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SC Court of Appeals

FORM 18
PETITION FOR A WRIT OF CERTIORARI

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Appellate Case No. 2021-000793
Circuit Court Case No. 2017-CP-10-05427

FAMILY SERVICES, INC., AS
CONSERVATOR FOR MURIEL W.
CLARKIN, RESPONDENT,

Respondent(s),

v.

PATRICIA CLARKIN SMITH AND
WELLS FARGO BANK, NA.,
DEFENDANTS, OF WHOM
PATRICIA CLARKIN SMITH IS
THE APPELLANT,

Petitioner(s).

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Petitioner Patricia Clarkin Smith filed a timely Petition to Reinstate Appeal and for a Rehearing on July 2, 2024, pursuant to the South Carolina Rules of Appellate Court Rules. Rule 240, SCACR. Counsel certifies that the South Carolina Court of Appeals issued its Order denying Petitioner Patricia Clarkin Smith's Petition to Reinstate Appeal and for a Rehearing *en banc* on September 4, 2024. This Petition for Writ of Certiorari is timely filed within thirty (30) days of the Appellate Court's final order and in compliance with the South Carolina Appellate Court Rules. Rule 242(c), SCACR. The content of this petition complies with the South Carolina Appellate Court Rules. Rule 242(d), SCACR. This petition raises issues involving substantial constitutional issues that are directly involved warranting this Court to grant a Petition for Certiorari. Rule 242(b)(4), SCACR.

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QUESTIONS PRESENTED

- I. Whether the Court of Appeals erred dismissing this appeal when the lower court lacked subject matter jurisdiction to award Respondent(s) for claims barred by the statute of limitations and violating Petitioner's constitutional rights to Petitioner's personal property without due process?**
- II. Whether the Court of Appeals erred dismissing this appeal when the lower court awarded Respondent with rent in arrears absent any landlord-tenant relationship between Respondent and Petitioner thus improperly awarding a party who lacked justiciability for claims of rent in arrears and violating Petitioner's constitutional rights to Petitioner's real property without due process?**

STATEMENT OF THE CASE

Petitioner Patricia Clarkin Smith (“Patricia”) appeals the Circuit Court’s Order Granting Motion for Summary Judgement on June 21, 2021, and the Court of Appeals’ order dismissing this appeal on September 4, 2024. (R. 20-46).

A. FACTUAL BACKGROUND

Respondent Family Services, Inc. (“Family Services”), as the conservator for Muriel Walsh Clarkin, sued Petitioner Patricia Clarkin Smith (“Patricia”) and Defendant Wells Fargo Bank, N.A. (“Wells Fargo”), for disputed monies and property transfer(s) pertaining to the conservatorship. (R. pp. 50-61, 63-64, 231-236, 238-250). Patricia is the daughter of Muriel Walsh Clarkin (“Mother”). (R. pp. 20-31, 50-61, 63-64, 230-236, 268-269, 285-302). In a sister probate case (Case No. 2014-GC-10-0209), the Honorable Tamara C. Curry in Charleston County Probate Court appointed Family Services as conservator for Mother on March 27, 2015. (R. pp. 24-25, 50, 66).

On or around November 1, 2012, Patricia received \$6,000.00 from Mother and her late father. (R. pp. 29, 31-33, 236). Pertaining to allegations of damages for a sum uncertain, Family Services never pled damages for this said stipulated amount of \$6,000.00 (on November 1, 2012). (R. pp. 29, 31-33, 35, 43-45, 50-61, 66-78, 373-382, 406, 477-478). Hence, an award on this amount is outside the scope of the pleadings and void. On or around August 21, 2013, Patricia received a secondary gift from Mother in the amount of \$1,500.00. (R. pp. 26, 29, 31-33, 35, 43-45, 52, 68, 135-136, 144-145, 343-346, 373-382, 477-478).¹ Both gifts occurred prior to

¹ On or around November 18, 2014, Patricia received \$6,000.00 from Mother. (R. pp. 28-29, 31-33, 35, 43-45, 69, 145, 156, 270-276, 359-362, 373-382, 517, 522-527). On or around December 23, 2014, Patricia received \$10,000.00 from Mother. (R. pp. 29, 31-33, 35, 43-45, 128, 146-147, 157, 373-382, 384-385, 389, 522-527). While Patricia claims these amounts as gifts from Mother to Patricia, Patricia concedes that challenging the said stipulated

Mother being diagnosed and declared legally incapacitated (collectively referred to as “Gifts”).

As recorded on August 7, 2013, the stipulated deed transfer pertains to the real property, and residence, or both of Mother and Patricia that is located on 602 Atlantic Street, Mount Pleasant, Charleston, South Carolina (Book No. 0351, Page No. 348, TMS No. 532-06-00-129) (“602 Atlantic Street”). Mother conveyed one-half (1/2) interest in said property to Patricia as joint tenants with rights of survivorship on August 7, 2013. (R. pp. 33-35, 43-45, 50-51, 66-67, 147, 156, 158-159, 230-236, 276-282, 290, 305-306, 337-342, 373-382, 390, 399-402, 427, 503-506). This deed evidenced both Mother and Patricia as landowners of said property at the time of filing this action. Also, this deed correctly identifies the subject property in dispute for the above-captioned case with respect to Family Services’s allegations of rent in arrears under different legal theories. (R. pp. 33-35, 43-45, 50-51, 66-67, 230-236, 276-282, 290, 305-306, 337-342, 373-382, 390, 399-402, 427, 503-506). Subsequently thereafter on or around April 1, 2014, Mother moved in with Patricia at 602 Atlantic Street. (R. pp. 329-330, 405).

Since March 27, 2015, Family Services asserted a claim of rent in arrears in the amount of \$500.00 in rent per month for Patricia to reside with Mother at 602 Atlantic Street. (R. pp. 33-36, 241-242, 305-306, 382). Despite acknowledging Patricia as a landowner of 602 Atlantic Street, Family Services extorted a total of rent in arrears for \$38,500.00 encompassing 77 monthly rent payments of \$500.00 per month since January of 2015. (R. pp. 33-36). Interest thereupon said rent in arrears amounted to \$8,255.88. (R. pp. 33-36). Total rent in arrears with interest amounted to \$46,755.88. (R. pp. 33-36, 43-45, 50-51, 66-67, 147, 156, 158-159, 230-236, 276-282, 290, 305-306, 337-342, 373-382, 390, 399-402, 427, 503-506).

amounts of \$6,000.00 (on November 18, 2014) and \$10,000.00 (on December 23, 2014) are not preserved upon appeal. (R. pp. 29-30, 43-45).

While Mother's demise with the progressive onset of dementia was an unfortunate hardship, Family Services did not properly assess or investigate the facts concerning Patricia before taking further legal action. (R. pp. 26-27, 29-30, 37, 54, 70, 236, 268-303). However, Mother was not actually declared mentally incapacitated until on or around December 22, 2014. (R. pp. 25, 29, 37, 231, 234, 268, 306-307). The lower court invalidated transactions or declared Mother under a disability effective as of November 12, 2014. (R. pp. 22, 27, 37). Moreover, in the demands made for repayment by Family Services to Patricia, Family Services only sent requests to Patricia for these two stipulated sums concerning the \$6,000.00 (on November 18, 2014) and the \$10,000.00 (on December 23, 2014). (R. pp. 289-295). Family Services does not provide any other documentation that Family Services made a demand to Patricia for other funds such as the Gifts or rent in arrears. Family Services does not establish having a right to said personal or real property for these monetary damages.

On or around September 24, 2024, Mother passed away. Virtually penniless.²

B. PROCEDURAL HISTORY

In the Summons and Complaint filed by Family Services on October 20, 2017, the following causes of action are relevant to this appeal: (1) Declaratory Injunctive Relief related to a gift from Mother to Patricia in the amount of \$6,000.00 on or around November 18, 2014; (2) Conversion of gifts from Mother to Patricia in the amount of \$1,500.00 and \$6,000.00 on or around August 21, 2023, and November 18, 2014, respectively; (3) Unjust enrichment related to

² Outside of this appeal, investigation is ongoing regarding Family Services's serious mismanagement of Mother's finances while acting as a conservator for Mother. Family Services amassed over \$100,00.00 plus in legal fees alone yet called for emergency hearings that Mother had no money to sustain her periodically (the actual amount still being investigated). Mother had sizeable assets that would have well afforded her to die with aplenty. Essentially, in some respects over all this time, Mother's assets were liquidated to pay legal fees instead of for her care.

these gifts; (4) Money Had Money Received related to these gifts; (5) Promissory Estoppel for Patricia's rent in arrears to Mother when both Mother and Patricia owned the home and lived together as joint owners with rights of survivorship; and, (6) Quantum Meruit for said gifts. (R. pp. 56-61, 237-250). On November 28, 2017, Patricia filed an answer that denied Family Services's material allegations. (R. pp. 50-61, 63-64). Family Services filed an amended complaint. (R. pp. 56-61, 72-78).³ Family Services served Patricia requests for admissions, interrogatories, and production of documents. (R. pp. 116-71, 485-502, 513-532). Family Services deposed Patricia. (R. pp. 252-532).

On February 11, 2020, Family Services moved the lower court to transfer the case to Master in Equity, of which the lower court granted the motion on February 12, 2020. (R. pp. 6, 210-12). On October 6, 2020, Family Services filed a motion for summary judgment. (R. pp. 230-532). On May 11, 2021, the Honorable Mikell R. Scarborough heard Family Services's motion for summary judgment and ruled in favor of Family Services in the absence of Patricia. (R. pp. 20-24, 533-534).⁴ The lower court issued an order granting Family Services's motion for summary judgment on June 21, 2021. (R. 20-46). Throughout most of this case in the lower court, Patricia represented herself pro se.

On July 22, 2021, Patricia filed this appeal timely. On January 2, 2024, Patricia filed the initial brief and designation of matter. On March 6, 2024, Family Services filed its initial brief and designation of matter. On April 18, 2024, Patricia filed record on appeal with a motion to file out of time. On April 19, 2024, Patricia filed the final brief. On April 25, 2024, Family Services

³ On May 23, 2019, Family Services and Wells Fargo entered into a consent order striking Wells Fargo from the case. (R. pp. 2-3). Wells Fargo is not involved in this appeal.

⁴ In a separate sister case (Case No. 2022-CP-08-00910), and on November 3, 2022, the Honorable Dale Van Slambrook in Berkley County entered an order withholding \$100,000.00 from Patricia in sale proceeds of another related real estate property due to the outcome of this appeal. (R. pp. 537-539).

filed a return to Patricia's motion to file out of time referencing to omissions from Family Services's designation of matters, of which many items were never part of the record in the lower court nor provided to the undersigned (see image):⁵

19. Notice of Appearance of New Counsel for Appellant, June 30, 2019;
20. Notice of Hearing and Respondent's Certificate of Service, filed December 24, 2020;
21. Notice of Hearing and Respondent's Certificate of Service, filed April 16, 2021;
22. Certificate of Service for Proposed Order Granting Summary Judgment, filed June 10, 2021;
23. Affidavit of Kelly Evans, filed June 10, 2021;
24. Email 5/10/21 5:20 p.m. from Respondent's Counsel to the Master's Office and Appellant containing a pdf copy of certified official records of the Probate Matter (2014-GC-10-0209), 50 pages including the court exemplification dated 8/15/19;
25. Copy of the Probate Matter Records a hard copy of which was provided to the Master on May 11, 2021, during the hearing on May 11, 2021, and an electronic copy of which was emailed to the Master's Office and Appellant on May 10, 2021; 50 pages including the court exemplification dated 8/15/19;
26. Email 4/1/21 11:40 AM from the Master's Office to Respondent's Counsel and Appellant informing the parties a hearing on the Motion for Summary Judgment would be held Tuesday May 11, 2021, at 12pm.
27. Email 4/16/21 10:29 AM from Respondent's Counsel to the Master's Office and Appellant, attaching a courtesy copy of the Notice of Hearing 5/11/21 Respondent Mailed to Appellant on April 16, 2021.
28. Email 5/7/21 5:07 PM from Appellant to Master's Office and Respondent's Counsel requesting a continuance of the Motion Hearing Scheduled for 5/11/21.
29. Email 5/10/21 12:09 PM from the Master's Office to Appellant and Respondent's Counsel, informing the Appellant the hearing will proceed forward as scheduled and Appellant is welcome to appear by either Web-Ex or in person, but there is no requirement for her to appear.
30. Charleston County Circuit Court Case Details Public Index for Case Number 2017-CP-10-05427, available online at:
<https://icmsweb.charlestoncountytv.org/PublicIndex/CaseDetails.aspx?CourtAgency=10002&Casenum=2017CP1005427&CaseType=V&HKey=10978122121102748772501167054100748371721038155907711310812148471021115110673113115705274117738298113119&Org=AC>

5 On July 3, 2024, the undersigned submitted a letter to the Court of Appeals with a pre-prepared record on appeal based on the proposed, corrected record on appeal due to issues with Family Services's designation of matter. The undersigned summarized the issues of inclusion and omissions with respect to Respondent's designation of matter: (1) the following items in Respondent's designation of matter were properly included in Petitioner's record on appeal: 1, 2, 3, 4, 5, 7, 8, 10, 12, 13, 14, 15, 17, 18, and 23; (2) the following items in Respondent's designation of matter must be included in Petitioner's resubmission of the record on appeal: 6 (motion to be relieved as counsel), 9 (motion to continue), 11 (motion to continue), and 16 (transcript); and, (3) the following items in Respondent's designation of matter were properly omitted in the Petitioner's record on appeal: 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, and 30. While some probate records from a separate case were provided by Respondent in Respondent's Motion to Dismiss filed in Court of Appeals on February 3, 2023, it is indistinguishable as to what Respondent is referring for the actual probate records.

On June 20, 2024, the Court of Appeals dismissed this appeal. On July 2, 2024, Patricia filed a motion to reinstate the appeal and for a rehearing *en banc*. Additionally, on July 3, 2024, Patricia submitted an explanatory letter accompanying the motion to reinstate the appeal and for a rehearing with a proposed, corrected record on appeal due to the issues with Respondent's designation of matters. However, this letter was filed by Patricia and received by the Court of Appeals, but it is not listed on the South Carolina Appellate Case Management System. Ex. A. On September 4, 2024, the Court of Appeals dismissed this appeal. Patricia petitions this Court to grant writ of certiorari and correct the errors in the Court of Appeal's decision.

ARGUMENT

When a plaintiff lacks subject matter jurisdiction, the defendant may raise lack of subject matter jurisdiction at any time before or after the case has been adjudicated. Rule 12(a)-(b), SCRPC. Rule 12(b)(1) pertains to dismissing a case or defending any cause of action in any pleading based upon a lack of subject matter jurisdiction over the case. Rule 12(b)(1), SCRPC. A court must have subject matter jurisdiction to enforce its own decrees. *Hallums v. Bowens*, 318 S.C. 1, 3, 428 S.E.2d 894, 895 (Ct. App. 1993). Subject matter jurisdiction is “a court's constitutional or statutory power to adjudicate a case.” *Johnson v. S.C. Dep't of Prob.*, 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007). Subject matter jurisdiction refers to the power of the court to adjudicate cases with the proceedings in question belonging to a general class. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) (conferring “the power of a court to hear and determine cases of the general class to which the proceedings in question belong”); *Dove v. Gold Kist*, 314 S.C. 235, 237-38, 442 S.E.2d 598, 599-600 (1994).

By contrast, compared to a claim for improper venue, “[a] court lacking subject matter jurisdiction, however, has no authority to act regardless of the geographical location or consent

of the litigants.” *Dove*, 314 S.C. at 238; *Triangle Auto Spring Co. v. Gromlovitz*, 270 S.C. 386, 389 n.1, 242 S.E.2d 430, 431 (1978) (opining that “consent has no bearing on the question of subject matter jurisdiction since such jurisdiction is not waivable”). While subject matter jurisdiction may not be waived by the parties or consented to by the parties, the issue of subject matter jurisdiction may be raised at any time upon the following condition as to “if it appeared that the lower court did not possess subject matter jurisdiction.” *Johnson*, 372 S.C. at 284; *Gentry*, 363 S.C. at 100.

Now, Family Services truly lacks standing and justiciability because Mother has died. Family Services is now a conservator for no one in this appeal. This case and appeal have been an absolute waste of Mother’s money that she could have used before she died to live her last days more comfortably instead.

I. Just as the lower court lacked subject matter jurisdiction over this appeal, the Court of Appeals also lacked subject matter jurisdiction to dismiss the appeal and affirm monetary damages in the amount of \$7,500.00 and interest thereupon awarded to Family Services pertaining to gifts made by Mother to Patricia that were barred from recovery under the three-year statute of limitations.

The term subject matter has a broad and various definition related to the right that one party claims against another party for the relief sought. *Atlanta Skin & Cancer Clinic, P.C. v. Hallmark Gen. Partners*, 320 S.C. 113, 121 n.10, 463 S.E.2d 600, 605 (1995) (citations omitted). First, if the defense for statute of limitations prevails, then so does the defense for lack of subject matter jurisdiction because a court’s subject matter jurisdiction rests upon whether a plaintiff is entitled to sue on a cause of action. *See McLendon v. S.C. Dep’t of Highways & Pub. Transp.*, 313 S.C. 525, 525-26, 443 S.E.2d 539, 540 (1994). The effect of the statute of limitations is substantive in nature foreclosing a claim. Because, the statute of limitations (as codified and amended) operates like a time capsule as to whether a claim is barred. Whether a claim is barred

is based upon the controlling law (for the statute of limitations) that surrounds a cause of action at the time the said cause of action accrued. The laws in effect at the moment a cause of action accrued is the controlling law over parties' legal relationships and rights. *Tilley v. Pacesetter Corp.*, 355 S.C. 361, 371, 585 S.E.2d 292, 297 (2003). A cause of action accrues at the moment when plaintiff is entitled to sue on it. *Id.* at 381.

As enacted on January 1, 2019, the South Carolina Probate Code does not abridge the effect of other statutes on rights acquired, extinguished, or barred. S.C. Code Ann. § 62-5-100(C). Once the probate court adjudicates an individual to be incapacitated, a conservator will be granted powers to assist managing the incapacitated individual's physical and financial well-being. S.C. Code Ann. § 62-5-101(1) to -(19). With respect to standing for collections purposes and asset tracing for the incapacitated person's estate, conservators must adhere to the appropriate statute of limitations under the circumstances as to when the right of action accrued. S.C. Code Ann. §§ 15-3-40 (tolling statute of limitations for persons with disability), 15-3-50 (limitations on tolling statute of limitations based on when disability existed at the time of when the right accrued). The statute of limitations is three years for "an action upon a contract, obligation, or liability, express or implied." S.C. Code Ann. §§ 15-3-530(1), 15-3-530(4) (three-year statute of limitations for claim and delivery). For older promises to pay from more than three years ago, acknowledgments or renewed promises to pay will not be charged against the promisor unless signed in writing by the promisor or the promisor pays a part of the debt or interest thereon. S.C. Code Ann. §§ 15-3-120, 15-3-130.

The Court of Appeals erred dismissing this appeal because both the Court of Appeals and the lower court lack subject matter jurisdiction while Family Services lacks standing to assert claims on disputed funds after the statute of limitations tolled. The statute of limitations abridges

Family Services's rights to exercise its powers as conservator for Mother; and, at the time of and after Family Services filed this lawsuit, the statute of limitations still governed under these circumstances in conjunction with the South Carolina Probate Code as codified and amended. Here, Mother was only diagnosed as mentally incapacitated on or around November 26, 2014. However, the probate court made findings that the mental incapacitation for Mother was identified at the earliest on November 14, 2014. Hence, all repossessions of Mother's assets prior to November 14, 2014, are not subject to the statute of limitations tolling for a person under disability. Prior to November 14, 2014, the conservator must adhere to when the right accrued to pursue said assets or disputed sums.

As a matter of law, Family Services *is not* entitled to collect Mother's Gifts to Patricia (instead of loans) *after* the statute of limitations has tolled and *before* Mother was declared legally incapacitated. Prior to November 14, 2014, Mother only had three years statute of limitations for Family Services's other allegations pertaining to Patricia's promises to pay or conversion of the Gifts in the amounts of \$6,000.00 (on November 1, 2012) and \$1,500.00 (on August 21, 2013) ("Gifts"). Family Services only filed the lawsuit against Patricia on October 20, 2017. When Family Services filed its complaint against Patricia on October 20, 2017, Family Services's allegations of claims on these Gifts occurred well after the three-year statute of limitations tolled. The statute of limitations for these Gifts tolled under the three-year statute of limitations on November 1, 2015, and August 21, 2016, respectively. Family Services did not present any documentation in writing of Patricia assuming the debt after the statute of limitations was tolled. Family Services did not present any evidence or written documentation that Family Services made a demand for repayment of these Gifts. Thus, Family Services is not entitled to these Gifts in the amount of \$7,500.00 and said interest thereupon.

Thus, the three-year statute of limitations barred Family Services's claims related to Patricia's Gifts. At the time Patricia received these Gifts from Mother, Mother's rights accrued at that time with no tolling of the statute of limitations for a person with disability. Family Services cannot seek to enlarge its rights beyond what the South Carolina code allows for Mother. Family Services's self-perceived rights to these Gifts were extinguished before Family Services ever filed this lawsuit against Patricia. If Family Services lacked standing to bring claims against Patricia for these Gifts at the time of filing this lawsuit, then Family Services also lacked standing to receive an award from the lower court for said claims because the lower court lacked subject matter jurisdiction to do so.

II. Just as the lower court lacked subject matter jurisdiction over this appeal, the Court of Appeals also lacked subject matter jurisdiction to dismiss the appeal and affirm monetary damages in the amount of \$46,755.88 awarded to Family Services pertaining to rent in arrears and interest thereupon when Family Services lacked justiciability to claim said rent in arrears in the absence of a landlord-tenant relationship between Patricia Clarkin Smith and Muriel Walsh Clarkin.

A party must have justiciability to bring forth a claim and have standing to do so for a court to have subject matter jurisdiction. *Joseph v. S.C. Dep't of Labor, Licensing & Regulation*, 417 S.C. 436, 449, 790 S.E.2d 763, 769-70 (2016). As a question of law, the court may construe the statutes in question for determining a plaintiff's justiciability without deference to the lower court. *Ex parte State ex rel. Wilson*, 391 S.C. 565, 570, 707 S.E.2d 402, 405 (2011); *see also McMaster v. Columbia Bd. of Zoning Appeals*, 395 S.C. 499, 504, 719 S.E.2d 660, 662 (2011) (discussing court's construction of legislative intent permissible for substantive due process). A party must have a personal stake in the lawsuit in which said claim, of which is the subject matter of the lawsuit, is ripe to be heard. *Joseph*, 417 S.C. at 449. The plaintiff must establish three required elements to meet the prerequisites to have standing in a lawsuit: (1) the plaintiff

suffers an injury in fact; (2) a causal connection exists between the injury in fact and the conduct complained of that is traceable to the defendant; and, (3) the likelihood is high that a decision by the court will favorably redress the plaintiff's injury that is not merely speculative in nature.

Joseph, 417 S.C. at 449; *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136 (1992). An injury in fact is the defendant's invasion of plaintiff's legal right, or interest, which is concrete and personalized harm whether actualized or imminent in nature. *Lujan*, 504 U.S. at 560-61; *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639-40, 528 S.E.2d 647, 649-50 (1999) (explaining that the injury in fact must be ripe or plaintiff faces imminent danger of sustaining injury). The injury must be of a personal nature that directly impacts the plaintiff and is not generalized in nature with the common public. *Joytime Distribs.*, 338 S.C. at 639-40.

Compliance with South Carolina law is mandatory by landlords and tenants alike, unless the statute expressly allows for private agreement to preempt the statute. *Compare Burbach v. Inv'rs Mgmt. Corp. Int'l*, 326 S.C. 492, 497, 484 S.E.2d 119, 121 (Ct. App. 1997) (holding landlords and tenants to statutory duties), with S.C. Code Ann. § 27-35-100 ("unless there be an express agreement to the contrary"), and S.C. Code Ann. § 27-35-110 ("[w]hen there is an express agreement, either oral or written"). The South Carolina Residential Landlord-Tenant Act governs the residential use of the real estate leased. S.C. Code Ann. § 27-40-210(3). If no lease exists, or a lease is silent on the subject, then South Carolina law applies as a gap-filling function. S.C. Code Ann. §§ 27-40-30 (supplemental law permissible), 27-40-110 (governing rights, obligations, and remedies under a lease agreement for a residential dwelling), 27-40-310 (governing terms and conditions of lease agreements), 27-40-330 (prohibiting certain lease provisions), 27-40-920 (preempting inconsistent provisions for residential leasing or renting of any real property in other South Carolina codes). The South Carolina Residential Landlord-

Tenant Act does not apply when a person's occupancy of real property precedes a conveyance of the same to said person, whether in part or in full. S.C. Code Ann. § 27-40-120; *see also* S.C. Code Ann. § 27-7-40 (creation of joint tenancies with rights of survivorship or in common).

When a lease—as a contract—is not involved in the landlord-tenant dispute, determining the status of the landlord-tenant relationship is a prerequisite before referring to the parties as the landlord and tenant and creating the duty of a tenant to pay rent. *See Simon v. Kirkpatrick*, 141 S.C. 251, 257-65, 139 S.E. 614, 616-19 (1927). Failure to pay rent by the tenant upon demand by the landlord terminates the tenant's possessory interest in the real estate, and the tenant must vacate the real estate. S.C. Code Ann. § 27-35-140 (leaving right of entry and remainderman fee simple to landowner). South Carolina law separates legal title to the land from the possession of the land in a leasehold estate, protecting one in possession of the land from “one who enters and takes lands from the possession of another.” *See State v. Bates*, 87 S.C. 527, 530-31, 70 S.E. 170, 171 (1911). The South Carolina Code is clear establishing that owners are in possession of real estate being used or occupied by a tenant whereas the tenant is merely holding the real estate thereunder. S.C. Code Ann. § 27-35-30.

The tenant occupies the lands, or premises, of the landlord with the landlord's assent, whether express or implied, in a manner that is subordinated to the landlord's title to the lands or premises. *Columbia R., G. & E. Co. v. Jones*, 119 S.C. 480, 490, 112 S.E. 267, 271 (1922). The South Carolina Code defines a tenant as “[a] person *other than the owner* using or occupying real estate” whether under a written or oral agreement. S.C. Code Ann. §§ 27-33-10(3) to -(8) (emphasis added). The South Carolina Residential Landlord-Tenant Act defines a tenant as “a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.” S.C. Code Ann. § 27-40-210(15). By contrast, the South Carolina Code defines a landlord “to

include the owner or person in possession or entitled to possession of the real estate used or occupied by the tenant. . . .” S.C. Code Ann. § 27-33-10(8). The South Carolina Residential Landlord-Tenant Act defines a landlord as the owner of the premises who comprises of “one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to property or (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises.” S.C. Code Ann. § 27-40-210(8) (owners); *see also* S.C. Code Ann. §§ 27-40-210(6) (landlord), 27-40-210(10) (premises).

Regardless of whether a lease governs the landlord-tenant relationship, South Carolina law governs landlords and tenants separately from the lease itself as mutually independent. *Burbach*, 326 S.C. at 497. The lease for the premises is both a contract and a transfer of estate, which are mutually independent:

While landlord-tenant relationships are frequently governed by contract, landlords have certain statutory duties, as do tenants. These duties protect the public interest in that they create a framework that governs landlord-tenant relationships regardless of the private arrangements parties have made between themselves. *Id.*

A written lease is not always relevant in a landlord-tenant dispute because the written lease may be invalid, expired, or nonexistent. *E.g.*, *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989) (expired lease and unenforceable, oral contract); *Barksdale v. Hinson*, 212 S.C. 1, 3, 46 S.E.2d 170, 171 (1948) (oral lease); *Wilson v. McAbee*, 256 S.C. 211, 217, 182 S.E.2d 313, 315 (1971) (defective, written lease). A breach of contract under the lease will not permit the tenant to vacate as the leasehold estate exists independently and is mutually exclusive from the characterization of the lease as a contract. *See Rowland & Sons v. Bock*, 150 S.C. 490, 493, 148 S.E. 549, 550 (1929). In the absence of a written lease agreement, no oral lease agreement may exceed one year or said oral lease will be void as a matter of public policy. S.C. Code Ann. §§

27-35-10, 27-35-20. Hence, the South Carolina Residential Landlord Tenant Act trumps any legal analysis under promissory estoppel for the recovery of rent for residential homes. While conservators are empowered to enter into a lease agreement and manage real property as rental property for the residential use on behalf of the incapacitated person, conservators must adhere to the South Carolina Residential Landlord-Tenant Act and accompanying law accordingly. S.C. Code Ann. §§ 27-40-920 (application of law), 62-5-101(1)-(19) (definitions), 62-5-107, 62-5-422 (B)(5) (powers).

The Court of Appeals erred dismissing this appeal because both the Court of Appeals and the lower court lack subject matter jurisdiction while Family Services lacks standing to assert claims for rent in arrears because no landlord-tenant relationship exists to warrant an award to Family Services for rent in arrears pursuant to its cause of action for promissory estoppel. For Family Services to recover rent in arrears from Patricia pertaining to 602 Atlantic Street, Family Services must determine the existence of a landlord-tenant relationship between Mother and Patricia. Here, Patricia resides in 602 Atlantic Street as her personal residence and dwelling. Patricia entered and took possession of 602 Atlantic Street on or just before the time Mother conveyed one-half (1/2) of her full interest in said property to Patricia. Hence, Patricia was entitled to occupy 602 Atlantic Street without paying rent when Mother concomitantly granted conveyance to Patricia as joint tenants with rights of survivorship. Patricia is entitled to the possession of 602 Atlantic Street. Patricia has vested legal title in said real property, whether in part or in full; beneficial ownership of said property; and, the present use and enjoyment of said real property. Patricia is an owner—not a tenant. By contrast, Patricia has a fee simple interest in 602 Atlantic Street with a remainderman of a right of reentry on the real property as a landowner instead of merely having a tenant's possessory interest. Furthermore, because Mother is now

deceased, Patricia is the sole landowner, or owner, of 602 Atlantic Street.

Additionally, Family Services may not impose rent in arrears onto Patricia in excess of a year (or twelve months) without a written lease agreement. No written or oral lease agreement exists between Mother and Patricia for 602 Atlantic Street. Therefore, Family Services may not impose rent in arrears of 77 monthly rent payments of \$500.00 per month since January of 2015 that directly violates the statute of frauds and is void against public policy. Liability for rent in arrears does not apply to owners of the premises who reside on the premises. Failure to pay rent will not terminate Patricia's possession of 602 Atlantic Street. Patricia is not required to pay rent in exchange for possessing 602 Atlantic Street thereunder her vested right of legal title to and present use and enjoyment of said property. Because no landlord-tenant relationship exists, Family Services lacks standing under the South Carolina Residential Landlord-Tenant Act with respect to claims of monetary loss from rent in arrears. Family Services lacks a concrete and particularized injury for so-called rent in arrears in the woeful absence of a landlord-tenant relationship. Family Services lacks standing to bring forth any legal claims related to the South Carolina Residential Landlord-Tenant Act or to landlord-tenant law applying to leasehold estates because no landlord-tenant relationship exists. As a matter of law, the lower court grossly erred by awarding Family Services \$46,755.88 for rent in arrears that is based on a legal impossibility and without merit.

III. Just as the lower court violated Patricia's substantive due process rights, the Court of Appeals also violated Patricia's substantive due process rights by dismissing this appeal and depriving her of her valid legal interest in her personal and real property because no court may award Family Services approximately \$54,255.88 with interest thereupon for Family Services's lack of subject matter jurisdiction and justiciability.

The lower court violated due process under the Fourteenth Amendment of the Federal

Constitution, and corollary rights under South Carolina law, which stands for the proposition that:

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. Due process does not mandate any particular form of procedure. Instead, due process is a flexible concept, and the requirements of due process in a particular case are dependent upon the importance of the interest involved and the circumstances under which the deprivation may occur. *State v. Owens*, 346 S.C. 637, 664, 552 S.E.2d 745, 759 (2001) (citing *S.C. Nat'l Bank v. Cent. Carolina Livestock Mkt., Inc.*, 289 S.C. 309, 313, 345 S.E.2d 485, 488 (1986) (internal citations omitted)).

Both the Federal Constitution and the South Carolina Constitution extend protection to individuals from any state actor who deprives any citizen of the United States “under [the] color of any statute, ordinance, regulation, custom, or usage, of any State.” 42 U.S.C. § 1983; U.S. CONST. amend. 1, XIV; S.C. CONST. art. I, § 2; *see also Denene, Inc. v. City of Charleston*, 359 S.C. 85, 96, 596 S.E.2d 917, 923 (2004). The Fourth Amendment vests to the people “[t]he right . . . to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. CONST. amend. IV. The physical trespass of property by the government is not necessary to affect a seizure of property because unlawful seizure may occur “a seizure of property occurs, not when there is a trespass, but “when there is some meaningful interference with an individual's possessory interests in that property.” *United States v. Jacobsen*, 466 U.S. 109, 113, 104 S. Ct. 1652, 1656, 80 L. Ed. 2d 85 (1984).

Under a substantive due process claim, the aggrieved party must show the unlawful, arbitrary, and capricious deprivation of a cognizable property interest under South Carolina law. *Denene, Inc.*, 359 S.C. at 96; *Worsley Cos. v. Town of Mount Pleasant*, 339 S.C. 51, 56, 528 S.E.2d 657, 660 (2000) (discussing that the aggrieved party must have a legitimate claim or entitled to a property interest in a benefit with respect to agencies). To use other law that is not

controlling based on when the cause of action accrued may result in harsh and oppressive results that violates a party's substantive due process rights. *See Tilley*, 355 S.C. at 370-72. The standard of review for substantive due process claims under the color of state law is whether the state law or ordinance "ordinance bears a reasonable relationship to any legitimate interest of government." *Denene, Inc.*, 359 S.C. at 96.

Here, Family Services is court-appointed by the probate court and acting under the color of the law with respect to tracing, collecting, and repossessing assets of protected persons adjudicated as legally incapacitated. The application of retrospective civil legislation may produce harsh and oppressive outcomes when a conservator, in fact, does not limit its activities in asset tracing, collections, or repossession within the same scope and manner as prescribed by the statute of limitations or applicable law under the circumstances as an equitable matter. Family Services must have subject matter jurisdiction and justiciability over its claims against Patricia—in any court. Family Services does not. Thus, no court in South Carolina may award Family Services approximately \$54,255.88 with interest thereupon related to the Gifts and rent in arrears. The role of conservators is not to go on a wild goose chase to nickel and dime any potential party in possession of or owing funds. Such conduct is a cost-ineffective endeavor for the protected person and eats up precious resources for said protected person. At some point, the conservator's efforts fail to represent the best interests of the protected person under these circumstances. Such a result is harsh and oppressive to victims harangued by Family Services as well as to protected persons left with little to no funds due to Family Services capricious management of funds allocated to protected persons in unnecessary litigation and legal fees. The outcome does not bear a reasonable relationship to the original intent of protecting legally incapacitated persons physically and financially.

CONCLUSION

An award to Family Services for claims barred by the statute of limitations and rent in arrears from a landowner is a sham legal process thwarting justice and absolutely violates public policy. Family Services never had standing to pursue collections on gifts made from Mother to Patricia more than three years before Family Services filed a lawsuit and Mother was declared legally incapacitated. Family Services never had standing to pursue rent in arrears from a landowner residing on the real property in question, and in possession of the same, because the prerequisite landlord-tenant relationship is necessary to charge for rent in a residential home. Thus, charging an owner of real property rent to live on said real property is an obsequious, legal impossibility. Ultimately, Family Services's collections on \$54,255.88 violate Patricia's substantive due process rights. No court has jurisdiction to abide by such an award. Patricia seeks relief from the Court to grant this petition for a writ of certiorari to reverse, remand, and modify the lower court's order granting Family Services motion for summary judgment. To uphold substantive due process rights for Patricia under these circumstances, Patricia is entitled to the reduction of Family Services's award for monetary damages with total damages in the amount of only \$16,000.00 with the appropriate interest thereupon. However, the case must now be turned over to the executor of the estate—not Family Services.

Respectfully submitted this 3 day of October , 2024 .

DICKSON DAVIS LAW FIRM, LLC

/s/ Deborah D. Davis

Deborah D. Davis, Esq.

SC Bar No.: 102942

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ATTORNEY FOR PETITIONER

EXHIBIT A



DICKSON DAVIS LAW FIRM

**NOTICE OF APPELLANT'S PETITION TO REINSTATE APPEAL
AND FOR A REHEARING**

July 3, 2024

Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
P.O. Box 11629
Columbia, SC 29211

RECEIVED

Jul 03 2024

SC Court of Appeals

VIA EMAIL CTAPPFILINGS@SCCOURTS.ORG

Re	: <i>Family Services, Inc., as Conservator for Muriel W. Clarkin v. Patricia Clarkin Smith and Wells Fargo Bank, NA., Defendants, Of whom Patricia Clarkin Smith is the Appellant</i>
Case No.	: 2017-CP-10-05427
Appellate Case No.	: 2021-000793
File Id.	: 2023-06-002-PSC-002

Dear Clerk of Court:

Due to the recent order issued by this Court on June 20, 2024, to dismiss this appeal, I have previously filed the Petition to Reinstate the Appeal and for Rehearing for Appellant.

Exhibit 1 regards Respondent's Designation of Matter. Exhibit 2 regards Appellant's record on appeal should the Court rule in Appellant's favor with respect to Appellant's petition. **Please note, Exhibit 2 is not an official filing of a corrected record on appeal.**

This letter and these exhibits solely serve as an explanation to show the Court that:

- (1) Appellant is able, willing, and ready to submit a corrected record on appeal without delay upon resolution of issues related to Respondent's Designation of Matter as explained in Appellant's petition; and,
- (2) under normal circumstances, Appellant would have also filed the corrected record on appeal with Appellant's petition.

If the documents in question regarding Respondent's Designation of Matter were straightforward, then I would have also included a corrected record on appeal with Appellant's petition. Ex. 1. I have previously detailed each item in question separately regarding Respondent's Designation of Matter in Appellant's petition.

However, most of these documents were not entered into the record with the lower court(s) nor am I in possession of said documents creating a problematic dilemma. I have obtained the missing transcript and provided an explanation accordingly in Appellant's petition. To comply with the full inclusion of Respondent's list of matters would also not comport with Rules 209 and 210. Rules 209(b), 210(c), SCACR.

In short, Appellant seeks relief from the Court and requested the following in Appellant's petition:

DICKSON DAVIS LAW FIRM, LLC ■ 620 RUTHERFORD STREET ■ GREENVILLE, SOUTH CAROLINA ■ 29609
833.729.3426 TEL ■ 864.752.1424 FAX ■ WWW.DICKSONDAVISLAW.COM ■ INFO@DICKSONDAVISLAW.COM
Pet. Ex. A-000002

- (1) The Court's ruling that the following items in Respondent's designation of matter were properly included in Appellant's record on appeal: 1, 2, 3, 4, 5, 7, 8, 10, 12, 13, 14, 15, 17, 18, and 23;
- (2) The Court's ruling that the following items in Respondent's designation of matter must be included in Appellant's resubmission of the record on appeal: 6 (motion to be relieved as counsel), 9 (motion to continue), 11 (motion to continue), and 16 (transcript); and,
- (3) The Court's ruling that the following items in Respondent's designation of matter were properly omitted in the Appellant's record on appeal: 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, and 30.

Based on the analysis and explanation in Appellant's petition, Appellant has a prepared record on appeal on standby that correlates with Appellant's sought relief in Appellant's petition as mentioned above in items (1)-(3). Ex. 2.

This letter and these exhibits do not serve as an official filing of a record on appeal to correct deficiencies.

I do not wish to incur more deficiencies by submitting a record on appeal based on the analysis and explanation in Appellant's petition if the Court should rule differently with additional instructions to adjust the record on appeal than as proposed by Appellant's revised index for the record on appeal.

Please let me know what further you require from me at this time. Thank you for your time and consideration in this matter.

Respectfully submitted this 3 day of July , 2024 .

s/ Deborah D. Davis

Deborah D. Davis, Esq.
SC Bar No.: 102942

ATTORNEY FOR APPELLANT

cc: The Law Office David Conor Keys, LLC
D. Conor Keys, Esq.
P.O. Box 14225
Charleston, SC 29422
(843) 906-3998

ATTORNEYS FOR THE RESPONDENTS

/ddd

EXHIBIT 1

RECEIVED

Mar 06 2024

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master in Equity Charleston County

Case No. 2017-CP-10-5427
Appellate Case No. 2021-000793

Family Services, Inc., as Conservator for Muriel W. Clarkin.....Respondent,

v.

Patricia Clarkin Smith and Wells Fargo Bank, NA., Defendants,
Of whom Patricia Clarkin Smith is the Appellant.

RESPONDENT'S DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Pursuant to Rule 209, SCACR, Respondent, Family Services, Inc. as Conservator for Muriel W. Clarkin hereby designates the following material for inclusion in the record on appeal. Undersigned counsel certifies, pursuant to Rule 209(c), SCACR, that the designation contains no matter which is irrelevant to the appeal.

ORDERS

1. Consent Order Relieving and Substituting Counsel for Appellant, filed May 23, 2019;
2. Order Disqualifying Counsel for Appellant, filed October 10, 2019;
3. Order Referring the Matter to the Master in Equity February 12, 2020;
4. Order Granting Respondent's Motion for Summary Judgment, filed June 21, 2021;

MOTIONS

5. Respondent's Motion to Compel Discovery Including all Exhibits, filed May 1, 2018;
6. Appellant's Counsel's Motion to be Relieved as Counsel, filed April 4, 2019;
7. Respondent's Motion to Enforce Settlement including all Exhibits, filed July 10, 2019;
8. Appellant's Motion for Continuance, filed November 27, 2019;
9. Appellant's Motion for Continuance, filed January 27, 2020;
10. Respondent's Motion to Refer the Matter to the Master in Equity, filed February 11, 2020;
11. Appellant's Motion for Continuance, filed February 18, 2020;
12. Respondent's Motion for Summary Judgment including all Exhibits, filed October 6, 2020;
 - a) Exhibit A: Deposition Transcript of Appellant, July 24, 2018, 233 pages;
 - b) Exhibit B: Excerpts of Text Messages between Appellant and Kennedy, 17 pages;
 - c) Exhibit C: Email, 1 page
 - d) Exhibit D: Deed 7/30/13, 4 pages
 - e) Exhibit E: Copy of a Check of Appellant 8/2/13, 1 page
 - f) Exhibit F: Deed 11/17/14, 5 pages
 - g) Exhibit G: Appellant's Answer to Interrogatories 6/19/18, 9 pages
 - h) Exhibit H: Correspondence Excerpts, 7 pages
 - i) Exhibit I: Deed 3/31/16, 4 pages

PLEADINGS

13. Summons and Complaint, filed October 20, 2017;
14. Appellant's Answer, filed November 28, 2017;
15. Amended Complaint, filed December 4, 2017;

TRANSCRIPTS

16. Transcript for the Hearing on Respondent's Motion for Summary Judgment, May 11, 2021;

OTHER EVIDENCE

17. Appellant's Letter to Judge Young, filed November 1, 2019;
18. Affidavit of Kelley Evans in Support of Motion to Enforce Settlement, filed August 13, 2019;

19. Notice of Appearance of New Counsel for Appellant, June 30, 2019;
20. Notice of Hearing and Respondent's Certificate of Service, filed December 24, 2020;
21. Notice of Hearing and Respondent's Certificate of Service, filed April 16, 2021;
22. Certificate of Service for Proposed Order Granting Summary Judgment, filed June 10, 2021;
23. Affidavit of Kelly Evans, filed June 10, 2021;
24. Email 5/10/21 5:20 p.m. from Respondent's Counsel to the Master's Office and Appellant containing a pdf copy of certified official records of the Probate Matter (2014-GC-10-0209), 50 pages including the court exemplification dated 8/15/19;
25. Copy of the Probate Matter Records a hard copy of which was provided to the Master on May 11, 2021, during the hearing on May 11, 2021, and an electronic copy of which was emailed to the Master's Office and Appellant on May 10, 2021; 50 pages including the court exemplification dated 8/15/19;
26. Email 4/1/21 11:40 AM from the Master's Office to Respondent's Counsel and Appellant informing the parties a hearing on the Motion for Summary Judgment would be held Tuesday May 11, 2021, at 12pm.
27. Email 4/16/21 10:29 AM from Respondent's Counsel to the Master's Office and Appellant, attaching a courtesy copy of the Notice of Hearing 5/11/21 Respondent Mailed to Appellant on April 16, 2021.
28. Email 5/7/21 5:07 PM from Appellant to Master's Office and Respondent's Counsel requesting a continuance of the Motion Hearing Scheduled for 5/11/21.
29. Email 5/10/21 12:09 PM from the Master's Office to Appellant and Respondent's Counsel, informing the Appellant the hearing will proceed forward as scheduled and Appellant is welcome to appear by either Web-Ex or in person, but there is no requirement for her to appear.
30. Charleston County Circuit Court Case Details Public Index for Case Number 2017-CP-10-05427, available online at:
<https://jcmsweb.charlestoncounty.org/PublicIndex/CaseDetails.aspx?CourtAgency=10002&Casenum=2017CP1005427&CaseType=V&HKey=10978122121102748772501167054100748371721038155907711310812148471021115110673113115705274117738298113119&Org=AC>

March 6, 2024.

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC

s/ D. Conor Keys

D. Conor Keys (100148)

P.O. Box 14225

Charleston, SC 29422

Phone: 843-906-3998

conor@dconorkeyslaw.com

Attorney for Respondent

EXHIBIT 2

FORM 15
RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2021-000793

FAMILY SERVICES, INC., AS
CONSERVATOR FOR MURIEL W.
CLARKIN, RESPONDENT,

Appellant(s),

v.

PATRICIA CLARKIN SMITH AND
WELLS FARGO BANK, NA.,
DEFENDANTS, OF WHOM
PATRICIA CLARKIN SMITH IS
THE APPELLANT,

Respondent (s).

RECORD ON APPEAL

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(843) 906-3998

ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Family Services, Inc., as Conservator for Muriel W. Clarkin)

☐ Plaintiff)

v.)

Wells Fargo Bank, N.A., et. al.)

☒ Defendants)

IN THE COURT OF COMMON PLEAS

CASE NO.

2017-CP-10-5427

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

David Conor Keys, Esquire
The Law office of David Conor Keys, LLC
PO Box 14225
Charleston, SC 29422
Phone: (843) 906-3998
Email: conor@dconorkeys.law.com

Defendant's Attorney:

S. Sterling Laney, Esquire. / John C. Hawk, Esquire
WOMBLE BOND DICKINSON (US) LLP
5 Exchange Street, Charleston SC 29401
Phone (843) 722-3400 Fax:
E-mail: Sterling.Laney@wbd-us.com
John.Hawk@wbd-us.com

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **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:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order: **CONSENT ORDER**

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

May 16, 2019
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: \$25.00

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ 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, SCRPC)

☐ 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: _____

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

) CASE NO.: 2017-CP-10-5427

)
)
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)
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)

CONSENT ORDER

FILED
2019 MAY 23 AM 10:12
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____ wing:

1. That Alan D. Toporek shall be relieved as counsel for the Defendant, Patricia Clarkin Smith;
2. That Karen DeJong shall be substituted as counsel for the Defendant, Patricia Clarkin Smith;
3. That this case shall be mediated on or before June 15, 2019;
4. That this matter shall be called for trial no sooner than July 31, 2019;
5. That Wells Fargo Bank, N.A. shall be stricken as a Defendant in this action. Wells Fargo's lien rights and interest over the property which is the subject of the Complaint are preserved.

Presiding Judge of the Ninth Judicial Circuit
Court of Common Pleas

Presiding Judge of the Ninth Judicial Circuit
Court of Common Pleas

23
s 16th day of
Charleston, South

WE CONSENT:

ADT / permission
Alan D. Toporek, Esquire
Attorney for Defendant, Smith

KMD / permission
Karen M. DeJong, Esquire
Attorney for Defendant, Smith

DCK with permission
David Conor Keys, Esquire
Attorney for Plaintiff, Family Services, Inc.

John C. Hawk
John C. Hawk, Esquire
Attorney for Defendant, Wells Fargo, N.A.



May 16, 2019

Charleston County Clerk of Court
Ms. Julie Armstrong
100 Broad Street
Charleston, SC 29401

Re: Family Services, Inc. as Conservator for Muriel W.
Clarkin v. Patricia Clarkin Smith and Wells Fargo
Bank, N.A.
Case No: 2017-CP-10-5427

Womble Bond Dickinson (US) LLP

Post Office Box 999
Charleston, SC 29402

5 Exchange Street
Charleston, SC 29401

t: 843.722.3400
f: 843.723.7398

John C. Hawk, IV
Direct Dial: 843-720-4626
Direct Fax: 843-723-7398
E-mail: John.Hawk@wbd-us.com

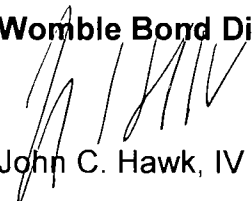
Dear Ms. Armstrong,

Enclosed for signature and filing, please find one original and one copy of the **Consent Order** with regard to the above matter. Also enclosed, please find our firm check in the amount of \$25 for your filing fee. Please have the appropriate judge sign, then file and return to our office in the enclosed self-addressed stamped envelope. Thank you in advance for your assistance. By copy of this letter, we are serving all parties with the same.

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Womble Bond Dickinson (US) LLP


John C. Hawk, IV

JCH/cxc
Enclosure

CC: Alan D. Toporek, Esq.
Karen M. DeJong, Esq.
David Conor Keys, Esq.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Family Services, Inc., as Conservator
for Muriel W. Clarkin,

Plaintiff,

v.

Patricia Clarkin Smith and Wells
Fargo Bank, NA,

Defendants.

) IN THE COURT OF COMMON PLEAS

)
) CASE NO.: 2017-CP-10-5427

**ORDER GRANTING PLAINTIFF'S
MOTION TO DISQUALIFY COUNSEL
AND CONTINUING MOTION TO
ENFORCE SETTLEMENT**

2019 OCT 10 PM 4:15
JULIE HARRIS
CLERK OF COURT

On August 30, 2019 this matter came before the Court on two Motions. The Court heard Plaintiff's Motion to Enforcement Settlement, and Plaintiff's Motion to Disqualify Karen DeJong as Counsel for Patricia Clarkin Smith. After hearing arguments, and reviewing the matters, the Court rules as follows:

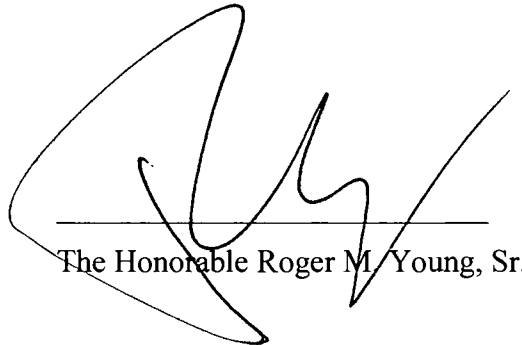
As for Plaintiff's Motion to Disqualify Counsel, Attorney Karen DeJong is hereby disqualified as counsel for Patricia Clarkin because Attorney DeJong previously acted as a mediator in a related action. Defendant Patricia Clarkin Smith has 30 days from this Order to obtain a new attorney for this matter.

As to Plaintiff's Motion to Enforce Settlement, this Motion is continued until Defendant Patricia Clarkin Smith obtains a new attorney. The Clerk's Office will reschedule the Motion to Enforce Settlement after 30 days have passed.

AND IT IS SO ORDERED.

October 3, 2019

Charleston, South Carolina


The Honorable Roger M. Young, Sr.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-5427
	)	
Family Services, Inc., as Conservator	)	
For Muriel W. Clarkin,	)	
	)	ORDER OF REFERENCE
Plaintiff,	)	
	)	
vs.	)	
	)	
Patricia Clarkin Smith and Wells Fargo	)	
Bank, NA.	)	
	)	
Defendant.	)	
_____	)	

It appearing that pursuant to Rule 53(b), SCRCP the herein action is an appropriate action to be referred to Mikell R. Scarborough. Master-In-Equity for Charleston County with authority to enter a final judgment in the case;

NOW, upon motion by the Plaintiff

IT IS ORDERED, that this case is referred to Mikell R. Scarborough, Master-In-Equity for Charleston County, who, pursuant to Rule 53(b) SCRCP, shall exercise all power and authority which a circuit judge sitting without a jury would have, including but not limited to, making findings of fact and conclusions of law; directing entry of a final judgment in this action under Rule 53(b) SCRCP; to hear any issues, including motions, after judgment; issuing any and all Order and Supplemental Orders, and Writs of Assistance. Pursuant to Rule 53(b) SCRCP, any appeal from the final judgment entered by the Master-In-Equity shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Presiding Judge, Charleston County or
Clerk of Court for Charleston County



Charleston Common Pleas

Case Caption: Family Services Inc , plaintiff, et al VS Patricia Clarkin Smith ,
defendant, et al

Case Number: 2017CP1005427

Type: Order/Referred to Master or Special Referee

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2020-02-12 14:51:06 page 2 of 2

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP1005427

Family Services Inc et al
PLAINTIFF(S)

Patricia Clarkin Smith
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

This matter came before the court on June 25, 2020 on Plaintiff's Motion to Enforce Settlement Agreement dated 12/12/18 filed on July 10, 2019. Pro Se Defendant appeared by telephone and requested additional time to obtain an attorney. She had previously advised the court by letter of November 2019 that she would proceed pro se and has filed two (2) prior requests to continue the motion which have both been granted.

Both parties were heard on the matter. The court is taking the Motion under advisement for 15 days in order to provide Defendant, Patricia Clarkin Smith, ten (10) days from today's date to obtain an attorney. The attorney will need to file a Notice of Appearance within the ten (10) days and will have five (5) days in which to file a written response to the Motion with the Clerk of Court and this court. The court will thereupon rule based upon the record in this matter.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/25/2020 .

Patricia Clarkin Smith for Patricia Clarkin Smith
Patricia Clarkin Smith for Patricia Clarkin Smith

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

Case Caption: Family Services Inc , plaintiff, et al VS Patricia Clarkin Smith ,
defendant, et al

Case Number: 2017CP1005427

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2020-06-25 12:22:13 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017CP1005427

Family Services Inc et al
PLAINTIFF(S)

Patricia Clarkin Smith
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

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

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

This matter came before the court on Plaintiff's Motion to Enforce Settlement Agreement dated 12/12/18 filed on July 10, 2019. Pursuant to this court's Order dated June 25, 2020 the Motion was taken under advisement by the court. The court has received a Notice of Limited Appearance by M. Richardson Hyman, Esq. and the Defendant Smith's Memorandum in Opposition to Plaintiff's Motion both filed June 30, 2020.

The Plaintiff's Motion is respectfully DENIED as the agreement is unenforceable under SCRPC 43(k). Additionally, Mr. Hyman is now relieved as counsel for Mr. Smith due to his limited appearance to defend against above referenced Motion.

Ms. Smith is to obtain new counsel within 30 days and the matter shall proceed to trial within 90 days.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/06/2020 .

Patricia Clarkin Smith for Patricia Clarkin Smith
Patricia Clarkin Smith for Patricia Clarkin Smith

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

Case Caption: Family Services Inc , plaintiff, et al VS Patricia Clarkin Smith ,
defendant, et al

Case Number: 2017CP1005427

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2020-07-06 10:26:59 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2017 CP-10-5427

FAMILY SERVICES, INC. AS CONSERVATOR
FOR MURIEL W. CLARKIN

PATRICIA CLARKIN SMITH, ET AL.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: DAVID CONOR KEYS

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCp; ☐ Rule 41(a), SCRCp (Vol. Nonsuit); ☐ Rule 43(k), SCRCp (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCp; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Family Services, Inc. as Conservator for Muriel W. Clarkin	Patricia Clarkin Smith	\$81,149.13
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
602 Atlantic St., Mt. Pleasant SC, 29464, TMS # 532-06-00-129

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Charleston Common Pleas

Case Caption: Family Services Inc , plaintiff, et al VS Patricia Clarkin Smith ,
defendant, et al

Case Number: 2017CP1005427

Type: Master/Order/Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-06-21 11:59:30 page 6 of 6

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-5427
	)	
Family Services, Inc., as Conservator	)	
For Muriel W. Clarkin,	)	
	)	
Plaintiff,	)	ORDER GRANTING PLAINTIFF'S
	)	MOTION FOR SUMMARY JUDGMENT
	)	
vs.	)	
	)	
Patricia Clarkin Smith and Wells Fargo	)	
Bank, NA.	)	
	)	
Defendant.	)	
	)	

This matter came before this Court on May 11, 2021, upon Plaintiff, Family Services, Inc., as Conservator for Muriel W. Clarkin's (hereinafter "Plaintiff") Motion for Summary Judgment schedule to be heard. Present at the hearing was Kelly Evans, case manager for Plaintiff, with Plaintiff's counsel David Conor Keys. The motion was scheduled to be heard at 12:00 p.m. The Defendant, Patricia Clarkin Smith (hereinafter "Defendant"), was properly noticed of the time and date of hearing and appeared pro se in the court room after this Court heard the motion and made a ruling on the motion from the bench. The Court began hearing the motion at or around 12:15 p.m. and concluded the hearing at or around 1:00 p.m. Thereafter, when Plaintiff and Plaintiff's counsel were packing up their belongings and this Court was beginning its next hearing, the Defendant appeared in the court room. This Court informed Defendant that the Court had already made a ruling in favor of Plaintiff as to the motion and that an order would follow.

PROCEDURAL HISTORY

Plaintiff filed the summons and complaint in this matter on October 20, 2017, asserting causes of action for Conversion, Unjust Enrichment, Money Had and Received, Promissory Estoppel, Quantum Meruit, Declaratory Judgment, Fraudulent Conveyance, and Quiet Title.

Defendant through her then-counsel Alan D. Toporek filed an answer on November 28, 2017, which did not assert any defenses, claims or counterclaims. Defendant Wells Fargo Bank N.A., filed an answer on August 15, 2018. By consent order filed May 23, 2019, Karen DeJong was substituted as counsel for Defendant and Wells Fargo Bank, N.A. was dismissed from the matter without prejudice. The order further provided that the matter should be called for trial on or after July 31, 2019. Plaintiff moved to enforce a settlement agreement by motion filed July 10, 2019. By Order of the Honorable Roger M. Young, Sr., filed October 10, 2019, Karen DeJong was disqualified as counsel for Defendant and the Plaintiff's motion to enforce settlement was continued to give Defendant an opportunity to find new counsel. On November 1, 2019, Defendant filed a letter to the court informing the court that she would be proceeding pro se. The Motion to enforce settlement was scheduled to be reheard on December 16, 2019, but was continued upon the motion of Defendant filed November 27, 2019. The Motion was scheduled to be heard on January 27, 2020 but continued upon the motion of Defendant filed January 27, 2020. By order filed February 12, 2020, the matter was referred to the Master in Equity. On February 18, 2020, Defendant filed a motion to continue the motion to enforce settlement. On February 24, 2020, Plaintiff's counsel emailed this court attaching the Defendant to the email and requesting that Plaintiff's motion to enforce settlement be scheduled. On February 27, 2020, Defendant sent a response email to this Court's office requesting that Plaintiff's motion not be scheduled for medical reasons. Plaintiff's counsel responded to Defendant's email to the court and requested the motion be scheduled at or around March 31, 2020, giving Defendant an opportunity to address any medical concerns. The court scheduled the motion to be heard March 31, 2020. The motion was then continued as a result of the pandemic. The motion to enforce settlement was then rescheduled to be heard by this Court on June 25, 2020. The motion was heard remotely by this Court on June

25, 2020, wherein the Defendant and Plaintiff both appeared. This Court filed a Form 4 Order on June 25, 2020, which stated this Court would take the matter under advisement and that Defendant had ten days to retain counsel, who would then have five days to file a written response to the motion on Defendant's behalf. Defendant retained M. Richardson Hyman, Jr. who filed a limited notice of appearance on behalf of Defendant for purposes of filing Defendant's written response to the motion. The Court filed an order denying Plaintiff's motion to enforce settlement on July 8, 2020. The Order further provided Mr. Hyman was relieved as counsel for Defendant and Defendant had 30 days to obtain new counsel and the matter shall proceed to trial within 90 days of the order. On October 6, 2020, Plaintiff filed this motion for summary judgment. On October 7, 2020, Plaintiff's counsel emailed this Court's office, attaching Defendant to the email and requested that the motion for summary judgment be scheduled. This Court's office responded to the email on the same date stating the matter could be scheduled to be heard remotely on November 5, 2020. On October 12, 2020, Defendant responded to the Court's email stating she was unavailable during the month of November to appear for a hearing, even a remote hearing due to medical issues. At the Defendant's request, this Court did not schedule the motion for summary judgment to be heard on November 5, 2020. On November 12, 2020, this Court emailed both parties that the motion for summary judgment would be scheduled to be heard on January 7, 2021. On November 12, 2020, Defendant responded to this Court's email requesting that, if the motion had to be scheduled at this time, that it be scheduled at the end of January. On December 24, 2020 Plaintiff filed a notice of hearing to Defendant and certificate of service for the notice of hearing. On December 28, 2020, Defendant emailed this Court and requested that the hearing on Plaintiff's motion for summary judgment be continued due to Defendant's medical issues. At the request of the Defendant, this Court continued the motion. On March 31, 2021, Plaintiff's counsel emailed

this Court's office attaching Defendant to the email and requested that the motion be rescheduled. On March 31, 2021, Defendant responded to the email requesting the motion not be rescheduled at this time for medical reasons. On April 1, 2021, the Court responded to Plaintiff and Defendant's emails stating the motion for summary judgment would be scheduled to be heard on May 11, 2021 at 12:00 p.m. On April 16, 2021, Plaintiff's counsel emailed Defendant attaching this Court's office to the email as well and attached a notice of hearing to Defendant. On April 16, 2021 Plaintiff filed a notice of hearing to Defendant along with a certificate of service which stated the notice was provided to Defendant by first class mail and electronic mail. On Friday May 7, 2021 at 5:07 p.m., Defendant emailed this Court's office requesting the motion hearing be continued for medical reasons. On Monday 10, 2021, this Court responded to Defendant's email stating that the hearing would proceed forward on May 11, 2021, and that Defendant was welcome to appear either remotely or in person. On May 10, 2021, this Court's office spoke with the Defendant by telephone and to accommodate Defendant, switched the scheduled format of the hearing from remote to in person. On May 11, 2021, prior to the hearing scheduled to be heard at 12:00 p.m., this Court's office again spoke with the Defendant by telephone. On May 11, 2021, this Court was running slightly behind schedule in its hearing schedule and therefore did not begin to hear this matter until at or around 12:15 p.m. At 12:15 this Court began hearing Plaintiff's motion for summary judgment. Plaintiff and Plaintiff's counsel were present; however, Defendant did not timely appear either remotely or in person. Upon hearing Plaintiff's motion, this Court issued an order from the bench granting the motion for summary judgment and requested that Plaintiff's counsel draft a proposed order and submit it to the Court. The motion hearing was concluded and thereafter Defendant appeared for the first time in the court room. This Court stated to Defendant at that time the Court had already heard the motion, the hearing had concluded, this Court had

granted Plaintiff's motion for summary judgment and that Plaintiff's counsel would be submitting a proposed order to the Court for review. This Court then instructed Plaintiff's counsel who was still present in the Court room to provide the Defendant with a copy of the proposed order at the same time Plaintiff provided it to the Court. This Court watched the Defendant, Plaintiff, and Plaintiff's counsel all walk out of the court room together while speaking with one another. On June 10, 2021, Plaintiff filed a supplemental affidavit of Kelley Evan's in support of the motion for summary judgement. In the Affidavit, Ms. Evans, as case manager for Plaintiff, stated that immediately upon leaving the court room she, Plaintiff's counsel and the Defendant sat down in the court conference room located just outside the court room. Ms. Evans testifies Plaintiff's counsel explained to the Defendant that this Court had granted Plaintiff's motion, that Plaintiff's counsel would draft a proposed order and email it to the Court and at that time he would also email the proposed order to Defendant and if she wished to comment on the proposed order she should provide a written response of her comments to this Court. In the Affidavit Ms. Evans further testifies that Defendant commented she was on the Cooper River Bridge eight minutes prior to 12:00 p.m., driving to the courthouse and then stated: "but you can't be late for the judge." Ms. Evans further testified that the Defendant made multiple specific comments regarding facts of the case while speaking with her and Plaintiff's counsel in the conference room. This Court finds that Ms. Evans's affidavit testimony provides further supporting evidence that the Defendant was aware that the hearing was scheduled for 12:00 p.m. and further understood at that time the importance of the hearing and the importance of timely appearing at the hearing.

FACTUAL HISTORY

Plaintiff was appointed conservator for the assets, affairs and estate of Muriel W. Clarkin by a temporary order dated January 16, 2015, and a permanent order dated March 27, 2015, in case

number 2014-GC-10-0209, by the Honorable Tamara C. Curry, Charleston Count Probate Judge (hereinafter “Probate Matter”). Muriel W. Clarkin (hereinafter “Clarkin”) is an eighty-eight year old widow who has four living children, and Clarkin requires finances and funds to provide for Clarkin’s necessary assisted living care. Defendant Patricia Clarkin Smith (hereinafter “Defendant”) is a daughter of Clarkin. On December 22, 2014, in the Probate Matter the Honorable Tamara C. Curry by Ex Parte Order made a preliminary finding of fact that Clarkin’s physician had certified in writing that Clarkin is incapacitated and unable to make decisions for herself and in her best interest. Thereafter as a matter of law Judge Curry ordered Clarkin is adjudged to be an incapacitated person, as defined by South Carolina Probate Code §62-5-101(1). The Temporary Order was subsequently reconfirmed by orders dated 1/16/15 and 3/27/15. Defendant contested the Petition.

FINDINGS OF FACT

1. I find that Defendant was properly noticed of this motion hearing by both first-class mail and electronic mail.
2. I find that Defendant had actual knowledge that this hearing was scheduled for May 11, 2021, at 12:00 p.m.
4. I find that Defendant over the course of this matter has been represented by three different legal counsel and had adequate notice of this hearing to retain a fourth counsel to represent her in this matter at the hearing on the motion for summary judgment, but did not do so.
5. I find that Defendant has established a pattern and practice in this matter of seeking to postpone or delay hearings.
6. I find that Defendant had the capability to appear and defend the motion for summary judgment but did not do so.

7. I find in or around October or November of 2014, prior to Defendant's sister Muriel Kennedy (hereinafter "Kennedy") filing a probate petition to appoint a conservator for Clarkin, Kennedy contacted Defendant regarding Clarkin's reduced mental capacity and requested that Defendant sign paperwork consenting to a finding of incapacity of Clarkin. Plaintiff presented evidence to this Court that Defendant testified at her Deposition, that in October or November of 2014, her sister Muriel Kennedy called Defendant and said:

A. "You know Mama's memory is getting bad. And [Defendant] said: Yeah. Well she's in her 80's. Muriel Said: I want you to come –I'm paraphrasing. I'm definitely paraphrasing. Muriel called me wanting me to sign paperwork.

Q. For what?

A. Saying that Mama could not take care of herself.

Q When was this?

A. It was – it was October, November. Because that's when my warning lights went off. And I said. No, hell no" (Depo Excerpts pg. 81 ln 20 – pg 82 ln 10)

8. I find that on or about November 1, 2012, Defendant received \$6,000.00 (hereinafter "11/1/12 \$6,000") from Clarkin. I find Defendant has acknowledged she has an obligation to repay the 11/1/12 \$6,000 but has not repaid said funds. Plaintiff presented this court evidence in support of this finding as evidenced by Exhibits A, B, and C attached to Plaintiff's motion.

9. I find that on or about August 21, 2013, Defendant obtained \$1,500.00 (hereinafter "8/21/13 \$1,500") from Clarkin which she agreed to repay Clarkin and Defendant has acknowledged she has an obligation to repay Clarkin for said funds but has not done so as evidenced by Defendant's admissions in her answer to Plaintiff's summons and complaint filed in this matter and further supported by evidence Plaintiff presented to this Court in Exhibit B attached to Plaintiff's motion for summary judgment.

10. I find that on July 30, 2013, Clarkin through her counsel attorney Gibson recorded a deed in RMC office of Charleston County in Book 0351 at Page 348 wherein Clarkin conveyed

a half interest in real property Clarkin owned at 602 Atlantic St., Mt. Pleasant, SC 29464 (hereinafter “the Property”) to Defendant as Joint Tenants with rights of survivorship.

11. I find that beginning in August of 2013 Defendant agreed to pay Clarkin monthly rent in the amount of \$500 a month in exchange for residing the Property. I find Defendant made monthly rent payments to Clarkin in 2013 and 2014, but Defendant ceased making monthly rent payments to Clarkin once Plaintiff was appointed conservator for Clarkin in January of 2015. Plaintiff presented this Court evidence of this in the form of certified copies of probate court records for the Probate Matter including petitions for conservatorship and appointment of a temporary guardian filed in the Probate Matter, and further evidenced by Exhibits A, B, and E attached to Plaintiff’s motion for summary judgment.

12. I find that Clarkin through her counsel attorney Gibson recorded a power of attorney in the Charleston County Register of Deeds in Book 0319 Pg 644 on March 27, 2013, which named Defendant’s sister Kennedy as the attorney in fact and Defendant as successor attorney in fact in the event Kennedy was deceased or unable to serve.

13. I find that on November 12, 2014, Dr. Jacob Mintzer of the Alzheimer’s Research Center of Roper St. Francis Hospital found that Clarkin lacked the mental capacity to give informed consent to for a standard clinical assessment as evidence by certified records of the Charleston County Probate Court for the Probate Matter which Plaintiff presented to this Court.

14. I find that on November 18, 2014, Defendant recorded a deed in the RMC office for Charleston County in Book 0441, Page 484 (hereinafter “November 18th Deed”), which is alleged to have been executed by Clarkin and which conveyed to Defendant, Clarkin’s remaining half interest in the in the Property originally owned wholly by Clarkin. I further find that Defendant did not pay Clarkin any consideration for the November 18th Deed.

15. I find based upon testimony of the Defendant in her deposition the reason Defendant caused the November 18th Deed to be drafted, executed and recorded was that she was concerned that Clarkin may be declared incapacitated and in which case Clarkin would not be able to sign a mortgage for the Property and therefore Defendant would not be able to get a loan in Defendant's own name secured by the Property. However, if Defendant owned the Property in whole, she would not require her mother's signature to undertake such a transaction.

16. I find that on November 18, 2014, Defendant caused Clarkin to withdraw \$6,000.00 (hereinafter "11/18/14 \$6,000") from Clarkin's account and provided it to Defendant. I further find Defendant has acknowledged that she has an obligation to repay Clarkin said funds but has not done so as evidenced by Exhibits A, C and G attached to Plaintiff's Motion for Summary Judgment.

17. I find that a medical record made by Dr. Michael Mikola of Roper St. Francis Hospital dated November 26, 2014, evidenced Clarkin was diagnosed with Alzheimer's dementia and that after Dr. Mikola examined Clarkin he was of the opinion: "I don't believe she should be making financial or other decisions for herself. I believe that underlying memory disorder will render her incompetent to make such decisions. . ." I make this finding based upon the evidence of certified records of the Charleston County Probate Court for the Probate Matter which Plaintiff presented to this Court.

18. I find that a certified record of the Charleston County Probate Court for the Probate Matter, in the form of the letter from Dr. Mikola dated January 7, 2015, further confirms that Clarkin had been diagnosed with Alzheimer's disease at the time and the doctor was of the opinion that a guardian and conservator should be placed over Clarkin.

19. I find that on December 8, 2014 Defendant caused a subsequent power of attorney to be executed by Clarkin which named Defendant along with her sister Kennedy as dual attorneys in fact and Defendant then recorded the subsequent power of attorney in the Charleston RMC Office in Book 0445 at Page 144.¹

20. I find that by Temporary Order of the Charleston County Probate Court filed December 22, 2014, in the Probate Matter the Court declared Clarkin incapacitated.

21. I find that on December 23, 2014, Defendant, in the presence of Clarkin, was informed by law enforcement that the Probate Court had declared Clarkin incapacitated. I find that thereafter Defendant withdrew \$10,000.00 (hereinafter “12/23/14 \$10,000”) from an account titled in Clarkin’s name alone and Defendant subsequently used said funds to retain counsel to represent Defendant, not Clarkin. I further find that Defendant has acknowledged an obligation to repay Clarkin and/or Plaintiff said funds but has not done so. I make this finding based upon Defendant’s deposition testimony as well as the evidence of Exhibits A and G attached to Plaintiff’s Motion for Summary Judgment (hereinafter collectively the 11/1/12 \$6,000, 8/21/13 \$1,500, 11/18/14 \$6,000, and the 12/23/14 \$10,000 are referred to as the “Dispersed Funds”).

22. I find that Defendant is a party to the Probate Matter and first made an appearance in the Probate Matter, through counsel, in January of 2015.

23. I take judicial notice of the findings of fact of the Honorable Tamara C. Curry in the Order dated March 27, 2015, in the Probate Matter wherein Judge Curry made the following finds of fact and conclusions of law:

“FINDINGS OF FACT

2. Mrs. Clarkin was evaluated pursuant to Court Order by designated examiners Leonard W. Mulbry, Jr. MD, and Debra A. Dinolfo, M.A., LPC.

¹ The Charleston County Probate Court by order in the Probate Matter subsequently declared said power of attorney void ab initio.

3. Dr. Mulbry testified he diagnosed Mrs. Clarkin with Major Depressive Disorder and Neurocognitive Disorder, Mild.

4. Dr. Mulbry also testified these diagnoses render Mrs. Clarkin susceptible to undue influence.

5. Dr. Mulbry further testified that Mrs. Clarkin had a very difficult time providing information about her assets and liabilities. He testified that she had basically lost touch with her finances, with who was paying her bills and where her money was going.

6. Ms. Dinolfo testified that based on the evidence at the hearing she was of the opinion Mrs. Clarkin was unable to manage her finances.

7. Both examiners opined that Mrs. Clarkin lacked sufficient understanding or capacity to make responsible decisions concerning her finances and assets. The examiners recommended that a permanent Conservator be appointed for Mrs. Clarkin. . .

CONCLUSIONS OF LAW

1. The Court finds that there is clear and convincing evidence that Muriel W. Clarkin is incapacitated to such an extent that she lacks sufficient understanding or capacity to make or communicate responsible decisions regarding her property, finances and her person.”

24. I find that Plaintiff has presented sufficient evidence in the record in this matter to find that Clarkin lacked sufficient mental capacity on November 18, 2014 to execute the November 18th Deed.

25. I find that on March 31, 2016, Defendant executed a deed to the Property to Patricia Clarkin Smith, Trustee of the Patricia Clarkin Trust Dated March 31, 2016 (hereinafter “Trust Deed”), which was Recorded on April 6, 2016 in Book 0545 at Page 374 (Exhibit I to Plaintiff’s motion).

26. I find that Defendant as settlor and trustee of the Patricia Clarkin Trust dated March 31, 2016, took title to the Property through the Trust Deed without paying consideration for the Property, with knowledge the Property was encumbered by a mortgage recorded in the RMC office of Charleston County in Book 664 at Page 769, and with Defendant’s further knowledge that Plaintiff claimed Defendant owed Plaintiff the amounts claimed owed as set forth in Plaintiff’s Motion for Summary Judgement and the exhibit’s attached thereto.

27. I find that Defendant is obligated to repay Plaintiff as conservator for Clarkin the Dispersed Funds.

LEGAL ANALYSIS

STANDARD

“Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E. 2d 432 (2003).

I. DISBURSED FUNDS

A. Money Had and Received

“An action for money had and received exists where a defendant has money belonging to the plaintiff which in equity should be repaid to the plaintiff. In order to recover on a count for money had and received . . . the plaintiff must show he has equity and conscience on his side, and that he could recover in a court of equity. . . Once the requirements of an action for money had and received are proven, the equitable principles of unjust enrichment and restitution provide a remedy. An action for money had and received is based upon a quasi-contract or a contract implied in law. . . In addition, the court adopted the Scudder May test as the sole test for a quantum meruit/quasi-contract/implied by law claim. This test mandates: (1) a benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value.” *Okatie River v. Southeastern Site Prep*, 353, S.C. 327, 334-35, 577 S.E.2d 468 (2003).

“Because the applicable statute and case law do not exclude the award of prejudgment interest for a claim under the theory of quantum meruit, it appears that our appellate courts have implicitly recognized that such an award is permissible.” *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 206, 600 S.E.2d 105 (2004).

In this case Plaintiff has presented sufficient evidence to establish that Defendant received all of the Dispersed Funds, that Defendant realized the benefit of receiving the Dispersed Funds and retention of the Dispersed Funds by Defendant without repaying Plaintiff as conservator for Clarkin would be inequitable. I further find that Plaintiff is entitled to award of prejudgment interest upon the dispersed funds from January of 2015 to the date of this Order at the current legal rate of interest of 7.25%. I find that a genuine issue of material fact does not exist with regard to the Dispersed Funds such that I find as a matter of law that Plaintiff is entitled to a judgment against Defendant in the amount of \$23,500.00 for the Dispersed Funds, plus an award of prejudgment interest on that amount in the amount of \$9,228.65 for a total judgment due with regard to the Dispersed Funds in the amount of \$32,728.65.

B. Unjust Enrichment

“A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another. Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff.” *Dema v. Tenet Physician Services-Hilton*, 383 S.C. 115, 123, 678 S.E.2d 430 (2009). “In South Carolina pre-judgment interest may also be awarded in equity cases, conversion cases, and property cases.” *Vaugh Dev. v. Westvaco Development, Inc.*, 372 S.C. 576, 579, 642, S.E. 2d 757 (Ct. App. 2007)

In this case I further find the Plaintiff has present sufficient evidence to establish in a court of equity an award of judgment against Defendant with regard to the Dispersed Funds under Plaintiff's cause of action for unjust enrichment. I further find that Plaintiff would be entitled to an award of prejudgment interest on its cause of action for unjust enrichment. However, this finding does not change or increase the amount of the final judgment awarded with regard to the Dispersed Funds which shall remain at the total amount of \$32,728.65, including prejudgment interest as set forth above.

Finally, because the Plaintiff has established that it is entitled to an award of judgment for the dispersed funds, including an award of prejudgment interest on the judgment under its causes of action for money had and received and unjust enrichment this Court does not find the need to make a determination with regard to the dispersed funds as to Plaintiff's remaining asserted causes of action for conversion or quantum meruit.

II. DEFENDANT'S MONTHLY RENT MONEY OBLIGATION

A. Promissory Estoppel

"A contract and promissory estoppel are two separate and distinct legal theories. They are two different creatures of the law; they are not legally synonymous; the birth of one does not spawn the other. Our courts recognize a remedy in equity if the claimant can prove: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise. The applicability of the doctrine depends on whether the refusal to apply it would be virtually to sanction the perpetration of a fraud or would result in other injustice. Unlike a contract which requires a meeting of the minds and consideration, promissory estoppel looks at a promise,

its subsequent effect on the promisee . . .” *Satcher v. Satcher*, 351 S.C. 477, 483-84, 570 S.E.2d 535 (Ct. App. 2002). “In South Carolina pre-judgment interest may also be awarded in equity cases, conversion cases, and property cases.” *Vaugh Dev. v. Westvaco Development, Inc.*, 372 S.C. 576, 579, 642, S.E. 2d 757 (Ct. App. 2007)

In this case Plaintiff has presented sufficient evidence to establish in a court of equity that Defendant promised to pay Clarkin monthly rent payments of \$500 a month in exchange for Defendant residing in the Property. Plaintiff presented evidence that Defendant made monthly rent payment to Clarkin in 2013 and 2014 but ceased making monthly rent payments once Plaintiff began acting as conservator for Clarkin in January of 2015. Plaintiff presented credible evidence to this Court that the current value of the Property is over \$500,000 and that the current rental value of the property is over \$2,500.00 a month. Plaintiff presented evidence that Clarkin reasonably relied upon Defendant paying Clarkin monthly rent for residing in the Property and that Clarkin’s reliance on Defendant’s promise to pay rent was reasonable, expected and foreseeable by Defendant. Further Plaintiff has presented sufficient evidence that Plaintiff standing in Clarkin’s shoes as conservator was damaged by Defendant failing to continue to make the monthly rent payments she promised to pay. Therefore, this Court finds in equity that Plaintiff is entitled to a judgment for monthly back rent unpaid by Defendant from the January of 2015 when Plaintiff began serving as conservator through the month this Order is filed in May of 2021. This Court calculates said amount of back rent due at \$500 a month for 77 months to equal \$38,500.00. This Court further finds Plaintiff is entitled to an award of prejudgment interest upon the back rent due from January of 2015 to May of 2021 at the current legal rate of interest of 7.25%. This prejudgment interest is due and awarded upon each back rental payment from the month it became due through May of 2021. The total amount of prejudgment interest awarded on

the back rent due is \$8,255.88, with a total amount due for judgment with regard to the back rent being \$46,755.88.

B. Unjust Enrichment

“A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another. Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff.” *Dema v. Tenet Physician Services-Hilton*, 383 S.C. 115, 123, 678 S.E.2d 430 (2009). “In South Carolina pre-judgment interest may also be awarded in equity cases, conversion cases, and property cases.” *Vaugh Dev. v. Westvaco Development, Inc.*, 372 S.C. 576, 579, 642, S.E. 2d 757 (Ct. App. 2007)

In this case I further find the Plaintiff has presented sufficient evidence to establish in a court of equity an award of judgment against Defendant with regard to the back rent under Plaintiff’s cause of action for unjust enrichment. I further find that Plaintiff would be entitled to an award of prejudgment interest on its cause of action for unjust enrichment. However, this finding does not change or increase the amount of the final judgment awarded with regard to the back rent which shall remain at the total amount of \$46,755.88, including prejudgment interest as set forth above.

Finally, because the Plaintiff has established that it is entitled to an award of judgment for the back rent due, including an award of prejudgment interest on judgment under its causes of action for promissory estoppel and unjust enrichment this Court does not find the need to make a determination with regard to the back rent due as to Plaintiff’s remaining asserted cause of action for quantum meruit.

III. 11/18/14 DEED

A. Declaratory Injunctive Relief (Undue Influence)

“A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue.” *Felts v. Richland County*, 303 S.C. 354, 356, 400 S.E.2d 781 (1991). “An action to set aside a deed on the basis of undue influence is an action in equity.” *Skipper v. Perrone*, 382 S.C. 53, 57, 674 S.E.2d 510 (Ct. App. 2009). “Generally, the party attacking a deed has the burden of proof. However, the Supreme Court held an inference of undue influence will arise upon a showing of great mental weakness of the grantor and gross inadequacy of consideration. The Court explained: It is not necessary, in order to secure the aid of equity, to prove that the deceased (grantor) was at the time insane, or in such a state of mental imbecility as to render her entirely incapable of executing a valid deed. It is sufficient to show that from her sickness and infirmities she was at the time in a condition of great mental weakness, and that there was gross inadequacy of consideration for the conveyance. From these circumstances imposition of undue influence will be inferred. The Court recognized this inference applies even absent a confidential relationship.” *Id.* at 57-58 (citations omitted). “Even absent a confidential relationship, this court has several times approved the principle that imposition or undue influence upon the grantor will be inferred from proof of great mental weakness, not amounting to incapacity to execute a valid deed, accompanied by gross inadequacy of consideration.” *Brooks v. Kay*, 339 S.C. 479, 490, 530 S.E.2d 120 (2000) (citations omitted). “A confidential relationship arises when the grantor has placed his trust and confidence in the grantee, and the grantee has exerted dominion over the grantor. The essence of the relationship is the trust and confidence. *Id.* Mere friendship between the parties is not sufficient. The relationship must be one implying confidence. Some evidence is required that the grantor actually reposed trust in the grantee in the handling of her affairs.” *Id.* at 488. (citations omitted). “Once a contestant has proven a confidential relationship

existed at the time of conveyance, the burden shifts to the grantee to prove that the contestant's conveyance was not the product of undue influence.” *Dixon v. Dixon*, 362 S.C. 388, 398, 608, S.E.2d 849 (2005). In *Brooks* the court voided a deed on the ground of undue influence stating: “Even if Brooks was mentally competent enough to execute a deed there is no doubt that she was rapidly approaching senility, if not already suffering from the Alzheimer's disease responsible for her commitment to the State Hospital only one year after the transaction in question.” *Brooks* at 490.

In this case this Court finds Clarkin lacked capacity at the time of execution to execute the 11/18/14 Deed. Plaintiff has presented this Court sufficient evidence in the form of certified probate court records from the Probate Matter that Clarkin was incapacitated at the time of the execution of the 11/18/14 Deed. Plaintiff presented evidence that on November 12, 2014, just days prior to the execution of the Deed, Dr. Jacob Mintzer of Alzheimer’s Research Center of Roper St. Francis Hospital found that Clarkin lacked the mental capacity to give informed consent to for a standard clinical assessment. Further on November 26, 2014, Dr. Michael Mikola of Roper St. Francis Hospital in a report, notes Clarkin was diagnosed with Alzheimer’s dementia and that Dr. Mikola was of the opinion he did not believe Clarkin should be making financial or other decisions for herself and that her underlying memory disorder will render her incompetent to make such decisions. Thereafter, just a month later, by Ex Parte Order dated December 22, 2014, the Probate Court declared Clarkin an incapacitated person and appointed a temporary guardian and conservator for Clarkin. Then, after two court appointed medical examiners examined Clarkin, the Probate Court on March 19, 2015, held a formal hearing on the subject and the Probate Court by Order declared Clarkin permanently incapacitated and appointed Plaintiff permanent conservator for Clarkin. In its order the Probate Court noted that one of the examining doctors testified that he

believed Clarkin's diagnosis rendered her susceptible to undue influence. Therefore, the 11/18/14 Deed is void ab initio.

However, even if this Court did not make a finding that Clarkin lacked the capacity to execute the 11/18/14 Deed, this Court would still find the Deed should be declared void based upon a lack of consideration paid by the Defendant accompanied with undue influence exerted by Defendant over her mother Clarkin.

This Court finds as a matter of law that a confidential relationship existed between Defendant and Clarkin at the time Clarkin executed the 11/18/14 Deed. Defendant conceded in her Complaint that Clarkin imposed a special confidence in Defendant. Defendant testified that her mother placed great trust and confidence in her (Exhibit "A" pg. 83, ln 24 – pg. 84, ln 4). Clarkin also imparted fiduciary responsibilities onto Defendant. On March 18, 2013, Clarkin executed a durable power of attorney which was record on March 27, 2013 in the RMC Office for Charleston County in BK 0319 at PG 644 (hereinafter "First POA"). The First POA named Defendant as the alternate successor attorney in fact. On December 8, 2014, Clarkin executed a second durable power of attorney, which named Defendant as a dual attorney in fact with her sister Muriel Kennedy. Therefore, there is sufficient evidence to establish the existence of a confidential relationship between Defendant and Clarkin.

This matter is analogous to *Brooks*. Here, the Court finds Defendant paid no consideration for the 11/18/14 Deed conveying Clarkin's remaining interest in the Property to Defendant. Further Plaintiff has presented this court sufficient evidence in the form of certified probate court records from the Probate Matter that Clarkin was suffering from a great mental weakness at the time of the execution of the 11/18/14 Deed. In *Brooks* the court voided the deed based on undue influence stating "Even if Brooks was mentally competent enough to execute a deed there is no doubt that

she was rapidly approaching senility, if not already suffering from the Alzheimer's disease responsible for her commitment to the State Hospital only one year after the transaction in question.” *Brooks* at 490. Here, due to her Alzheimer’s diagnosis Clarkin was declared incapacitated contemporaneous with the transaction in question, rather than a year later, as was the case in *Brooks*. Therefore this Court would further declare the 11/14/18 Deed void ab initio even if this Court had not found that Clarkin lacked capacity to execute the 11/14/18 Deed because the Defendant paid no consideration for the Deed and exerted undue influence over her mother Clarkin who suffered a great mental weakness at the time of execution of the 11/18/14 Deed.

Plaintiff also requests an award of costs pursuant to S.C. Code §15-53-100. Plaintiff’s counsel has presented this Court with an affidavit stating that Plaintiff has incurred legal costs in this matter in the amount of \$1,664.60. I find Plaintiff is entitled to a judgment against Defendant for costs incurred in the amount of \$1,664.60.

B. Fraudulent Conveyance

“The Statute of Elizabeth provides: Every gift, grant, alienation, bargain, transfer, and conveyance of lands ... for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties and forfeitures must be deemed and taken ... to be clearly and utterly void. In interpreting this statute, this Court has held conveyances shall be set aside under two conditions: First, where there was valuable consideration and the transfer is made by the grantor with the actual intent to defraud; and, second, where a transfer is made without actual intent to defraud but without valuable consideration.” *Oskin v. Johnson*, 400 S.C. 390, 735 S.E.2d 459 (2012). "Where transfers to members of the family are attacked either upon the ground of actual fraud or on account of their voluntary character, the law imposes the burden on the transferee to establish both a valuable consideration and the bona fides

of the transaction by clear and convincing testimony. . . . Fraudulent intent in such instances can usually be shown only by a consideration of the attendant facts and circumstances, a resort to which must usually be had in order to distinguish between transactions which are bona fide, and those which are not. The Courts frequently must resort to evidence or circumstances which are not properly explained, when such circumstances lead to the belief that a fraudulent intent was present. . . . Certain circumstances so frequently attend conveyances to defraud creditors that they are recognized and referred to as "badges of fraud." The badges tend to excite suspicions as to the bona fides of a challenged conveyance. Unexplained, they may warrant an inference of fraud. Whether the inference is warranted depends in large measure on whether a satisfactory explanation is presented. The facts which are recognized indicia of fraud are numerous, and no court could pretend to anticipate or catalog them all. Among the generally recognized badges of fraud are the insolvency or indebtedness of the transferor, lack of consideration for the conveyance, relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, departure from the usual method of business, the transfer of the debtor's entire estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property. Although it has been said that a single badge of fraud may stamp a transaction as fraudulent, it is more generally held that while one circumstance recognized as a badge of fraud may not alone prove fraud, where there is a concurrence of several such badges of fraud an inference of fraud may be warranted." *Coleman v. Daniel*, 261 S.C. 198, 208-210, 199 S.E.2d 74 (1973).

In this case the November 18th Deed and the Trust Deed constitute conveyance of lands for the purpose hindering others of their just and lawful actions. Both conveyances were without consideration, and the circumstances of the conveyances evidence multiple badges of fraud

including lack of consideration for the conveyance, relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, departure from the usual method of business, and the transfer of the Clarkin's entire interest in the Property when Defendant already possessed a half interest with rights of survivorship in the Property.

Here, Defendant already possessed a fifty percent interest in the Property with rights of survivorship. Defendant testified that that her sister Kennedy came to her a month or two prior to the execution of the November 18th Deed and asked her to sign papers declaring Clarkin incompetent. Defendant testified that she did not know what Kennedy was up to, but she did not think it was good. Defendant testified that the reason she caused the November 18th Deed to be executed and recorded was because if her mother Clarkin was declared incompetent then Clarkin would not be able to sign a mortgage on the property securing a loan for the benefit of Defendant, but if Defendant was the sole titleholder to the Property she would not need her mother's signature. Defendant testified that she knew at the time that if full and complete title to the Property was transferred to her name, it could cause Wells Fargo to call the note secured by the mortgage on the property immediately due and owing (Exhibit "A" pg. 139, ln. 5 – 142, ln. 12). The November 18th Deed was not drafted or recorded by Attorney Mac Gibson who had historically and only a year prior had been Clarkin's usual attorney for drafting deeds, wills, and powers of attorney. Thereafter on December 8, 2014, Defendant caused the Second POA to be executed and recorded giving her power of attorney over her mother Clarkin and again not utilizing the services of Mac Gibson. These actions were undertaken in secrecy and concealment and without the knowledge of her sister Kennedy who had durable power of attorney over Clarkin at the time. These actions were taken a month or less before Kennedy filed her petition with the probate court to declare Clarkin incompetent and to appoint a conservator, and in her petition Kennedy referenced both the

November 18th Deed and the Second POA as a basis for her petition. Thereafter, Clarkin was declared incompetent. Plaintiff was appointed conservator and began communicating with Defendant about repaying Clarkin for various improper transactions (See Exhibits C, E, and H to Plaintiff's Motion as well as the affidavit of Kelley Evans filed August 13, 2019 in this matter). Defendant contested the Probate Matter and as the very litigious and contested Probate Matter continued Defendant learned through filings, hearing, and mediations that Plaintiff did not believe the November 18th conveyance was a proper and valid conveyance. Thereafter on March 31, 2016, a year before this action, Defendant again conveyed the Property without consideration to a trust bearing her name and for which she is trustee with full knowledge that she owed Clarkin both funds and a half interest in the Property. I find Defendant as Settlor and Trustee of the Patricia Clarkin Trust dated March 31, 2016, did not take title to the Property as a bona fide purchaser for value, because Defendant as trustee paid no consideration for the transfer and took title to the Property through the Trust Deed with knowledge the property was encumbered by a mortgage and that Plaintiff claimed defendant was in debt to Plaintiff and the November 18th Deed was not a valid conveyance. S.C. Code Ann. § 62-7-106 states that principles of equity supplement the law of trusts in this state. S.C. Code Ann. § 62-7-103(14) defines a "Settlor" of a trust as a person who contributes property to a trust. Here Defendant contributed the Property to the trust which bears her own name, for which she is the trustee, and which the trust creation date and the date Defendant transferred the Property to the trust are the same. S.C. Code Ann. § 62-7-505 provides "during the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

This Court finds as a matter of law that Plaintiff should prevail on its claim for fraudulent conveyance and both the November 18th Deed and the Trust Deed are void ab initio.

Quiet Title

“An action to remove a cloud on and quiet title to land is one in equity.” *Bryan v. Freeman*, 253 S.C. 50, 52, 168 S.E.2d 793 (1969) “In an action to quiet title, the plaintiff must recover on the strength of his own title, not on the alleged weakness of the defendant's title.” *Hoogenboom v. City of Beaufort*, 433 S.E.2d 875, 880 (Ct. App. 1992)

In this case Clarkin obtained sole title to the Property by deed dated and recorded on January 5, 1998 and recorded in the RMC office for Charleston County in Book J-295 at Page 592. Thereafter Clarkin deeded a half interest in the Property to Defendant with Clarkin and Defendant possessing rights of survivorship as evidenced by the deed recorded in the RMC Office for Charleston County August 7, 2013 in Book 0351 at Page 348. Thereafter Defendant caused the November 18th Deed and the Trust Deed to be recorded both of which deeds this Court by this Order has now declared to be avoid ab initio. Therefore, this Court finds that fee simple title to the Property should be quieted such that clear title to 602 Atlantic St., Mt. Pleasant, SC 29464, bearing TMS# 532-06-00-129 as is more fully described in that certain deed executed by Muriel Walsh Clarkin on July 30, 2013 and recorded in the RMC Office for Charleston County August 7, 2013 in Book 0351 at Page 348 is once again vested in Muriel Walsh Clarkin and Patricia Clarkin Smith as joint tenants with rights of survivorship, not as tenants in common, their Heirs, Successors, and Assigns forever.

IT IS THEREFORE ORDERED THAT:

1. Plaintiff, Family Services, Inc., as Conservator for Muriel Walsh Clarkin is awarded a judgement against the Defendant with regard to the Disputed Funds in the amount of \$32,728.65.

2. Further, Plaintiff, Family Services, Inc., as Conservator for Muriel Walsh Clarkin is awarded a judgement against the Defendant with regard to the unpaid back rent in the amount of \$46,755.88.

3. Further, Plaintiff, Family Services, Inc., as Conservator for Muriel Walsh Clarkin is awarded a judgement against the Defendant for costs pursuant to S.C. Code §15-53-100 in the amount of \$1,664.60.

4. Therefore Plaintiff, Family Services, Inc., as Conservator for Muriel Walsh Clarkin is awarded a judgement against the Defendant Patricia Clarkin Smith, for a total amount of liquidated damages in the amount of \$81,149.13

5. Further it is ordered that certain deed dated November 17, 2014, for the real property located at 602 Atlantic St., Mt. Pleasant SC, 29464, whereby Muriel Walsh Clarkin granted Patricia Clarkin Smith all of Mrs. Clarkin's remaining interest in the Property as evidenced by the recording of said deed on November 18, 2014, in the Charleston County Register of Deeds Office in Book 0441 at Page 484, is hereby declared void ab initio.

6. Further it is ordered that certain deed dated March 31, 2016, for the real property located at 602 Atlantic St., Mt. Pleasant SC, 29464, whereby Patricia Clarkin Smith granted Patricia Clarkin Smith, Trustee of the Patricia Clarkin Trust Dated March 31, 2016 all of Ms. Smith's interest in the Property as evidenced by the recording of said deed on April 6, 2016, in the Charleston County Register of Deeds Office in Book 0545 at Page 374, is hereby declared void ab initio.

7. Finally, fee simple title to the Property is quieted such that clear title to 602 Atlantic St., Mt. Pleasant, SC 29464, bearing TMS# 532-06-00-129 as is more fully described in that certain deed executed by Muriel Walsh Clarkin on July 30, 2013 and recorded in the RMC Office for

Charleston County August 7, 2013 in Book 0351 at Page 348 is once again vested in Muriel Walsh Clarkin and Patricia Clarkin Smith as joint tenants with rights of survivorship, not as tenants in common, their Heirs, Successors, and Assigns forever.

The Honorable Mikell R. Scarborough
Master in Equity for Charleston County

June_____, 2021
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Family Services Inc , plaintiff, et al VS Patricia Clarkin Smith ,
defendant, et al

Case Number: 2017CP1005427

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-06-21 11:59:09 page 27 of 27

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Family Services, Inc., Conservator for Muriel W. Clarkin

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

vs.

Patricia Clarkin Smith and Wells Fargo Bank, N.A.

Defendant(s)

2017-CP - 10-5427

Submitted By: David Conor Keys

Address: PO Box 14225

Charleston, SC 29422

SC Bar #: 100148

Telephone #: 843-906-3998

Fax #:

Other:

E-mail: Conor@dconorkeyslaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 ____ -NI- ____ - ☐ Notice/ File Med Mal (230) ☐ Other (299) _____	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399) _____	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☒ Other (499) <u>Quite Title</u>
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599) _____	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899) _____	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799) _____	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999) _____
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699) ☐ Sexual Predator (510) ☐ Permanent Restraining Order (680)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Pre-Suit Discovery (670)		

Submitting Party Signature: 

Date: 10/20/17

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a “Proof of ADR” form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the “Notice of Intent to File Suit” or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Family Services, Inc., as Conservator)
For Muriel W. Clarkin,)
)
Plaintiff,)
)
vs.)
)
Patricia Clarkin Smith and Wells Fargo)
Bank, N.A.)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2016-CP-10- 5427

SUMMONS

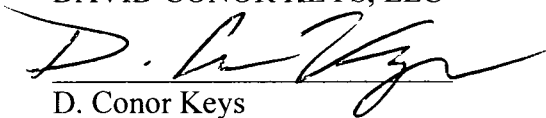
FILED
2017 OCT 20 PM 2:23
JULIE J. HARRIS
CLERK OF COURT

TO THE DEFENDANTS ABOVE-NAMED:

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

RESPECTUFLLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC



D. Conor Keys
P.O. Box 14225
Charleston, SC 29422
Phone: 843-906-3998
conor@dconorkeyslaw.com
Attorney for Plaintiff

October 20, 2017
Charleston, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Family Services, Inc., as Conservator)
For Muriel W. Clarkin,)
)
Plaintiff,)
)
vs.)
)
Patricia Clarkin Smith and Wells Fargo)
Bank, NA.)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2016-CP-10-

54 27

COMPLAINT
JURY TRIAL DEMANDED
(Declaratory Injunctive Relief)
(Fraudulent Conveyance)
(Quiet Title)
(Conversion)
(Unjust Enrichment)
(Money Had and Received)
(Promissory Estoppel)
(Quantum Meruit)

FILED
2017 OCT 20 PM 2:23
JULIE J. ANDERSON
CLERK OF COURT

Plaintiff complains of the above-named Defendant as follows:

1. Plaintiff, Family Services Inc., as Conservator for Muriel W. Clarkin (hereinafter "Plaintiff") is a resident of Charleston County.
2. Plaintiff was appointed conservator for the assets, affairs and estate of Muriel W. Clarkin by and order dated March 27, 2015, in case number 2014-GC-10-0209, by the Honorable Tamara C. Curry, Charleston Count Probate Judge.
3. Muriel W. Clarkin (hereinafter "Clarkin") is an eighty-five year old widow who has four living children, and Clarkin requires finances and funds to provide for Clarkin's necessary assisted living care.
4. Defendant Patricia Clarkin Smith (hereinafter "Defendant") is a daughter of Clarkin and resides in Charleston County.
5. The real property which is a subject of this action is located at 602 Atlantic Street, Mt. Pleasant, SC 29464, bearing TMS # 532-06-00-129 (hereinafter "Subject Property"), in Charleston County. The Subject Property is legally described as follows:

ALL that certain lot, piece, or parcel of land, together with all buildings and improvements thereon, situate lying and being in Mt. Pleasant, Heights, Christ Church Parish Number 5, Charleston County, State of South Carolina, and known on the Plat or plan of re-subdivision of Mt. Pleasant Heights made by J. O'Hear Sanders, Jr. dated January, 1950, recorded in the RMC Office for Charleston County, SC in Plat Book G, Page 99-A as LOT NO. 63.

MEASURING AND CONTAINING in front on Atlantic Street sixty (60) feet; the same on the back line and one hundred and eighty (180) feet in depth.

BUTTING AND BOUNDING Southeast on Atlantic Street, Northwest on a ten (10) foot roadway; Northeast on Lot No. 64 on said Plats; and Southwest on Boundary Street; all as is more fully shown on the Plat hereinabove referred to and on the Plat of J. O'Hear Sanders, Jr. dated January 25, 1952, which said Plat is made a part and parcel of this conveyance.

This being the same property devised to Muriel Walsh Clarkin from the Estate of Muriel Monica Dean Walsh, Estate File No. 1997-ES-10-00254, pursuant to a Deed of Distribution dated January 5, 1998, and recorded on January 5, 1998, in the RMC Office for Charleston County, SC in Book J-295, Page 592; and by Deed of Muriel Walsh Clarkin to Muriel Walsh Clarkin and Patricia Clarkin Smith, as joint tenants with rights of survivorship, and not as tenants in common, dated July 30, 2013, recorded in the RMC Office for Charleston County, SC on August 7, 2013 in Deed Book 0351, Page 348.

6. At all times of the allegations made hereinafter Clarkin imposed a special confidence in the Defendant.

7. In or around the second half of 2012 and further during 2013, Clarkin with the assistance of her attorney C Mac Gibson Jr. (hereinafter "Attorney Gibson") undertook some estate planning including but not limited to drafting a will, codicils, a power of attorney, and deeds devising interests in real property owned by Clarkin to her daughters.

8. On or about August 15, 2012, Attorney Gibson on behalf of Clarkin recorded a deed in the Charleston RMC Office in book 0271, page 285, devising to Muriel Clarkin Kennedy (hereinafter "Kennedy"), Clarkin's interest in real property she owned on Goat Island, bearing TMS # 571-14-00-007.

9. On or about March 27, 2013, Attorney Gibson on behalf of Clarkin recorded a general durable power of attorney in the Charleston RMC Office in book 0319, page 644, naming Kennedy as attorney in fact for Clarkin.

10. On or about August 7, 2013, Attorney Gibson on behalf of Clarkin recorded a deed in the Charleston RMC Office in book 0351, page 348, devising to Defendant a half interest in the Subject Property *as joint tenants in common with right of survivorship* with Clarkin.

11. On or about August 21, 2013, Defendant obtained \$1,500.00 from Clarkin.

12. Defendant has acknowledged that she has an obligation to pay back Clarkin for the \$1,500.00.

13. On or about December 27, 2013, Attorney Gibson on behalf of Clarkin recorded a deed in the Charleston RMC Office in book 0380, page 802, devising to Defendant, Kennedy, and Clarkin herself a third of an interest a piece in Clarkin's residence, bearing TMS number 535-15-00-043, as joint tenants in common with right of survivorship.

14. In or around November of 2014, Clarkin was evaluated for a alzheimer's and dementia research protocol.

15. In November of 2014, multiple doctors made statements in writing regarding Clarkin's mental capacity, including but not limited to, that due to Clarkin suffering from depression, alzheimer's and/or dementia; that Clarkin should not be making financial decisions for herself; and that she lacked the capacity to make informed decisions.

16. On November 18, 2014, Defendant recorded a deed in the RMC office for Charleston County in Book 0441, Page 484 (hereinafter "November 18th Deed"), which is alleged to have been executed by Clarkin and which conveyed to Defendant, Clarkin's remaining half interest in the subject property.

17. The November 18th Deed was not drafted by Clarkin's Attorney Gibson in contrast to the previous deeds referenced above.

18. Further on November 18, 2017, Defendant obtained \$6,000.00 from Clarkin.

19. Upon information and belief Defendant used her undue influence upon Clarkin to have Clarkin to execute the November 18th Deed.

20. Upon information and belief Defendant used her undue influence upon Clarkin to obtain \$6,000.00 from Clarkin.

21. Upon information and belief absent Defendant's undue influence upon Clarkin, Clarkin would not have executed the November 18th Deed and Defendant would not have obtained from Clarkin \$6,000.00.

22. Defendant has acknowledged that she has an obligation to pay back Clarkin for the \$6,000.00.

23. Upon information and belief at or around November of 2014, and as a result of Clarkin's medical conditions, she was vulnerable to exploitation and undue influence by Defendant.

24. Plaintiff asserts that Clarkin lacked the mental capacity to execute the November 18th Deed.

25. Plaintiff asserts that at the time Defendant obtained \$6,000.00 from Clarkin, Clarkin lacked the mental capacity to handle her financial affairs.

26. On or about December 8, 2014, Defendant took Clarkin to an attorney who is not Clarkin's Attorney Gibson, to have the attorney draft a second durable power of attorney for Clarkin to execute. This power of attorney in contrast to the power of attorney referenced above appointed both Kennedy and Defendant as co-attorney's in fact for Clarkin (hereinafter "December

8th POA”). Defendant then took the December 8th POA and had it recorded in the Charleston RMC Office in Book 0445 at Page 144.

27. Clarkin granting Defendant power of attorney contradicted statements Clarkin has made that she and her husband had previously determined that Kennedy, not Defendant, should have power of attorney for Clarkin.

28. By Order dated March 27, 2015, in case number 2014-GC-10-0209, the Honorable Tamara C. Curry, Charleston Count Probate Judge, declared the December 8th POA “renounced as null and void.”

29. On December 22, 2014, Kennedy filed an emergency petition for appointment of temporary conservator, alleging things including but not limited to that Defendant had caused to be drafted, executed and recorded the November 18th Deed and the December 8th POA; that Defendant using her undue influence upon Clarkin obtained \$6,000.00 from Clarkin; and that in December of 2014 Defendant took Clarkin to Wells Fargo Bank and began inquiring about Clarkin’s bank accounts, which resulted in Wells Fargo flagging the accounts for suspicious activity.

30. On December 22, 2014, Kennedy also filed a Petition for Order of Protection and Appointment of Conservator making allegations including but not limited to those referenced above and that Defendant had agreed to pay Clarkin \$600 a month in rent for use of the Subject Property and has failed to do so.

31. By Ex Parte Order Appointing Temporary Guardian dated December 22, 2014, in case number 2014-GC-10-0209, the Honorable Tamara C. Curry, Charleston Count Probate Judge, ordered “Muriel W. Clarkin is adjudged to be an incapacitated person, as defined by South

Carolina Probate Code §62-5-101(1), whose immediate welfare requires the appointment of a temporary guardian.”

32. On December 23, 2014, Defendant as an alleged authorized user of a Wells Fargo Credit Card account owned by Clarkin, signed for and received a \$10,000 cash advance upon Clarkin’s account.

33. Clarkin was the sole owner of the credit card account.

34. On December 23, 2014, Clarkin lacked the capacity to authorize Defendant to make a \$10,000.00 cash advance upon the credit card.

35. On December 23, 2014, Defendant lacked the authority to sign for a \$10,000.00 advance upon the credit card.

36. Plaintiff at present continues to incur damages in the form of interest upon the December 23, 2014, \$10,000 advance executed and taken by Defendant.

37. In or around January of 2015, Defendant retained an attorney to contest the appointment of a guardian for Clarkin. On January 5, 2015, Clarkin’s attorney filed an Petition to Dismiss the Exparte Order Appointing a Tempory Guardian, wherein Defendant asserted Clarkin was not incapacitated and could care for herself.

38. Defendant obtained \$7,500 of Clarkin’s money to obtain Defendant’s attorney.

39. After Plaintiff was appointed Plaintiff demanded Defendant reimburse Plaintiff the \$7,500, and Defendant subsequently did.

40. By Order dated January 16, 2015, the Probate Court again adjudicated Clarkin to be incapacitated and appointed Plaintiff as her temporary conservator.

41. By Order dated March 27, 2015, the Probate Court appointed Plaintiff as the Conservator for Clarkin.

**FOR AND AS A FIRST CAUSE OF ACTION AGAINST DEFENDANT
(Declaratory Injunctive Relief)**

42. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

43. Plaintiffs seek declaratory relief pursuant to S.C. Code Ann. § 15-53-10, et seq., on the grounds that Plaintiff is an interested party and seeks a declaration as to Clarkin's rights and the rights of Defendant with regard to the following:

a) Whether the November 18th Deed is void because Clarkin lacked the mental capacity to execute the deed at time of execution;

b) Whether Clarkin lacked the capacity to handled her financial affair in November of 14 at the time Defendant obtained \$6,000.00 from Clarkin;

c) Whether on December 23, 2014, Clarkin lacked the capacity to authorize Defendant to withdraw a \$10,000.00 cash advance from Clarkin's credit card account; and

d) Whether on December 23, 2014, Defendant lacked the authority to execute a \$10,000 cash advance upon Clarkin's credit card account.

44. Plaintiff is entitled to a declaratory judgment as to the rights and obligations of the parties as address above.

**FOR AND AS A SECOND CAUSE OF ACTION AGAINST DEFENDANT
(Fraudulent Conveyance)**

45. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

46. Without the intent, consent and understanding of Clarkin Defendant deceitfully caused the November 18th Deed to be drafted and allegedly executed by Clarkin, thereafter Defendant recorded said deed in the register of deeds for Charleston County.

47. Defendant knew that Clarkin did not understand the significance of the executing the November 18th Deed.

48. Upon information and belief Defendant caused the November 18th Deed to be executed and recorded for the purpose of defrauding Clarkin of Clarkin's half interest in the subject property.

49. Accordingly Plaintiff should be entitled to have November 18th Deed declared null and void, and/or to receive damages as a result of the fraudulent transfer, including damages for emotional distress.

50. Plaintiff is also informed and believes that Plaintiff is entitled to recover punitive damages from Defendant based upon Defendant's intentional and deceptive conduct.

**FOR AND AS A THIRD CAUSE OF ACTION AGAINST DEFENDANT AND WELLS
FARGO BANK, NA
(Quiet Title)**

51. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

52. This is an action to quiet title to the Subject Property.

53. Plaintiff acquired ownership of the Subject Property January of 1998.

54. On or about July 17, 2006, Clarkin executed a \$100,000 note and mortgage secured by the Subject Property to Wachovia Bank, NA (hereinafter "Mortgage"). The Mortgage was recorded in the RMC Office for Charleston County in Book L591, Page 244.

55. On or about July 7, 2008, said note and Mortgage were modified to increase the maximum balance of indebtedness to \$150,000 (hereinafter "Modification"), the Modification was recorded in the RMC Office for Charleston County in Book E664, Page 769.

56. On or about August 7, 2013, Attorney Gibson on behalf of Clarkin recorded a deed in the Charleston RMC Office in book 0351, page 348, devising to Defendant a half interest in the Subject Property *as joint tenants in common with right of survivorship* with Clarkin.

57. Attorney Gibson drafted and recorded two other deeds for Clarkin within a year of August 7, 2013, as well as drafting a will, codicils, and a power of attorney for Clarkin around the same time.

58. On or about November 17, 2014, Defendant caused the November 18th Deed to be drafted and allegedly executed by Clarkin.

59. On November 18, 2014, Defendant recorded the November 18th Deed in the RMC Office of Charleston County.

60. Transfer of Clarkin's interest in the Subject Property put Clarkin in breach of the terms of the Mortgage.

61. Plaintiff is of the opinion and belief that the November 18th Deed should be declared null and void based upon a lack of capacity and intent on the part of Clarkin to transfer her remaining half interest in the subject property to Defendant through the November 18th Deed.

62. Clarkin remains obligated pursuant to the terms of the Note and Mortgage upon the Subject Property.

63. The Defendants in this case are named as parties hereto by virtue of their alleged rights, title or interest in the Subject Property as follows:

a) Defendant by virtue of the August 7, 2013, deed recorded in the Charleston RMC Office in Book 0351, Page 348, and the November 18th Deed.

b) Wells Fargo Bank, NA, as successor in interest, to Wachovia Bank, NA pursuant to the Mortgage.

64. Plaintiff is entitled to and requests that this Court declare the November 18th Deed null and void and further declares that Clarkin owns a one-half interest in the Subject Property as a tenant in common with Defendant with rights of survivorship.

**FOR AND AS A FOURTH CAUSE OF ACTION AGAINST DEFENDANT
(CONVERSION)**

65. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.
66. Plaintiff as conservator for Clarkin has an interest in the following:
- a) \$1,500.00 of Clarkin's money obtained by Defendant from Clarkin in on or about August 21, 2013.
 - b) \$6,000.00 of Clarkin's money obtained by Defendant from Clarkin on or about November 18, 2014;
 - c) \$10,000.00 taken by Defendant on December 23, 2014, as a cash advance from Clarkin's Wells Fargo credit card account, bearing an account number with the last four digits 5793.
67. Clarkin owned and had an interest in the funds described above.
68. Defendant converted the funds to her own use and benefit.
69. Defendant did not have permission and/or authority to obtain and retain said funds.
70. Defendant has acknowledged an obligation to repay some and/or all of the said funds of Clarkin.
71. In November and December of 2014, Clarkin did not have the capacity to give Defendant the permission and/or authority to obtain those particular funds.
72. With regard to the \$10,000.00 cash advance Plaintiff has been damaged by the continued accrual of interest upon the cash advance.
73. Plaintiff is entitled to and requests an award of the \$17,500.00, the cost of the interest incurred for the \$10,000 cash advance, and legal interest upon the \$17,500.00 from the dates which Defendant converted the funds to her own use and benefit.

**FOR AND AS A FIFTH CAUSE OF ACTION AGAINST DEFENDANT
(Unjust Enrichment)**

74. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

75. Defendant has been unjustly enriched at the expense of and to the detriment of Clarkin in the amount of \$17,500.00.

76. Defendant has been unjustly enriched at the expense of and to the detriment of Clarkin by Defendant enjoying the benefit of living in the Subject Property while failing to pay Clarkin monthly rent for the Subject Property as Defendant had agreed to do.

77. Plaintiff is informed and believes that it is entitled to recover from Defendant all monies, and any improper benefit received by Defendant as a result or consequence, and/or incidentally related to Defendant's actions as alleged above.

**FOR AND AS A SIXTH CAUSE OF ACTION AGAINST DEFENDANT
(Money Had and Received)**

78. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

79. Defendant presently holds \$17,500.00 in her possession or control that was received from Clarkin.

80. Defendant does not have a right to retain said money of Clarkin.

81. The money in question belongs, in equity and good conscience to Plaintiff and should not in equity and good conscience be retained by Defendant.

82. Plaintiff is informed and believes that it is entitled to recover from Defendant all money had and received by Defendant as a result, consequence, and/or incidentally related to Defendant's actions as alleged above.

**FOR AND AS A SEVENTH CAUSE OF ACTION AGAINST DEFENDANT
(Promissory Estoppel)**

83. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

84. Defendant promised to pay rent in exchange for Defendant residing in the subject property.

85. Defendant has failed to pay Clarkin said rent as promised.

86. Clarkin relied upon Defendant's promise to pay Clarkin rent.

87. Clarkin's reliance upon Defendant's promise was expected and foreseeable by Defendant.

88. Plaintiff has suffered damages as a result of Defendant's failure to pay Clarkin rent as promised.

89. Plaintiff is informed and believes that it is entitled to recover from Defendant all rent not paid to Clarkin by Defendant as a result, consequence, and/or incidentally related to Defendant's actions as alleged above.

**FOR AND AS A SEVENTH CAUSE OF ACTION AGAINST DEFENDANT
(Quantum Meruit)**

91. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

92. Clarkin conferred upon Defendant a benefit of \$17,500, as well as the use and benefit of the Subject Property.

93. Defendant realized the benefits as described above.

94. Retention of these benefits by Defendant under the conditions described above make it unjust for Defendant to retain said benefits without paying the value of said benefits.

95. Plaintiff is informed and believes that it is entitled to recover from Defendant all benefits retained by Defendant as a result, consequence, and/or incidentally related to Defendant's actions as alleged above.

JURY TRIAL DEMANDED

WHEREFORE, Plaintiffs pray that this Court enter judgment against each of the named Defendants as to each of Plaintiff's above named causes of action awarding Plaintiffs actual, statutory, and punitive damages, declaratory and injunctive relief, prejudgment interest, attorneys' fees and costs and such other relief, fees and costs as may be appropriate.

RESPECTUFLLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC



D. Conor Keys

P.O. Box 14225

Charleston, SC 29422

Phone: 843-906-3998

conor@dconorkeyslaw.com

Attorney for Plaintiff

STATE OF SOUTH CAROLINA) IN AND FOR THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-5427

Family Services, Inc, Conservator for)
Muriel W. Clarkin,)

Plaintiff,)

versus)

Patricia Clarkin Smith and Wells Fargo)
N.A,)

Defendant.)

ANSWER of DEFENDANT
PATRICIA CLARKIN SMITH

FILED
2017 NOV 28 PM 12:56
JULIE L. ARMSTRONG
CLERK OF COURT

TO THE PLAINTIFF AND THEIR ATTORNEY, DAVID CONNER KEYS, ESQUIRE:

1. The Defendant, Patricia Clarkin Smith **ADMITS** Paragraphs 1 through 13 of the Plaintiff's Complaint.

2. The Defendant, Patricia Clarkin Smith, responding to Paragraph 14, would assert that in or around November, 2014, Muriel Clarkin volunteered to be evaluated for Alzheimers and Dementia research protocol.

3. The Defendant, Patricia Clarkin Smith, **DENIES** Paragraph 15 of the Plaintiff's Complaint.

4. The Defendant, Patricia Clarkin Smith, **ADMITS** so much of Paragraph 16 which alleges that on November 18, 2014, a deed was recorded in the RMC Office for Charleston County in Book 441 on Page 484 which was executed by Muriel Clarkin and conveyed to the Defendant her remaining half interest in the subject property.

5. The Defendant, Patricia Clarkin Smith, **ADMITS** Paragraphs 17 and 18 of the Plaintiff's Complaint.

6. The Defendant, Patricia Clarkin Smith, **DENIES** Paragraphs 19, 20, 21, 22, 23, 24, 25, 26 and 27 of the Plaintiff's Complaint.

7. The Defendant, Patricia Clarkin Smith, **ADMITS** Paragraphs 28, 29, 30, and 31 of the Complaint.

8. The Defendant, Patricia Clarkin Smith, **DENIES** Paragraphs 32, 33, 34, 35 and 36 of the Plaintiff's Complaint.

9. The Defendant, Patricia Clarkin Smith, **ADMITS** Paragraph 37 of the Plaintiff's Complaint.

10. The Defendant, Patricia Clarkin Smith, **DENIES** Paragraph 38 of the Plaintiff's Complaint.

11. The Defendant, Patricia Clarkin Smith, **ADMITS** Paragraphs 39, 40, and 41 of the Plaintiff's Complaint.

12. The Defendant, Patricia Clarkin Smith, **DENIES** Paragraphs 42, 43, 44, 45, 46, 47, 48, 49, 50, and 51 of the Plaintiff's Complaint.

13. The Defendant, Patricia Clarkin Smith, **ADMITS** Paragraphs 52, 53, 54, 55, 56, and 57 of the Plaintiff's Complaint.

14. The Defendant, Patricia Clarkin Smith, **DENIES** Paragraph 58 of the Plaintiff's Complaint.

15. The Defendant, Patricia Clarkin Smith, **ADMITS** Paragraph 59 of the Plaintiff's Complaint.

16. The Defendant, Patricia Clarkin Smith, **DENIES** Paragraphs 60 and 61 of the Plaintiff's Complaint.

17. The Defendant, Patricia Clarkin Smith, **ADMITS** Paragraphs 62 and 63 of the Plaintiff's Complaint.

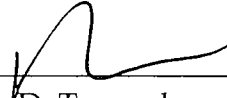
18. The Defendant, Patricia Clarkin Smith, **DENIES** Paragraphs 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 91, 92, 93, 94, and 95.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant prays as follows:

- (a) That the Plaintiff's Complaint be dismissed with costs assessed against the Plaintiff.

Respectfully submitted this 27 day of November, 2017.

**URICCHIO, HOWE, KRELL, JACOBSON,
TOPOREK, THEOS & KEITH, P.A.**



Alan D. Toporek
17 ½ Broad Street
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Phone: 843/723-7491
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alan@uricchio.com
Attorney for the Defendant

Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Family Services, Inc., as Conservator)
For Muriel W. Clarkin,)
)
Plaintiff,)
)
vs.)
)
Patricia Clarkin Smith and Wells Fargo)
Bank, NA.)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: ~~2016~~-CP-10-5427

2017

AMENDED COMPLAINT

FILED
2017 DEC -4 PM 2:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____ 6

Plaintiff complains of the above-named Defendant as follows:

1. Plaintiff, Family Services Inc., as Conservator for Muriel W. Clarkin (hereinafter "Plaintiff") is a resident of Charleston County.
2. Plaintiff was appointed conservator for the assets, affairs and estate of Muriel W. Clarkin by and order dated March 27, 2015, in case number 2014-GC-10-0209, by the Honorable Tamara C. Curry, Charleston Count Probate Judge.
3. Muriel W. Clarkin (hereinafter "Clarkin") is an eighty-five year old widow who has four living children, and Clarkin requires finances and funds to provide for Clarkin's necessary assisted living care.
4. Defendant Patricia Clarkin Smith (hereinafter "Defendant" is a daughter of Clarkin and resides in Charleston County.
5. The real property which is a subject of this action is located at 602 Atlantic Street, Mt. Pleasant, SC 29464, bearing TMS # 532-06-00-129 (hereinafter "Subject Property"), in Charleston County. The Subject Property is legally described as follows:

ALL that certain lot, piece, or parcel of land, together with all buildings and improvements thereon, situate lying and being in Mt. Pleasant, Heights, Christ Church Parish Number 5, Charleston County, State of South Carolina, and known on the Plat or plan of re-subdivision of Mt. Pleasant Heights made by J. O'Hear Sanders, Jr. dated January, 1950, recorded in the RMC Office for Charleston County, SC in Plat Book G, Page 99-A as LOT NO. 63.

MEASURING AND CONTAINING in front on Atlantic Street sixty (60) feet; the same on the back line and one hundred and eighty (180) feet in depth.

BUTTING AND BOUNDING Southeast on Atlantic Street, Northwest on a ten (10) foot roadway; Northeast on Lot No. 64 on said Plats; and Southwest on Boundary Street; all as is more fully shown on the Plat hereinabove referred to and on the Plat of J. O'Hear Sanders, Jr. dated January 25, 1952, which said Plat is made a part and parcel of this conveyance.

This being the same property devised to Muriel Walsh Clarkin from the Estate of Muriel Monica Dean Walsh, Estate File No. 1997-ES-10-00254, pursuant to a Deed of Distribution dated January 5, 1998, and recorded on January 5, 1998, in the RMC Office for Charleston County, SC in Book J-295, Page 592; and by Deed of Muriel Walsh Clarkin to Muriel Walsh Clarkin and Patricia Clarkin Smith, as joint tenants with rights of survivorship, and not as tenants in common, dated July 30, 2013, recorded in the RMC Office for Charleston County, SC on August 7, 2013 in Deed Book 0351, Page 348.

6. At all times of the allegations made hereinafter Clarkin imposed a special confidence in Defendant.

7. In or around the second half of 2012 and further during 2013, Clarkin with the assistance of her attorney C Mac Gibson Jr. (hereinafter "Attorney Gibson") undertook some estate planning including but not limited to the drafting a will, codicils, a power of attorney, and deeds devising interests in real property owned by Clarkin to her daughters.

8. On or about August 15, 2012, Attorney Gibson on behalf of Clarkin recorded a deed in the Charleston RMC Office in book 0271, page 285, devising to Muriel Clarkin Kennedy (hereinafter "Kennedy"), Clarkin's interest in real property she owned on Goat Island, bearing TMS # 571-14-00-007.

9. On or about March 27, 2013, Attorney Gibson on behalf of Clarkin recorded a general durable power of attorney in the Charleston RMC Office in book 0319, page 644, naming Kennedy as attorney in fact for Clarkin.

10. On or about August 7, 2013, Attorney Gibson on behalf of Clarkin recorded a deed in the Charleston RMC Office in book 0351, page 348, devising to Defendant a half interest in the Subject Property *as joint tenants in common with right of survivorship* with Clarkin.

11. On or about August 21, 2013, Defendant obtained \$1,500.00 from Clarkin.

12. Defendant has acknowledged that she has an obligation to pay back Clarkin for the \$1,500.00.

13. On or about December 27, 2013, Attorney Gibson on behalf of Clarkin recorded a deed in the Charleston RMC Office in book 0380, page 802, devising to Defendant, Kennedy, and Clarkin herself a third of an interest a piece in Clarkin's residence, bearing TMS number 535-15-00-043, as joint tenants in common with right of survivorship.

14. In or around November of 2014, Clarkin was evaluated for an Alzheimer and dementia research protocol.

15. In November of 2014, multiple doctors made statements in writing regarding Clarkin's mental capacity, including but not limited to, that due to Clarkin suffering from depression, alzheimer's and/or dementia; that Clarkin should not be making financial decisions for herself; and that she lacked the capacity to make informed decisions.

16. On November 18, 2014, Defendant recorded a deed in the RMC office for Charleston County in Book 0441, Page 484 (hereinafter "November 18th Deed"), which is alleged to have been executed by Clarkin and which conveyed to Defendant, Clarkin's remaining half interest in the subject property.

17. The November 18th Deed was not drafted by Clarkin's Attorney Gibson in contrast to the previous deeds referenced above.

18. Further on November 18, 2014, Defendant obtained \$6,000.00 from Clarkin.

19. Upon information and belief Defendant used her undue influence upon Clarkin to have Clarkin to execute the November 18th Deed.

20. Upon information and belief Defendant used her undue influence upon Clarkin to obtain \$6,000.00 from Clarkin.

21. Upon information and belief absent Defendant's undue influence upon Clarkin, Clarkin would not have executed the November 18th Deed and Defendant would not have obtained from Clarkin \$6,000.00.

22. Defendant has acknowledged that she has an obligation to pay back Clarkin for the \$6,000.00.

23. Upon information and belief at or around November of 2014, and as a result of Clarkin's medical conditions, she was vulnerable to exploitation and undue influence by Defendant.

24. Plaintiff asserts that Clarkin lacked the mental capacity to execute the November 18th Deed.

25. Plaintiff asserts that at the time Defendant obtained \$6,000.00 from Clarkin, Clarkin lacked the mental capacity to handle her financial affairs.

26. On or about December 8, 2014, Defendant took Clarkin to an attorney who is not Clarkin's Attorney Gibson, to have the attorney draft a second durable power of attorney for Clarkin to execute. This power of attorney in contrast to the power of attorney referenced above appointed both Kennedy and Defendant as co-attorney's in fact for Clarkin (hereinafter "December

8th POA”). Defendant then took the December 8th POA and had it record in the Charleston RMC Office in Book 0445 at Pate 144.

27. Clarkin allegedly granting Defendant power of attorney contradicted statements Clarkin has made that she and her husband had previously determined that Kennedy, not Defendant, should have power of attorney for Clarkin.

28. By Order dated March 27, 2015, in case number 2014-GC-10-0209, the Honorable Tamara C. Curry, Charleston Count Probate Judge, declared the December 8th POA “renounced as null and void.”

29. On December 22, 2014, Kennedy filed an emergency petition for appointment of temporary conservator, alleging things including but not limited to that Defendant had caused to be drafted, executed and recorded the November 18th Deed and the December 8th POA; that Defendant using her undue influence upon Clarkin obtained \$6,000.00 from Clarkin; and that in December of 2014 Defendant took Clarkin to Wells Fargo Bank and began inquiring about Clarkin’s bank accounts, which resulted in Wells Fargo flagging the accounts for suspicious activity.

30. On December 22, 2014, Kennedy also filed a Petition for Order of Protection and Appointment of Conservator making allegations including but not limited to those referenced above and that Defendant had agreed to pay Clarkin \$600 a month in rent for use of the Subject Property and has failed to do so.

31. By Ex Parte Order Appointing Temporary Guardian dated December 22, 2014, in case number 2014-GC-10-0209, the Honorable Tamara C. Curry, Charleston Count Probate Judge, ordered “Muriel W. Clarkin is adjudged to be an incapacitated person, as defined by South

Carolina Probate Code §62-5-101(1), whose immediate welfare requires the appointment of a temporary guardian.”

32. On December 23, 2014, Defendant as an alleged authorized user of a Wells Fargo Credit Card account owned by Clarkin, signed for and received a \$10,000 cash advance upon Clarkin’s account.

33. Clarkin was the sole owner of the credit card account.

34. On December 23, 2014, Clarkin lacked the capacity to authorize Defendant to make a \$10,000.00 cash advance upon the credit card.

35. On December 23, 2014, Defendant lacked the authority to sign for a \$10,000.00 advance upon the credit card.

36. Plaintiff at present continues to incur damages in the form of interest upon the December 23, 2014, \$10,000 advance executed and taken by Defendant.

37. In or around January of 2015, Defendant retained an attorney to contest the appointment of a guardian for Clarkin. On January 5, 2015, Defendant’s attorney filed an Petition to Dismiss the Exparte Order Appointing a Temporary Guardian, wherein Defendant asserted Clarkin was not incapacitated and could care for herself.

38. Defendant obtained \$7,500 of Clarkin’s money and used it to retain Defendant’s Attorney.

39. After Plaintiff was appointed Plaintiff demanded Defendant reimburse Plaintiff the \$7,500.00 Defendant used to retain her attorney.

40. Defendant subsequently caused Plaintiff to be reimbursed the \$7,500.00 Defendant had used to retain her attorney.

41. By Order dated January 16, 2015, the Probate Court again adjudicated Clarkin to be incapacitated and appointed Plaintiff as her temporary conservator.

42. By Order dated March 27, 2015, the Probate Court appointed Plaintiff as the Conservator for Clarkin.

**FOR AND AS A FIRST CAUSE OF ACTION AGAINST DEFENDANT
(Declaratory Injunctive Relief)**

43. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

44. Plaintiffs seek declaratory relief pursuant to S.C. Code Ann. § 15-53-10, et seq., on the grounds that Plaintiff is an interested party and seeks a declaration as to Clarkin's rights and the rights of Defendant with regard to the following:

a) Whether the November 18th Deed is void because Clarkin lacked the mental capacity to execute the deed at time of execution;

b) Whether Clarkin lacked the capacity to handled her financial affair in November of 14 at the time Defendant obtained \$6,000.00 from Clarkin;

c) Whether on December 23, 2014, Clarkin lacked the capacity to authorize Defendant to withdraw a \$10,000.00 cash advance from Clarkin's credit card account; and

d) Whether on December 23, 2014, Defendant lacked the authority to execute a \$10,000 cash advance upon Clarkin's credit card account.

45. Plaintiff is entitled to a declaratory judgment as to the rights and obligations of the parties as address above.

**FOR AND AS A SECOND CAUSE OF ACTION AGAINST DEFENDANT
(Fraudulent Conveyance)**

46. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

47. Without the intent, consent and understanding of Clarkin, Defendant deceitfully caused the November 18th Deed to be drafted and allegedly executed by Clarkin, thereafter Defendant recorded said deed in the register of deeds for Charleston County.

48. Defendant knew that Clarkin did not understand the significance of the executing the November 18th Deed.

49. Upon information and belief Defendant caused the November 18th Deed to be executed and recorded for the purpose of defrauding Clarkin of Clarkin's half interest in the subject property.

50. Accordingly, Plaintiff should be entitled to have November 18th Deed declared null and void, and/or to receive damages as a result of the fraudulent transfer, including damages for emotional distress

51. Plaintiff is also informed and believes that Plaintiff is entitled to recover punitive damages from Defendant based upon Defendant's intentional and deceptive conduct.

**FOR AND AS A THIRD CAUSE OF ACTION AGAINST DEFENDANT AND WELLS
FARGO BANK, NA
(Quiet Title)**

52. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

53. This is an action to quiet title to the Subject Property.

54. Plaintiff acquired ownership of the Subject Property January of 1998.

55. On or about July 17, 2006, Clarkin executed a \$100,000 note and mortgage secured by the Subject Property to Wachovia Bank, NA (hereinafter "Mortgage"). The Mortgage was recorded in the RMC Office for Charleston County in Book L591, Page 244.

56. On or about July 7, 2008, said note and Mortgage were modified to increase the maximum balance of indebtedness to \$150,000 (hereinafter “Modification”), the Modification was recorded in the RMC Office for Charleston County in Book E664, Page 769.

57. On or about August 7, 2013, Attorney Gibson on behalf of Clarkin recorded a deed in the Charleston RMC Office in book 0351, page 348, devising to Defendant a half interest in the Subject Property *as joint tenants in common with right of survivorship* with Clarkin.

58. Attorney Gibson drafted and recorded two other deeds for Clarkin within a year of August 7, 2013, as well as drafting a will, codicils, and a power of attorney for Clarkin around the same time.

59. On or about November 17, 2014, Defendant caused the November 18th Deed to be drafted and allegedly executed by Clarkin.

60. On November 18, 2014, Defendant recorded the November 18th Deed in the RMC Office of Charleston County.

61. Transfer of Clarkin’s interest in the Subject Property put Clarkin in breach of the terms of the Mortgage.

62. Plaintiff is of the opinion and belief that the November 18th Deed should be declared null and void based upon a lack of capacity and intent on the part of Clarkin to transfer her remaining half interest in the subject property to Defendant through the November 18th Deed.

63. Clarkin remains obligated pursuant to the terms of the Note and Mortgage upon the Subject Property.

64. The Defendants in this case are named as parties hereto by virtue of their alleged rights, title or interest in the Subject Property as follows:

a) Defendant by virtue of the August 7, 2013, deed recorded in the Charleston RMC Office in Book 0351, Page 348, and the November 18th Deed.

b) Wells Fargo Bank, NA, as successor in interest, to Wachovia Bank, NA pursuant to the Mortgage.

65. Plaintiff is entitled to and requests that this Court declare the November 18th Deed null and void and further declare that Clarkin owns a one-half interest in the Subject Property as a tenant in common with Defendant with rights of survivorship.

**FOR AND AS A FOURTH CAUSE OF ACTION AGAINST DEFENDANT
(CONVERSION)**

66. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

67. Plaintiff as conservator for Clarkin has an interest in the following:

a) \$1,500.00 of Clarkin's money obtained by Defendant from Clarkin on or about August 21, 2013.

b) \$6,000.00 of Clarkin's money obtained by Defendant from Clarkin on or about November 18, 2014;

c) \$10,000.00 taken by Defendant on December 23, 2014, as a cash advance from Clarkin's Wells Fargo credit card account, bearing an account number with the last four digits 5793.

68. Clarkin owned and had an interest in the funds described above.

69. Defendant converted the funds to her own use and benefit.

70. Defendant did not have permission and/or authority to obtain and/or retain said funds.

71. Defendant has acknowledged an obligation to repay some and/or all of said funds of Clarkin.

72. In November and December of 2014, Clarkin did not have the capacity to give Defendant the permission and/or authority to obtain those particular funds.

73. With regard to the \$10,000.00 cash advance Plaintiff has been damaged by the continued accrual of interest upon the cash advance.

74. Plaintiff is entitled to and requests an award of the \$17,500.00, the cost of the interest incurred for the \$10,000 cash advance, and legal interest upon the \$17,500.00 from the times which Defendant converted the funds to her own use and benefit.

**FOR AND AS A FIFTH CAUSE OF ACTION AGAINST DEFENDANT
(Unjust Enrichment)**

75. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

76. Defendant has been unjustly enriched at the expense of and to the detriment of Clarkin in the amount of \$17,500.00.

77. Defendant has been unjustly enriched at the expense of and to the detriment of Clarkin by Defendant enjoying the benefit of living in the Subject Property while failing to pay Clarkin monthly rent for the Subject Property as Defendant had agreed to do.

78. Plaintiff is informed and believes that it is entitled to recover from Defendant all monies, and any improper benefit received by Defendant as a result or consequence, and/or incidentally related to Defendant's actions as alleged above.

**FOR AND AS A SIXTH CAUSE OF ACTION AGAINST DEFENDANT
(Money Had and Received)**

79. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

80. Defendant presently holds \$17,500.00 in her possession or control that was received from Clarkin.

81. Defendant does not have a right to retain said money of Clarkin.

82. The money in question belongs, in equity and good conscience to Plaintiff and should not in equity and good conscience be retained by Defendant.

83. Plaintiff is informed and believes that it is entitled to recover from Defendant all money had and received by Defendant as a result, consequence, and/or incidentally related to Defendant's actions as alleged above.

**FOR AND AS A SEVENTH CAUSE OF ACTION AGAINST DEFENDANT
(Promissory Estoppel)**

84. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

85. Defendant promised to pay Clarkin rent in exchange for Defendant residing in the subject property.

86. Defendant has failed to pay Clarkin said rent as promised.

87. Clarkin relied upon Defendant's promise to pay Clarkin rent.

88. Clarkin's reliance upon Defendant's promise was expected and foreseeable by Defendant.

89. Plaintiff has suffered damages as a result of Defendant's failure to pay Clarkin rent as promised.

90. Plaintiff is informed and believes that it is entitled to recover from Defendant all rent not paid to Clarkin by Defendant as a result, consequence, and/or incidentally related to Defendant's actions as alleged above.

**FOR AND AS A SEVENTH CAUSE OF ACTION AGAINST DEFENDANT
(Quantum Meruit)**

91. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

92. Clarkin conferred upon Defendant a benefit of \$17,500, as well as the use and benefit of the Subject Property.

93. Defendant realized the benefits as described above.

94. Retention of these benefits by Defendant under the conditions described above make it unjust for Defendant to retain said benefits without paying the value of said benefits.

95. Plaintiff is informed and believes that it is entitled to recover from Defendant all benefits retained by Defendant as a result, consequence, and/or incidentally related to Defendant's actions as alleged above.

JURY TRIAL DEMANDED

WHEREFORE, Plaintiffs pray that this Court enter judgment against each of the named Defendants as to each of Plaintiff's above named causes of action awarding Plaintiffs actual, statutory, and punitive damages, declaratory and injunctive relief, prejudgment interest, attorneys' fees and costs and such other relief, fees and costs as may be appropriate.

RESPECTUFLLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC



D. Conor Keys
P.O. Box 14225
Charleston, SC 29422
Phone: 843-906-3998
conor@dconorkeyslaw.com
Attorney for Plaintiff

November 29, 2017
Charleston, SC

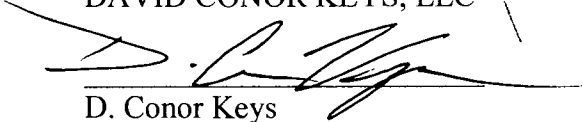
CERTIFICATE OF SERVICE

2017-CP-10-5427

I certify that on this 29th day of November 2017, a copy of the within Amended Complaint was mailed United States mail, addressed to parties and opposing counsel as follows:

Alan David Toporek
Uricchio Howe Krell Jacobson
Torporek Theos & Keith, PA
PO Box 399
Charleston, SC 29402
alan@uricchio.com
Attorney for
Patricia Clarkin Smith

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC


D. Conor Keys

FILED
2017 DEC -4 PM 2:49
JULIE J. ARKIS-TRONG
CLERK OF COURT
BY _____

THE LAW OFFICE OF
DAVID CONOR KEYS LLC
PO Box 14225 CHARLESTON, SC 29422
CONOR@DCONORKEYSLAW.COM
843-906-3998

November 29, 2017

Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad St, Suite 106
Charleston, SC 29401

**RE: Family Services, Inc., Conservator for Muriel W. Clarkin v. Patricia
Clarkin Smith, et al
Case No. 2017-CP-10-5427**

Madam Clerk:

Enclosed please find with regard to the above referenced matter, Plaintiff's amended complaint and an accompanying certificate of service. I kindly request that you file the same.

With kind regards,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC

D. Conor Keys

Enclosures:
(as stated)
CC:
Alan Toporek

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

) CASE NO.: 2017-CP-10-5427

)

)

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FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
N.A. TO
INT
2

6. Wells Fargo denies the allegations set forth in Paragraph 6 directed at Wells Fargo.

7. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 7, and therefore denies the same.

8. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 8, and therefore denies the same.

9. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 9, and therefore denies the same.

10. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 10, and therefore denies the same.

11. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 11, and therefore denies the same.

12. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 12, and therefore denies the same.

13. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 13, and therefore denies the same.

14. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 14, and therefore denies the same.

15. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 15, and therefore denies the same.

16. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 16, and therefore denies the same.

17. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 17, and therefore denies the same.

18. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 18, and therefore denies the same.

19. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 19, and therefore denies the same.

20. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 20, and therefore denies the same.

21. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 21, and therefore denies the same.

22. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 22, and therefore denies the same.

23. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 23, and therefore denies the same.

24. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 24, and therefore denies the same.

25. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 25, and therefore denies the same.

26. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 26, and therefore denies the same.

27. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 27, and therefore denies the same.

28. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 28, and therefore denies the same.

29. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 29, and therefore denies the same.

30. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 30, and therefore denies the same.

31. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 31, and therefore denies the same.

32. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 32, and therefore denies the same.

33. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 33, and therefore denies the same.

34. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 34, and therefore denies the same.

35. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 35, and therefore denies the same.

36. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 36, and therefore denies the same.

37. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 37, and therefore denies the same.

38. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 38, and therefore denies the same.

39. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 39, and therefore denies the same.

40. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 40, and therefore denies the same.

41. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 41, and therefore denies the same.

42. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 42, and therefore denies the same.

AS TO PLAINTIFF'S FIRST CAUSE OF ACTION AGAINST DEFENDANT
(Declaratory Injunctive Relief)

43. Responding to Paragraph 43, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

44. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 44, including all subparts, and therefore denies the same.

45. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 45, and therefore denies the same.

AS TO PLAINTIFF'S SECOND CAUSE OF ACTION AGAINST DEFENDANT
(Fraudulent Conveyance)

46. Responding to Paragraph 45, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

47. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 47, and therefore denies the same.

48. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 48, and therefore denies the same.

49. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 49, and therefore denies the same.

50. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 50, and therefore denies the same.

51. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 51, and therefore denies the same.

AS TO PLAINTIFF'S THIRD CAUSE OF ACTION AGAINST DEFENDANT AND
WELLS FARGO BANK, NA
(Quiet Title)

52. Responding to Paragraph 52, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

53. Responding to Paragraph 53 of the Complaint, Wells Fargo admits only that Plaintiff is asserting an action to quiet title in the Subject Property.

54. Wells Fargo admits the allegations set forth in Paragraph 54, upon information and belief.

55. Responding to Paragraph 55 of the Complaint, Wells Fargo references the documents in question and avers they are written documents, which speak for themselves. Accordingly, Wells Fargo denies any allegations in Paragraph 55 that are inconsistent with the express, written terms of the documents.

56. Responding to Paragraph 56 of the Complaint, Wells Fargo references the document in question and avers it is a written document, which speaks for itself. Accordingly, Wells Fargo denies any allegations in Paragraph 56 that are inconsistent with the express, written terms of the document.

57. Responding to Paragraph 57 of the Complaint, Wells Fargo references the document in question, and denies any inconsistent allegations.

58. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 58, and therefore denies the same.

59. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 59, and therefore denies the same.

60. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 60, and therefore denies the same.

61. Responding to Paragraph 61 of the Complaint, Wells Fargo references the terms of the mortgage, and denies any inconsistent allegations.

62. The allegations of Paragraph 62 state legal conclusions to which no response is required. To the extent a response is required, Wells Fargo lacks information sufficient to form a belief, and therefore denies the same.

63. Wells Fargo admits the allegations set forth in Paragraph 63.

64. Responding to Paragraph 64, including all subparts, Wells Fargo admits only that Plaintiff has named Wells Fargo as a defendant in the lawsuit and that Wells Fargo has a mortgage interest in the subject property.

65. The allegations of Paragraph 65 state legal conclusions to which no response is required. To the extent a response is required, Wells Fargo lacks information sufficient to form a belief, and therefore denies the same.

AS TO PLAINTIFF'S FOURTH CAUSE OF ACTION AGAINST DEFENDANT
(Conversion)

66. Responding to Paragraph 66, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

67. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 67, including all subparts, and therefore denies the same.

68. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 68, and therefore denies the same.

69. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 69, and therefore denies the same.

70. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 70, and therefore denies the same.

71. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 71, and therefore denies the same.

72. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 72, and therefore denies the same.

73. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 73, and therefore denies the same.

74. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 74, and therefore denies the same.

AS TO PLAINTIFF'S FIFTH CAUSE OF ACTION AGAINST DEFENDANT
(Unjust Enrichment)

75. Responding to Paragraph 75, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

76. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 76, and therefore denies the same.

77. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 77, and therefore denies the same.

78. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 78, and therefore denies the same.

AS TO PLAINTIFF'S SIXTH CAUSE OF ACTION AGAINST DEFENDANT
(Money Had and Received)

79. Responding to Paragraph 79, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

80. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 80, and therefore denies the same.

81. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 81, and therefore denies the same.

82. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 82, and therefore denies the same.

83. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 83, and therefore denies the same.

AS TO PLAINTIFF'S SEVENTH CAUSE OF ACTION AGAINST DEFENDANT
(Promissory Estoppel)

84. Responding to Paragraph 84, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

85. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 85, and therefore denies the same.

86. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 86, and therefore denies the same.

87. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 87, and therefore denies the same.

88. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 88, and therefore denies the same.

89. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 89, and therefore denies the same.

90. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 90, and therefore denies the same.

AS TO PLAINTIFF'S SEVENTH¹ CAUSE OF ACTION AGAINST DEFENDANT
(Quantum Meruit)

91. Responding to Paragraph 91, Wells Fargo incorporates by reference its responses to the allegations in the preceding paragraphs as if set forth fully herein.

92. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 92, and therefore denies the same.

93. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 93, and therefore denies the same.

94. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 94, and therefore denies the same.

95. Wells Fargo lacks information sufficient to form a belief as to the allegations contained in Paragraph 95, and therefore denies the same.

96. Responding to Plaintiff's "Wherefore" clause, Wells Fargo denies the Plaintiffs are entitled to judgment or relief of any kind from Wells Fargo.

FOR A FIRST AFFIRMATIVE DEFENSE
(First Priority Lien)

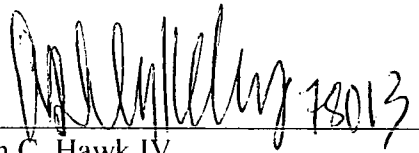
¹ Plaintiff has two "Seventh" causes of action.

97. Wells Fargo's Prime Equity Line of Credit Mortgage constitutes a first priority lien on the property. Priority is preserved by the Recording Statute, S.C. Code Ann. § 30-7-10. Counsel for Plaintiff executed a Stipulation of Priority, filed on March 27, 2018.

FOR A FIRST AFFIRMATIVE DEFENSE
(Additional Defenses)

98. Wells Fargo reserves its right to plead additional defenses as needed.

This the 15th day of August, 2018.



John C. Hawk IV
S.C. Bar No. 74786
S. Sterling Laney, III
S.C. Bar No. 6933
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Attorneys for Defendant Wells Fargo Bank, N.A.

2017-CP-10-5427

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2018, I served a copy of the foregoing ***Answer of Wells Fargo Bank, N.A. to Amended Complaint*** on the following counsel of record in the within entitled matter by delivering a copy of same by US Mail in an envelope and/or via electronic mail addressed to:

Alan David Toporek
Uricchio Howe Krell Jacobson
Torporek Theos & Keith, PA
PO Box 399
Charleston, SC 29402

David Conor Keys
The Law Office of David Conor Keys, LLC
PO Box 14225
Charleston, SC 29422

FILED
2018 AUG 15 PM 4:21
JULIE J. ARMSTRONG
CLERK OF COURT



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FAMILY SERVICES AS CONSERVATOR
FOR MURIEL CLARKIN,

Plaintiff,

vs.

PATRICIA SMITH CLARKIN,

Defendant.

)
) Court of Common Pleas
) Case No. 2017-CP-10-5427
)

) Transcript of Record
)

) DATE: August 30, 2019
)

B E F O R E:

THE HONORABLE ROGER M. YOUNG, SR.

A P P E A R A N C E:

DAVID CONOR KEYS
Attorney for Plaintiff

KAREN MARIE DEJONG
Attorney for Defendant

Stenographically recorded and transcribed by:

Karen V. Andersen, RMR, CRR, CSR

1 THE COURT: We've got Family Services, Inc., as
2 conservator for Muriel W. Clarkin v. Patricia Clarkin
3 Smith.

4 MR. KEYS: Yes, Your Honor. David Conor Keys, I
5 represent Family Services.

6 THE COURT: Go ahead.

7 MR. KEYS: We are here before you on two motions
8 today, Your Honor. The first is to enforce a settlement.
9 And the second is a motion to disqualify defendant's
10 counsel. This is a little background. I represent a
11 probate court-appointed conservatorship for Muriel
12 Clarkin. She is 86. She's a widow and needs funds to
13 care for her assisted living. She suffers from dementia.

14 You were -- saw a motion for continuance on the
15 sister case yesterday that got continued also involving a
16 different defendant but same plaintiff. So we brought an
17 action back in October of 2017 regarding some funds that
18 Ms. Clarkin's daughter, Patricia Smith, the defendant,
19 received and regarding a transfer of a half interest in
20 real property at 602 Atlantic Street that occurred two
21 weeks before the probate court declared her incompetent.

22 The property previously had been deeded a half
23 interest to the defendant with right of survivorship. And
24 then right before this, she took \$6,000 out of her mom's
25 bank account and caused it to happen. That deed

1 occurred -- a power of attorney that the probate court
2 later declared null and void occurred.

3 On 10/23, she, as an authorized user on a credit
4 account, took \$10,000 out, and used that money to pay her
5 former attorney, Mr. Toporek, to represent her in the
6 probate matter. Mr. Toporek made it very clear that he
7 was representing her and not Ms. Clarkin. So today we are
8 here on the motion to enforce the settlement. We went
9 through discovery in this process. We conducted
10 depositions. Thereafter, we got into negotiation on a
11 settlement.

12 There is another property that was formerly the
13 property that Ms. Clarkin resided in. And back in 2013, a
14 third of that was given to the defendant, a third of it
15 was given to the defendant's sister, Ms. Kennedy, and a
16 third remained in Ms. Clarkin's possession.

17 The probate court, I believe, has a petition on
18 September 19th to sign off on bringing a partition action
19 on that property. So we've got this laying out there as
20 well. And part of our settlement was, we agreed that if
21 she would give her third interest deeded over to Ms.
22 Clarkin, then we would dismiss this action. And we went
23 through some hurdles and worked that out over a period of
24 months, came to an agreement, executed the documents. I
25 have the originals right here, executed the deed, Ms.

1 Smith, the defendant, did on 12/12.

2 They didn't get to my office until about 12/20,
3 which is Thursday. 21st was Friday. And then we had --
4 the way Christmas and New Year's fell, we had two weeks
5 where school was off at that point in time. My client,
6 who would have been the signing agent for the agreement,
7 was gone that entire time. School starts back up on 1/7
8 this year. And a couple hours before school started, at
9 12:04, I believe, in the a.m., the defendant e-mails
10 myself, her attorney, and at the time Wells Fargo's
11 attorney. Wells Fargo is no longer in this case. And so
12 she revokes the agreement. This all happens prior to my
13 client getting back in town and the first business day
14 that she would have had an opportunity to sign the
15 agreement.

16 Thereafter, for a couple of months, I worked with
17 Allen Toporek, her former attorney, tried to get it back
18 on. It did not happen. And then Mr. Toporek filed a
19 motion to be relieved. And in his motion to be relieved,
20 he stated, pursuant to Rule 11, that counsel and the
21 defendant, Patricia Clarkin-Smith, have come to a
22 disagreement on how the case should be handled. Counsel
23 for defendant negotiated the settlement for defendant
24 Smith. Defendant Smith agreed. Defendant Smith signed
25 documents acknowledging the agreement. And then counsel

1 believes the agreement is in defendant Smith's best
2 interest. Defendant Smith now states that she will not go
3 forward and wants a jury trial. Counsel is concerned for
4 the health and welfare of defendant Smith and believes it
5 would be deleterious for her to go to trial.

6 That was his motion to be relieved as counsel.
7 The agreement was executed fully by the defendant, signed
8 by two witnesses, and notarized by her attorney
9 acknowledging that she would sign the agreement. It was
10 then delivered to me. The deed was also executed. Again,
11 I have both the originals right here if you would like to
12 look at them.

13 We would assert under 43(k) that the conditions
14 have been met because we've always been ready, willing,
15 and able to execute this agreement. They revoked it over
16 the holiday before we had an opportunity to do so, though
17 she had delivered the document signed weeks prior. And we
18 would assert that you should enforce the agreement, allow
19 us to record the deed, which we have in our possession.
20 And upon doing that, we would dismiss this case, Your
21 Honor.

22 THE COURT: Why do you need to dismiss or
23 disqualify opposing counsel?

24 MR. KEYS: As to that, Your Honor, so I told you
25 there was a sister case. Both of them were approved by

1 the probate court in the still ongoing probate matter, the
2 conservatorship, which I said there's a hearing on on the
3 19th. Four years prior, Ms. DeJong acted as a mediator in
4 that case. We did not learn that until my client was
5 going through documents preparing for mediation in this
6 matter in early June. She brought it to my attention. I
7 immediately e-mailed Ms. DeJong and said, we need to
8 discuss this, I think that's an issue. I did not hear
9 back from her for two weeks. And after that, I filed the
10 motion to disqualify her. I would assert these cases are
11 inextricably related. I can pass up the pleadings. I've
12 got certified pleadings -- may I approach, Your Honor?

13 THE COURT: Sure.

14 MR. KEYS: -- from the probate court. I did not
15 file or attach them out of abundance of caution of not
16 putting conservator records into the public record of
17 common pleas. But you will notice on the petition for
18 appointment of conservator, the petition for appointment
19 to declare her incapacitated and the petition for
20 appointment of a guardian, a number of the allegations
21 which led to the probate court declaring Ms. Clarkin
22 incapacitated are the exact same issues that were alleged
23 in this complaint and are the issues before this Court.

24 There's further an affidavit presented by my
25 client talking about how she provided confidential

1 information prior to the mediation, Ms. DeJong. And we
2 would assert that Rule 112 says that when it's a
3 substantially related matter, that she cannot represent
4 without informed consent in writing to all parties.

5 Note comment one in discussing the definition of
6 "personally" and "substantially" makes reference to the
7 judicial code A(2) and B(2) where it talks about how a
8 former judge or part-time judge can't act in any
9 proceeding which he served for or in any others related
10 proceeding. And we would just assert that they are all
11 inextricably related. The probate court approved this
12 action being brought. It monitors this action
13 continually. It signs off on expenses for this action.
14 The facts are the same in the probate court as they are in
15 this case. The disputes are the same. The parties are
16 the same.

17 We assert she mediated in the probate case and
18 she should not have come into this case just recently
19 without getting informed consent from my client, which my
20 client has not given.

21 THE COURT: Okay. Ms. DeJong.

22 MS. DeJONG: Good afternoon. If this case were
23 intertwined so deeply, then this separate case dated 2017,
24 these issues would have been still ongoing in the 2014
25 case, but they are a separate action.

1 With regards to my disqualifications, I spent one
2 day five years ago mediating this 2014 case. And I
3 honestly don't even remember it. The case I'm involved in
4 now is more of a creditor/debtor claim, the 2017 case.
5 It's separate. It's apart.

6 And even if I could remember what happened that
7 one day, it would be confidential anyhow. Whenever I read
8 the rule, it does say that -- excuse me. Let me find it.
9 It says that I would have had to have been substantially
10 involved in that case in order to be disqualified, and I
11 wasn't. It was just one day mediating; didn't come to
12 fruition. There's no agreement, and I was out.

13 So the documents that counsel handed up to you
14 today, I've never even seen the order appointing
15 conservator or guardian. So, really, I was not involved.
16 It's a separate action. We are now five years later. I'm
17 representing one of the parties in a lawsuit against
18 herself for collection. And so I would like to continue
19 to represent her. I'm pretty much pro bono. And I know
20 if I'm disqualified, she won't be able to have legal
21 representation. So I would ask that it not be
22 disqualified.

23 MR. KEYS: If I may, Your Honor, I would just say
24 as to venue, whether it was brought in probate in the
25 original matter or here, it's an election and remedy which

1 the plaintiff selected. Shouldn't be an issue held
2 against them because they elected a divert venue to
3 proceed forward.

4 THE COURT: What about the settlement issue?

5 MS. DeJONG: The settlement issue, counsel had
6 quoted Rule 43(k). And it's pretty much black and white.
7 It's: No agreement between the parties shall be binding
8 unless reduced in writing, a formal consent order, or
9 written stipulation signed by counsel and entered into the
10 record. And my client, with her former counsel, had
11 signed a settlement agreement and met with another
12 attorney. And based upon that conversation, she decided
13 that that settlement agreement was not in her best
14 interest, and immediately revoked it. She did not know
15 that everybody was away on vacation, unavailable. It's
16 more her decision that this was not a fair settlement.

17 She revoked it. Immediately her attorney
18 notified Family Services. So because there was no meeting
19 of the mind, there was no -- an agreement is a contract.
20 So, say, there's no offer/counter-offer accepted, there
21 really is no agreement. And Rule 43(k) specifically
22 says --

23 THE COURT: Did she sign the agreement?

24 MS. DeJONG: She did sign the agreement, but the
25 opposing counsel did not before she revoked it. She had a

1 right to do -- there's nothing to preclude her from
2 changing her mind as long as the other party hadn't
3 already signed it and entered it in record in accordance
4 with 43(k) and that did not happen.

5 MR. KEYS: One thing, Your Honor. Mr. Toporek
6 did not notify me that the agreement was revoked. She did
7 by her own e-mail. I, in fact, notified Mr. Toporek. He
8 as well was on vacation. I called him up. If she's
9 saying she met with another counsel and decided she didn't
10 agree with it, Ms. DeJong didn't come into this matter
11 until 5/23. And she revoked it at midnight on 1/7.

12 I would also note that Rock Smith Chevrolet notes
13 that it's a long policy of the court to encourage
14 settlement in lieu of litigation, and courts usually
15 enforce settlement agreements. I would note more recently
16 out of *Kinghorn* decided by our Court of Appeals last
17 month, *Kinghorn v. Sakakini* talks about the intent of the
18 rule. And it says: The intent of the rule is intended to
19 prevent disputes as to the existence and the terms of the
20 agreement, such that the court doesn't have to figure out
21 what the terms of the settlement agreement are.

22 The terms are not in dispute here. I have the
23 signed agreement. You are welcome to look at it, Your
24 Honor. Thank you.

25 THE COURT: What are your citations again?

1 MR. KEYS: *Rock Smith Chevrolet*. It's a Court of
2 Appeals case, I believe, from 1992.

3 THE COURT: What's the cite?

4 MR. KEYS: It is 309 S.C. 91.

5 THE COURT: 91?

6 MR. KEYS: Yes, 309 S.C. 91, 419 S.E.2d 841. And
7 it's Court of Appeals 92. The *Kinghorn v. Sakakini*, I
8 don't have -- I've got the opinion number because it was
9 issued 3/6/19 by the Court of Appeals.

10 THE COURT: What was that?

11 MR. KEYS: Opinion number is 5632.

12 THE COURT: That was Supreme Court?

13 MR. KEYS: Court of Appeals.

14 THE COURT: All right. Well, I'm going to read
15 those cases and give it a little bit of thought. And I
16 will let you know what I decide.

17 MS. DeJONG: Your Honor, may I give you a
18 citation?

19 THE COURT: Yeah.

20 MS. DeJONG: Thank you so much. And if I could
21 clarify, in January, she came to me. I was the attorney
22 that she came to when she decided to revoke. So not
23 returning any confidences, even though I entered
24 appearance in May, she came to me. And after speaking to
25 me, that's when she revoked. So it wasn't some outside

1 attorney.

2 The citation in support of this settlement not
3 being enforceable is South Carolina Supreme Court *Ashfort*
4 *Corp. vs. Palmetto Construction Group*. It is 458 S.E.2d
5 533, 318 S.C. 492 (S.C. 1995). And it's been cited quite
6 often ever since.

7 THE COURT: 453 S.E. 2d what?

8 MS. DeJONG: 458 --

9 THE COURT: Oh, 458?

10 MS. DeJONG: Ah-huh. S.E. 2d -- let me get my
11 glasses -- 533.

12 THE COURT: 533? And what's the name of the
13 case?

14 MS. DeJONG: *Ashfort Corporation v. Palmetto*
15 *Construction Group*.

16 THE COURT: All right. Okay. I will let you
17 know.

18 MR. KEYS: Thank you, Your Honor.

19 (Whereupon, proceedings are adjourned.)
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South
Carolina at Large, do hereby certify that the foregoing
transcript is a true, accurate and complete Transcript of
Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested
in the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Family Services, Inc.)

Plaintiff,)

vs.)

Patricia Clarkin Smith)

Defendant.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-5427

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

D. Conor Keys

The Law Office of David Conor Keys, LLC, Bar
No. 100148

Address:

PO Box 14225

Charleston, SC 29422

Phone: 843-906-3998 Fax _____

E-mail: conor@dconorkeyslaw.com Other: _____

Defendant's Attorney:

_____, Bar No. _____

Address:

Phone: _____ Fax _____

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **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: Compel

Estimated Time Needed: 20 min.

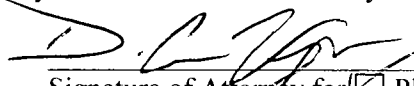
Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

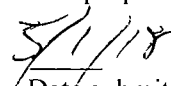
☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for ☒ Plaintiff / ☐ Defendant



Date submitted

SECTION III: Motion Fee

☒ 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

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Family Services, Inc., as Conservator)
For Muriel W. Clarkin,)
Plaintiff,)
vs.)
Patricia Clarkin Smith and Wells Fargo, NA)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5427

MOTION TO COMPEL

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2018 MAY -1 PM 1:27

FILED

TO: ALAN D. TOPOREK, ATTORNEY FOR DEFENDANT PATRICIA CLARKIN SMITH

PLEASE TAKE NOTICE Plaintiff, Family Services Inc., as Conservator for Muriel W. Clarkin (hereinafter "Plaintiff"), by and through its undersigned counsel, pursuant to Rules 26, 33, 34, and 37 of the South Carolina Rules of Civil Procedure will move before the presiding Judge of the above captioned court on the 10th day after service, or at such other time and place as is convenient to the Court, for an order compelling the Defendant, Patricia Clarkin Smith (hereinafter "Defendant"), to respond to Plaintiff's first set of interrogatories and requests for production of documents.

1) On or about January 25, 2018, Plaintiff sent Defendant Plaintiff's first set of interrogatories, requests for production of documents. A copy of the discovery requests are attached hereto as exhibit "A" and incorporated herein by reference.

2) On or about February 15, 2018, Defendant counsel sent Plaintiff Defendant's responses to Plaintiff's requests for admissions and sent an email to Plaintiff's counsel requesting a sixty day extension to respond to the remaining discovery. Plaintiff's counsel responded stating Plaintiff could only afford to grant a thirty day extension since time was of the essence in this matter.

- 3) On or about April 9, 2018, Plaintiff's counsel sent Defendant's counsel an email requesting that Defendant respond to Plaintiff's first set of interrogatories and requests for production.
- 4) At present Plaintiff has not received the responses from Defendant.

The undersigned hereby certifies and affirms in accordance with Rule 11 of the South Carolina Rules of Civil Procedure that he has attempt to resolve this matter prior to filing this motion but that no resolution was reached.

RESPECTUFLLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC



D. Conor Keys
P.O. Box 14225
Charleston, SC 29422
Phone: 843-906-3998
conor@dconorkeyslaw.com
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on this 1st day of May, 2018, a copy Plaintiff's motion to compel discovery was placed in the United States Mail postage pre-paid, addressed as follows:

Alan D. Toporek
Uricchio, Howe, Krell, Jacobson
PO Box 399
Charleston, SC 29402
Attorney for Patricia Clarkin Smith

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC



D. Conor Keys

CERTIFICATE OF SERVICE

I certify that on this 1st day of May, 2018, a copy Plaintiff's motion to compel discovery was placed in the United States Mail postage pre-paid, addressed as follows:

David B. Marvel
PO Box 22734
Charleston, SC 29413
Attorney for Patricia Clarkin Smith

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC


D. Conor Keys

FILED
2018 MAY -1 PM 1:29
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Family Services, Inc., as Conservator)
For Muriel W. Clarkin,)
)
Plaintiff,)
)
)
vs.)
)
Patricia Clarkin Smith and Wells Fargo)
Bank, NA.)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2017-CP-10-5427

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO COMPEL**

FILED
2018 JUL 11 PM 4:42
CLERK OF COURT
JULIE J. ARMSTRONG

This matter is before the Court on July 19, 2018, on Plaintiff, Family Services, Inc., as Conservator for Muriel W. Clarkin (hereinafter "Plaintiff") Motion to Compel Discovery Responses from Defendant, Bridget D. Inman (hereinafter "Defendant").

Plaintiff initiated this action on October 20, 2017, asserting causes of action against the Defendant for Declaratory Injunctive Relief, Fraudulent Conveyance, Quiet Title, Conversion, Unjust Enrichment, Money had and Received, Promissory Estoppel and Quantum Meruit. Defendant filed an answer to the summons and complaint on November 28, 2017.

The relevant background facts are as follows: Plaintiff was appointed conservator for the assets, affairs and estate of Muriel W. Clarkin by and order dated March 27, 2015, in case number 2014-GC-10-0209, by the Honorable Tamara C. Curry, Charleston Count Probate Judge. Muriel W. Clarkin (hereinafter "Clarkin") is an eighty-five year old widow who has four living children, and Clarkin requires finances and funds to provide for Clarkin's necessary assisted living care. Defendant is a daughter of Clarkin and resides in Charleston County. Plaintiff has asserted Defendant improperly acquired money and an interest in real property from Clarkin. Defendant admits acquiring \$17,500.00 in funds from Clarkin, acknowledges that she has not returned the

money to Plaintiff, but further denies that she has an obligation to return said funds. Defendant denies that she caused a half interest in the Subject property owned by Clarkin to be improperly transferred to Defendant. Finally, Plaintiff has asserted that an agreement existed whereby Defendant had agreed to provide Clarkin with rent regarding the Subject Property which Defendant denies as well.

RELEVANT PROCEDURAL BACKGROUND

1. Plaintiff served Defendant with Interrogatories, Requests for Production and Requests for Admission on or about January 25, 2018, a copy of which are attached hereto as Exhibit “A” and incorporated herein by reference.

2. Defendant served Plaintiff with Defendant’s Response to requests for admission on February 16, 2018, a copy of which are attached hereto as Exhibit “B” and incorporated herein by reference.

3. On or around February 15, 2018, Plaintiff granted Defendant a thirty-day extension to respond to Plaintiff’s discovery requests.

4. Plaintiff filed a motion to compel discovery on May 1, 2018.

5. Defendant served responses to Plaintiffs interrogatories and requests for production on June 19, 2018, a copy of which are attached hereto as Exhibit “C” and incorporated herein by reference.

6. On June 26, 2018, Plaintiff sent a letter to Defendant asserting deficiencies regarding Defendant’s responses to discovery, a copy of the letter is attached hereto as Exhibit “D” and incorporated herein by reference.

At present Defendant has not provided Plaintiff with supplemental responses to Plaintiff's requests for discovery. Therefore Plaintiff would requests that the Court grant Plaintiff's motion to compel and issue and order compelling Defendant to undertake the following:

AS TO REQUESTS FOR ADMISSIONS:

1) Defendant will provide supplemental responses to requests for admission numbers 2 and 13.

a) With regard to request 13, Defendant shall provide a supplement response to the request to admit which fairly meets the substance of the request, including but not limited to admitting or denying if Defendant made the statements found in the attached text message exhibit and stating the basis for denying any portion of the substance of the request.

AS TO INTERROGATORIES:

2) Defendant will provide supplemental responses to interrogatory numbers 8, 11, 13, 15, and 16, which shall include providing the following information:

a) With regard to interrogatory number 8, Defendant shall state who requested the services of attorney O'Neil; who executed the retainer with Mr. O'Neil; who paid for the services of Mr. O'Neil and the method and source of payment. Defendant shall identify any documents in her possession and control related to the transaction. Finally, Defendant shall further provide any documents in her possession or control which evidence the information contained Defendant's supplemental response to this request.

b) With regard to interrogatory number 11, Defendant shall for the period from 2012 through February of 2015 please identify every bank account and/or credit union account, including but not limited to any Heritage Trust Federal Credit Union account, for which 1) Defendant is or was a named owner on the account; 2) Defendant is or was an authorized user;

AND 3) from which Defendant accessed and/or deposited funds of Clarkin. For each account identified please state the name of the owner or owners of the account, the name of the bank or credit union, and the account number in full. For each account identified Defendant shall produce all documents in her possession or control which reference any funds of Plaintiff which Defendant accessed or obtained during the time period, including but not limited to any funds accessed and/or obtained in or around August of 2013, November of 2014, and December of 2014.

c) With regard to interrogatory number 13, for the time period from 2012 through 2015. Defendant shall identify every text message, email, and/or picture in her possession or control which relates to the subject matter of this action, including but not limited to matters related to any money received from Clarkin and any money provided to Clarkin. For each source identified Defendant shall produced a copy of said text message, email, and/or picture in response to requests for production in this matter.

d) With regard to interrogatory number 15, Defendant shall state to the best of her knowledge the amount of money she provided to Clarkin on a monthly basis for each month from August of 2012 to present. For each month identified Defendant shall state the amount of money provided, the source or bank account from which the money came, and the basis and/or reason for providing the money.

e) With regard to interrogatory number 16, Defendant shall provide a supplemental response.

AS TO REQUESTS FOR PRODUCTION:

3) Defendant will provide supplemental responses to requests for production numbers 1, 2, 3, 6 and 7.

a) With regard to request for production number 1, Defendant shall provide all documents in her possession or control related to the drafting of the subject deed and/or closing conducted by Dennis O'neal, including but not limited to, a retainer agreement, evidence of any funds used to pay for the retention of services, any notes, documents or memoranda used for the preparation of the subject deed.

b) With regard to request for production number 2, Defendant shall produce, for the period from 2012 through February of 2015, every bank account and/or credit union account record in her possession or control which evidences receipt of funds and/or use of funds received by Defendant from Clarkin.

c) With regard to request for production number 3, Defendant shall produce every document in her possession or control which relates to any claim or defense in this matter, including but not limited to bank statements, records regarding the subject deed, text messages, emails, pictures, and/or written memoranda.

d) With regard to request for production number 6, Defendant shall produce copies of all text messages in her possession or control which relate to Defendant receiving funds from Clarkin, Defendant paying funds to Clarkin, and/or Defendant paying funds to Clarkin for the purpose of rent.

e) With regard to request for production number 7, Defendant shall provide a supplemental response.

RESPECTUFLLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC


D. Conor Keys

2017-CP-10-5427

P.O. Box 14225
Charleston, SC 29422
Phone: 843-906-3998
conor@dconorkeyslaw.com
Attorney for Plaintiff

Charleston, SC
July 11, 2018

CERTIFICATE OF SERVICE

I certify that on this 11 day of July, 2018, a copy Plaintiffs Memorandum in support of

Plaintiff's Motion to Compel was mailed to:

Alan D. Toporek
Uricchio, Howe, Krell, Jacobson,
Theos, & Keith, P.A.
PO Box 399
Charleston, SC 29401
Attorney for Bridget D. Inman

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC

D. Conor Keys

FILED
2018 JUL 11 PM 4:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

EXHIBIT A

THE LAW OFFICE OF
DAVID CONOR KEYS LLC
PO Box 14225 CHARLESTON, SC 29422
CONOR@DCONORKEYSLAW.COM
843-906-3998

January 25, 2018

Alan D. Toporek
Uricchio, Howe, Krell, Jacobson
Toporek, Theos & Keith, P.A.
PO Box 399
Charleston, SC 29401

**RE: Family Services, Inc., Conservator for Muriel W. Clarkin v. Patricia
Clarkin Smith
Case No. 2017-CP-10-5427**

Alan:

Enclosed please find for service upon, Defendant, Patricia Clarkin Smith, Plaintiff's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission.

With kind regards,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC

D. Conor Keys

Enclosures:
(as stated)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2016-CP-10-5427
	)	
Family Services, Inc., as Conservator	)	
For Muriel W. Clarkin,	)	
	)	
Plaintiff,	)	FIRST SET OF INTERROGATORIES
	)	
vs.	)	
	)	
Patricia Clarkin Smith and Wells Fargo	)	
Bank, NA.	)	
	)	
Defendant.	)	
	)	

TO: ALAN D. TOPOREK, ATTORNEY FOR DEFENDANT PATRICIA CLARKIN SMITH

Plaintiff Family Services, Inc., as Conservator for Muriel W. Clarkin (hereinafter "Plaintiff") by and through their undersigned counsel and pursuant to Rule 33, of the South Carolina Rules of Civil Procedure requests that Defendant, Patricia Clarkin Smith (hereinafter "Defendant") answer the following interrogatories separately and fully in writing within thirty (30) days of the date of service hereof.

In answering these interrogatories, furnish all information available to Defendant, including information in the possession of your attorney, their investigators, or any person acting on your behalf and not merely such information as is known to your own personal knowledge. If you cannot answer any part of these interrogatories in full after exercising due diligence to secure the information requested, state and much and answer the remainder of the interrogatory as fully as possible, stating whatever information or knowledge you have concerning the unanswered or partially unanswered portion of the interrogatory.

These interrogatories are to be considered to be continuing and you are requested to provide, by way of supplementary answers, such additional information as you or any person acting on your behalf may obtain that will augment or modify your initial answers. Please treat these interrogatories as requests for production of documents under Rule 34, South Carolina Rules of Civil Procedure, where specific requests for production are made.

As used herein, the following terms shall have the meanings indicated below:

"You"- and all of its forms such as "Your" means Patricia Clarkin Smith;

"Subject Property" – means 602 Atlantic Street, Mt. Pleasant, SC 29464, bearing TMS # 532-06-00-129;

INTERROGATORIES

1. Give the names and addresses of persons known to the party or counsel to be a witness concerning the facts of this case and/or persons You intend to use as a witness at a trial in this matter, and indicate whether or not written or recorded statements have been taken from the witness 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 the defense in the case. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

3. List the names and addresses of any expert witness whom the party proposes to use as a witness at the trial of the case.

4. For each expert witness identified in Interrogatory No. 3, provide a brief summary of the opinion(s) you anticipate the expert will render in this case.

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 witness.

6. List all exhibits you propose to introduce into evidence at trial. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

7. If a defendant is improperly identified, give the property identification and state whether you will accept service on an amended summons and pleading reflecting the correct information.

8. Please state all information, knowledge, and documentation in Your possession or control which refers or relates to the drafting, creation, execution, and recording of that certain deed alleged to have been executed on November 17, 2014 and recorded on November 18, 2014, in Book 0441 at Page 484 on the Charleston County Register of Deeds Office. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

9. Please state any basis or assertion why You believe You do not have a obligation to repay Plaintiff for the \$6,000.00 you obtained from Defendant on November 18, 2014.

10. Please state all information, knowledge and documentation in Your possession or control which you allege provided You with a basis to take a \$10,000.00 cash advance on

December 23, 2014, from Plaintiff's Well's Fargo credit card account bearing an account number with the last four digits 5793. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

11. For the period from 2012 through February of 2015 please identify every bank account and/or credit union account, including but not limited to any Heritage Trust Federal Credit Union account, for which 1) You are or were a named owner on the account; 2) You are or were an authorized user; and 3) from which you accessed funds of Plaintiff. For each account identified please state the name of the owner or owners of the account, the name of the bank or credit union, and the account number in full. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

12. Please state whether you every paid Muriel Clarkin (Your Mother) rent for Your occupation the Subject Property. For every payment please state the amount of the payment, the date made, the method of payment, and whether you deposited money into a bank account as payment of said rent. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

13. For the period from 2012 through February of 2015 please identify any and all documentation in your possession or control which is or was located on any cell phone, blackberry, Iphone, IPad, or other mobile communication device, including an itemization of any incoming and outgoing calls, text messages, emails, picture files, as well as an indication of the sender and/or recipient, which relate to you obtain, borrowing, or paying money to the Plaintiff Muriel Clarkin, including rent payments. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

14. Please identify any and all information and/or documentation which would evidence that you paid back Plaintiff the amounts claimed owed and referenced in Paragraphs 11, 18, and 32 of the Complaint filed on October 20, 2017 in this matter. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

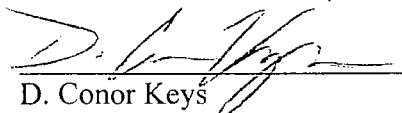
15. Please state the date you agreed to begin paying Muriel Clarkin (Your Mother) monthly rent for Your residing in the Subject Property, and the amount of the rent you were suppose to pay each month. Further please state the date of the last payment of rent and the amount

paid. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

16. Have you withheld any information and/or documentation regarding or related to any of these Interrogatories or not produced any requested documents in response to the Requests for Production? If so, please identify the information or those documents withheld and describe the legal and/or factual basis for their non-production.

RESPECTUFLLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC

A handwritten signature in black ink, appearing to read "D. Conor Keys", is written over a horizontal line.

D. Conor Keys

P.O. Box 14225

Charleston, SC 29422

Phone: 843-906-3998

conor@dconorkeyslaw.com

Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Family Services, Inc., as Conservator)
For Muriel W. Clarkin,)
)
Plaintiff,)
)
vs.)
)
Patricia Clarkin Smith and Wells Fargo)
Bank, NA.)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2016-CP-10-5427

**FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

TO: ALAN D. TOPOREK, ATTORNEY FOR DEFENDANT PATRICIA CLARKIN
SMITH

Plaintiff Family Services, Inc., as Conservator for Muriel W. Clarkin (hereinafter "Plaintiff") by and through their undersigned counsel and pursuant to Rule 34, of the South Carolina Rules of Civil Procedure requests that Defendant, Patricia Clarkin Smith (hereinafter "Defendant") answer the following requests separately and fully in writing within thirty (30) days of the date of service hereof.

In answering these requests, furnish all information available to Defendant, including information in the possession of your attorney, their investigators, or any person acting on your behalf and not merely such information as is known to your own personal knowledge. If you cannot answer any part of these requests in full after exercising due diligence to secure the information requested, state and much and answer the remainder of the interrogatory as fully as possible, stating whatever information or knowledge you have concerning the unanswered or partially unanswered portion of the interrogatory.

These requests are to be considered to be continuing and you are requested to provide, by way of supplementary answers, such additional information as you or any person acting on your behalf may obtain that will augment or modify your initial answers.

As used herein, the following terms shall have the meanings indicated below:

"You"- and all of its forms such as "Your" means Patricia Clarkin Smith;

"Subject Property" – means 602 Atlantic Street, Mt. Pleasant, SC 29464, bearing TMS # 532-06-00-129;

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please produce any and all copies of any information, document or agreement in your possession or control which evidence an agreement to purchase, sell, or transfer any interest in the Subject Property. In responding to this request please identify by bates number the

documents you are producing in response to this request. In responding to this request please identify by bates number the documents you are producing in response to this request.

2. For the time period from 2012 through February 2015, Please produce every bank statement from every bank account and/or credit union account, including but not limited to any Heritage Trust Federal Credit Union account, for which 1) You are or were a named owner on the account; 2) You are or were an authorized user; and 3) from which you accessed funds of Plaintiff. In responding to this request please identify by bates number the documents you are producing in response to this request.

3. Please produce in document in your possession which related to any claim or defense in this matter. In responding to this request please identify by bates number the documents you are producing in response to this request.

4. Please produce all documents which you intend to introduce as an Exhibit at a trial in this matter. In responding to this request please identify by bates number the documents you are producing in response to this request.

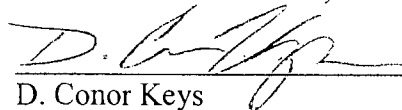
5. For the period from 2012 through February of 2015, please produce a copy of any and all emails, writing or receipts in your possession or control which relate to or evidence You obtaining money from Muriel W. Clarkin (Your Mother), You paying Muriel W. Clarkin money, and/or You paying Muriel W. Clarkin payments for rent for residing in the Subject Property.

6. For the period from 2012 through February of 2015, please produce a copy of any and all text messages in your possession or control which relate to or evidence You obtaining money from Muriel W. Clarkin (Your Mother), You paying Muriel W. Clarkin money, and/or You paying Muriel Clarkin payments for rent for residing in the Subject Property.

7. If you have withheld any documents requested in these requests under a claim of privilege, confidentiality, or otherwise, please produce a list of the documents withheld in conformity with Rule 26, SCRPC.

RESPECTUFLLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC



D. Conor Keys

P.O. Box 14225

Charleston, SC 29422

Phone: 843-906-3998

conor@dconorkeyslaw.com

Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Family Services, Inc., as Conservator)
For Muriel W. Clarkin,)
)
Plaintiff,)
)
vs.)
)
Patricia Clarkin Smith and Wells Fargo)
Bank, NA.)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2016-CP-10-5427

**FIRST SET OF REQUESTS FOR
ADMISSIONS**

TO: ALAN D. TOPOREK, ATTORNEY FOR DEFENDANT PATRICIA CLARKIN
SMITH

The Plaintiff, Family Services, Inc., as Conservator for Muriel W. Clarkin (hereinafter "Plaintiff"), by and through its undersigned counsel, requires Defendant, Patricia Clarkin Smith (hereinafter "Defendant") to respond to these Requests for Admissions hereinafter set forth within thirty (30) days after the service hereof, in accordance with Rule 36 of the South Carolina Rules of Civil Procedure.

1. Admit that on or about August 21, 2013, Defendant obtained \$1,500.00 from Muriel W. Clarkin. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCF.

RESPONSE:

2. Admit that Defendant has not repaid Muriel W. Clarkin the \$1,500.00 Defendant obtained from Muriel W. Clarkin on or about August 21, 2013. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCF.

RESPONSE:

3. Admit that Defendant owes Muriel W. Clarkin \$1,500.00 which Defendant obtained from Muriel W. Clarkin on or about August 21, 2013. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCF.

RESPONSE:

4. Admit that on or about November 18, 2014, Defendant obtained \$6,000.00 from Muriel W. Clarkin. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCP.

RESPONSE:

5. Admit that Defendant has not repaid Muriel W. Clarkin the \$6,000.00 Defendant obtained from Muriel W. Clarkin on or about November 18, 2014. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCP.

RESPONSE:

6. Admit that Defendant owes Muriel W. Clarkin \$6,000.00 which Defendant obtained from Muriel W. Clarkin on or about November 18, 2014. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCP.

RESPONSE:

7. Admit that on or about December 23, 2014, Defendant obtained \$10,000.00 from Muriel W. Clarkin. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCP.

RESPONSE:

8. Admit that Defendant has not repaid Muriel W. Clarkin the \$10,000.00 Defendant obtained from Muriel W. Clarkin on or about December 23, 2014. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCP.

RESPONSE:

9. Admit that Defendant owes Muriel W. Clarkin \$10,000.00 which Defendant obtained from Muriel W. Clarkin on or about December 23, 2014. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCP.

RESPONSE:

10. Admit that Exhibit "A"(attached hereto and incorporated herein by reference) is a true and correct copy of a Heritage Trust Federal Credit Union receipt dated December 23, 2014, for a \$10,000.00 cash advance on an account bearing the digits 5793 and executed by the Defendant Patricia Clarkin Smith. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCP.

RESPONSE:

11. Admit that Exhibit "B"(attached hereto and incorporated herein by reference) is a true and correct copy of a monthly statement for the statement billing period 12/18/14 to 1/16/14

of a Wells Fargo card account owned by Muriel W. Clarkin and with an account number bearing the last four digits 5793, and that the statement evidences that on December 23, 2014, a \$10,000.00 cash advance on the account was taken out at Heritage Trust Federal Credit Union. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRPC.

RESPONSE:

12. Admit that Defendant agreed to pay monthly rent to Muriel W. Clarkin in exchange for Defendant residing in 602 Atlantic St., Mount Pleasant, SC 29464. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRPC.

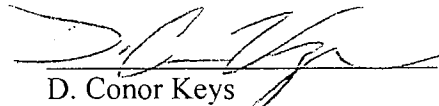
RESPONSE:

13. Admit that Exhibit "C" (attached hereto and incorporated herein by reference) is a true and correct copy of a text message exchange between Defendant and her sister Muriel Clarkin Kennedy, wherein Defendant admits that she owes Muriel W. Clarkin \$6,000.00 as well as \$1,500.00, and that she has an obligation to pay monthly rent to Muriel W. Clarkin. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRPC.

RESPONSE:

RESPECTUFLLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC



D. Conor Keys

P.O. Box 14225

Charleston, SC 29422

Phone: 843-906-3998

conor@dconorkeyslaw.com

Attorney for Plaintiff

EXHIBIT A

CREDIT UNION # 6
2030 SAM RITTENBURG BL
CHARLESTON, SC. 29403
(843) 832-7473

BATCH# 972
S-A-L-E-S D-R-A-F-T
0001
000000116145

TELLER: 174

REF: 7537

CD TYPE: VISA

TR TYPE: CASH ADV

DATE: DEC 23, 14 17:37:44

ID: 000005109

ACCT: 602

ZIP: 29404

CMT:

TOTAL \$10000.00

ACCT: 5793

EXP: 11/11

AP: 023034

NAME: PATRICIA C SMITH

CARDHOLDER ACKNOWLEDGES RECEIPT OF GOODS
AND/OR SERVICES IN THE AMOUNT OF THE
TOTAL SHOWN HEREON AND AGREES TO PERFORM
THE OBLIGATIONS SET FORTH BY THE
CARDHOLDER'S AGREEMENT WITH THE ISSUER

THANK YOU! COME AGAIN!

Patricia C. Smith

TOP COPY-MERCHANT BOTTOM COPY-CUSTOMER

EXHIBIT B

WELLS FARGO

VISA

Account Number
Statement Billing Period
Page 1 of 4Ending In 5793
12/18/2014 to 01/16/2015

Balance Summary

Previous Balance	\$994.95
- Payments	\$814.96
- Other Credits	\$179.99
+ Cash Advances	\$10,000.00
+ Purchases, Balance Transfers & Other Charges	\$920.59
+ Fees Charged	\$600.00
+ Interest Charged	\$145.86
= New Balance	\$11,566.45
Total Credit Limit	\$20,000

24-Hour Customer Service: 1-800-642-4720
TTY for Hearing/Speech Impaired: 1-800-419-2265
Outside the US Call Collect: 1-925-825-7600
Wells Fargo Online®: wells.fargo.com

Send General Inquiries To:
PO Box 10347, Des Moines IA, 50306-0347

Total Available Credit \$8,433

Payment Information

New Balance \$11,566.45
Minimum Payment \$762.00
Payment Due Date 02/11/2015

Send Payments To:
PO Box 6412, Carol Stream IL, 60197-6412

Late Payment Warning: If we do not receive your Minimum Payment by 02/11/2015, you may have to pay a late fee up to \$35.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example,

If you make no additional charges using this card and each month you pay ...	You will pay off the New Balance shown on this statement in about ...	And you will end up paying an estimated total of ...
Only the minimum payment	36 years	\$30,284
\$434	3 years	\$15,623 (Savings of \$14,661)

If you would like information about credit counseling services, refer to www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm or call 1-877-285-2108.

Important Information

\$0 - \$11,566.45 WILL BE DEDUCTED FROM YOUR ACCOUNT AND CREDITED AS YOUR AUTOMATIC PAYMENT ON 02/11/15. THE AUTOMATIC PAYMENT AMOUNT WILL BE REDUCED BY ALL PAYMENTS POSTED ON OR BEFORE THIS DATE

Wells Fargo Rewards® Program Summary

Rewards Balance as of: 12/31/2014 9,906

The Rewards Balance is for Rewards ID 60007898978.

This balance may be inclusive of other contributing Rewards accounts. For up-to-date Rewards Balance information, or more ways to earn and redeem your rewards, visit MyWellsFargoRewards.com or call 1-877-517-1358.

Transactions

Trans	Post	Reference Number	Description	Credits	Charges

Payments

01/11	01/11	F5299000B00CHGDDA	AUTOMATIC PAYMENT - THANK YOU	814.96	
TOTAL PAYMENTS FOR THIS PERIOD				\$814.96	

Other Credits

01/03	01/03	746258504566QR6H4	ComputerSupport	888-2586478 CT	179.99
TOTAL OTHER CREDITS FOR THIS PERIOD					\$179.99

NOTICE: SEE REVERSE SIDE FOR IMPORTANT INFORMATION ABOUT YOUR ACCOUNT

Continued

5596 YKG 1 7 10 150116 0 PAGE 1 of 4 10 5299 1000 WC03 QIDP5596

Detach and mail with check payable to Wells Fargo

Account Number 5793
New Balance \$11,566.45
Minimum Payment \$762.00
Payment Due Date 02/11/2015

07620011566450040722102928057931

YKG 125

Amount
Enclosed \$

WELLS FARGO CARD SERVICES
PO BOX 6412
CAROL STREAM IL 60197-6412

MURIEL W CLARKIN
602 ATLANTIC ST
MOUNT PLEASANT SC 29464-4406

Check here and see reverse for address and/or phone number correction

WELLS FARGO

VISA

Account Number
Statement Billing Period
Page 2 of 4Ending In 5793
12/18/2014 to 01/16/2015

Transactions (Continued...)

Trans	Post	Reference Number	Description	Credits	Charges

Cash Advances

12/23	12/23	7430792PNS66K8GFG	HERITAGE TRUST FEDERAL CR N CHARLESTON SC		10,000.00
TOTAL CASH ADVANCES FOR THIS PERIOD					\$10,000.00

Purchases, Balance Transfers & Other Charges

12/17	12/18	2422638PG2LR57731	WAL-MART #0632 MOUNT PLEASANT SC		28.75
12/17	12/18	2444500PF8PJ0GPPP	CRACKER BARREL #708 MT. PLEASANT SC		62.68
12/18	12/18	2443565PHAK0TXJRG	ESI MAIL PHARMACY S 800-332-5455 MO		13.00
12/18	12/18	2475542PHJPNJ1YV	BOULEVARD DINER MT PLEASANT SC		45.99
12/19	12/19	2444500PJ00A59VKN	CVS/PHARMACY #05553 MT. PLEASANT SC		26.39
12/21	12/21	2414572PLS66JANNY	SULLIVAN'S RESTAURANT SULLIVANS IS SC		62.00
12/21	12/21	2422638PL2LR8W26F	WAL-MART #0632 MOUNT PLEASANT SC		21.70
12/21	12/21	2445501PK43A526QB	WAL-MART #0632 MOUNT PLEASANT SC		18.45
12/22	12/22	2432304PMGTE3NMKY	BARONI'S NEW YORK PIZZ MOUNT PLEASANT SC		35.74
12/22	12/22	2432304PMGTE3NML6	BARONI'S NEW YORK PIZZ MOUNT PLEASANT SC		13.24
12/22	12/22	2444500PM0086SB1R	CVS/PHARMACY #05553 MT. PLEASANT SC		25.04
12/26	12/26	2475542PT3K42LYNE	CB MT PLEASANT THEATER MT PLEASANT SC		48.50
12/28	12/28	2444500PVHEWHBNQ4	ST JUDE Main Donations 800-822-5344 TN		5.00
12/30	12/30	2444500PX007V71A3	BI-LO GROCERY #5296 MOUNT PLEASANT SC		31.91
01/02	01/02	246258504S66QM4WB	ComputerSupport 888-2588478 CT		179.99
01/05	01/06	240710507WPAJ4R9	NMC MT PLEASANT MT PLEASANT SC		15.00
01/06	01/06	2475542073FSFHT4N	THE POST AND COURIER CIRC643-5777111 SC		23.40
01/11	01/11	24145720QS66LDVQW	SULLIVAN'S RESTAURANT SULLIVANS IS SC		32.01
01/11	01/11	2444500Q006E121K	CVS/PHARMACY #05553 MT. PLEASANT SC		31.80
01/16	01/16	24431060G2DJYW368	HOUSE CALLS-MD 843-303-5370 SC		200.00
TOTAL PURCHASES, BALANCE TRANSFERS & OTHER CHARGES FOR THIS PERIOD					\$920.59

Fees Charged

12/23	12/23		CASH ADVANCE FEE		500.00
TOTAL FEES CHARGED FOR THIS PERIOD					\$500.00

Interest Charged

INTEREST CHARGE ON PURCHASES				0.00
INTEREST CHARGE ON CASH ADVANCES				145.86
TOTAL INTEREST CHARGED FOR THIS PERIOD				\$145.86

2015 Totals Year-to-Date

TOTAL FEES CHARGED IN 2015	\$500.00
TOTAL INTEREST CHARGED IN 2015	\$145.86

Interest Charge Calculation

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Days in Billing Cycle	Interest Charge
PURCHASES	15.24%	\$0.00	30	\$0.00
CASH ADVANCES	21.15%	\$8,391.53	30	\$145.86

Wells Fargo News

Start the year off strong - set up your monthly bills for automatic payment using your Wells Fargo Credit Card. Visit wellsfargo.com/credipay and click the Wells Fargo Visa Cardholders link. Then choose your merchants for automatic billing. It's smart and simple, and you earn rewards points for paying bills with your Wells Fargo Credit Card

Transfer higher-rate balances to your Wells Fargo credit card using the SUPERCHECKS (TM) in this statement.

Continued

EXHIBIT C

●●●○○ Verizon 

1:03 AM

50%  Messages

Tricia

Details

Mon, Mar 31, 10:05 AM

Paid mama the
balance of
February \$300
cash it is in her
drawer \$200 is
in her drawer
that she
doesn't want
you to know
about. Owe for
March in April

●●●○○ Verizon

1:04 AM

50%  Messages

Tricia

Details

will pay it
during April.
Used my
March in April
rent money for
the
employment
lawyer. I
always pay
mama every
cent I borrow



Whatever I

●●●○○ Verizon

12:54 AM

51%  Messages

Tricia

Details

Okay I have an
easier plan. My
short term
disability is
9000 over the
next 3 months.
I owe mom a
6000 for
retirement and
1500 for
electrical. I will
give it to you

●●●●○ Verizon



12:55 AM

51%



Messages

Tricia

Details

Please don't
say no just
think about it
for a while

Give it to
momma. I am
calling big john
he MUST start
paying her
back. She has
15000 in Ac,
1800 for tree

●●○○○ Verizon

12:55 AM

51% 

Messages

Tricia

Details

need paid help
daily. Billy is to
pay her 500/mo
or u and Billy
550 ea. you will
pay the taxes
and insurance
from here on
out. Go change
Atlantic to you
NOW taxes and
insurance.
That's my plan

●●●●○ Verizon



12:57 AM

51%

Messages

Tricia

Details

Please get
your boat and
mule like we
discussed for
goat island.
Then go have
fun with the
residents. I will
be with Mama

It will be a cold
day in hell
before I take a

●●●●○ Verizon

1:09 AM

49%  Messages

Tricia

Details

Tue, Mar 4, 7:26 AM

Pl give some
money to put in
mommias acct.
I told u pl don't
make me ask
for it. Give it to
me not
momma. You
have got to
communicate
with me about

●●●○○ Verizon

1:09 AM

49%  Messages

Tricia

Details

month. Dean
gave me the
rent on the
27th. For
march Be
responsible

Just forgot will
go get it today

Thank you
how's billy n
how'r u feeling

Verizon

1:15 AM

48%

Messages

Tricia

Details

get his stuff?
We are going to
have a good
year dammit
lol. I love u

Will give you
December and
January
tomorrow



CERTIFICATE OF SERVICE

I certify that on this 25 day of January, 2018, a copy Plaintiffs First Set of Interrogatories, Requests For Production and Requests for Admissions was placed in the United States Mail postage pre-paid, addressed as follows:

Alan D. Toporek
Uricchio, Howe, Krell, Jacobson
Toporek, Theos & Keith, P.A.
PO Box 399
Charleston, SC 29401
Attorney for Patricia Smith

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC

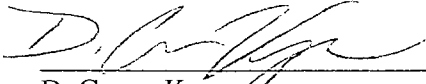

D. Conor Keys

EXHIBIT B

STATE OF SOUTH CAROLINA) IN AND FOR THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO.: 2017-CP-10-5427

Family Services, Inc, Conservator for)
Muriel W. Clarkin,)

Plaintiff,)

versus)

**DEFENDANT'S RESPONSES TO
PLAINTIFF'S REQUESTS FOR
ADMISSIONS**

Patricia Clarkin Smith and Wells Fargo)
N.A,)

Defendant.)

TO THE PLAINTIFF AND THEIR ATTORNEY, DAVID CONNER KEYS, ESQUIRE:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the Defendant responds to the Plaintiff's Requests for Admission as follows:

1. Admit that on or about August 21, 2013, Defendant obtained \$1,500.00 from Muriel W. Clarkin. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRPC.

RESPONSE: DENY. The Defendant **DENIES** this request. The Defendant does not recall obtaining \$1,500.00 from her mother on August 21, 2013. In the event the Defendant obtained these monies from her mother on that date and time, it would not have been given as a loan, however, as a gift.

2. Admit that Defendant has not repaid Muriel W. Clarkin the \$1,500.00 Defendant obtained from Muriel W. Clarkin on or about August 21, 2013. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRPC.

RESPONSE: DENY. The Defendant **DENIES** this request. The Defendant does not recall obtaining \$1,500.00 from her mother on August 21, 2013. In the event the Defendant obtained these monies from her mother on that date and time, it would not have been given as a loan, however, as a gift. .

3. Admit that Defendant owes Muriel W. Clarkin \$1,500.00 which Defendant obtained from Muriel W. Clarkin on or about August 21, 2013. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCF.

RESPONSE: DENY.

4. Admit that on or about November 18, 2014, Defendant obtained \$6,000.00 from Muriel W. Clarkin. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCF.

RESPONSE: ADMIT. The Defendant **ADMITS** that sometime during 2014 she obtained \$6,000.00 from her mother, however, does not recall if it was on or about November 18, 2014.

5. Admit that Defendant has not repaid Muriel W. Clarkin the \$6,000.00 Defendant obtained from Muriel W. Clarkin on or about November 18, 2014. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCF.

RESPONSE: ADMIT. The Defendant **ADMITS** that she has not returned \$6,000.00 to Muriel W. Clarkin.

6. Admit that Defendant owes Muriel W. Clarkin \$6,000.00 which Defendant obtained from Muriel W. Clarkin on or about November 18, 2014. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCF.

RESPONSE: DENY.

7. Admit that on or about December 23, 2014, Defendant obtained \$10,000.00 from Muriel W. Clarkin. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCP.

RESPONSE: ADMIT. The Defendant would **ADMIT** that on or about December 23, 2014, she obtained \$10,000.00 from a joint credit card with Muriel W. Clarkin. This was done at the request of Muriel W. Clarkin and with her blessings.

8. Admit that Defendant has not repaid Muriel W. Clarkin the \$10,000.00 Defendant obtained from Muriel W. Clarkin on or about December 23, 2014. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCP.

RESPONSE: ADMIT.

9. Admit that Defendant owes Muriel W. Clarkin \$10,000.00 which Defendant obtained from Muriel W. Clarkin on or about December 23, 2014. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCP.

RESPONSE: DENY.

10. Admit that Exhibit "A"(attached hereto and incorporated herein by reference) is a true and correct copy of a Heritage Trust Federal Credit Union receipt dated December 23, 2014, for a \$10,000.00 cash advance on an account bearing the digits 5793 and executed by the Defendant Patricia Clarkin Smith. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCP.

RESPONSE: ADMIT

11. Admit that Exhibit "B"(attached hereto and incorporated herein by reference) is a true and correct copy of a monthly statement for the statement billing period 12/18/14 to 1/16/14 of a Wells Fargo card account owned by Muriel W. Clarkin and with an account number bearing the last four digits 5793, and that the statement evidences that on December 23, 2014, a \$10,000.00 cash advance on the account was taken out at Heritage Trust Federal Credit Union. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCF.

RESPONSE: ADMIT. The Defendant would **ADMIT** that Exhibit B is a true and correct copy of the monthly statement billing period 12/18/14 to 1/16/14 of a Wells Fargo Credit Card account owned by Muriel W. Clarkin with privileges to the Defendant. These are the same monies that were withdrawn at the behest of Muriel W. Clarkin with her blessings as outlined in the admissions above.

12. Admit that Defendant agreed to pay monthly rent to Muriel W. Clarkin in exchange for Defendant residing in 602 Atlantic St., Mount Pleasant, SC 29464. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCF.

RESPONSE: DENY. The Defendant never agreed to pay monthly rent to her mother. It was her mother's intention that the Plaintiff own 602 Atlantic Street, Mount Pleasant, SC 29464. Muriel W. Clarkin had previously deeded family real estate on Goat Island to her daughter, Muriel Clarkin Kennedy. Muriel W. Clarkin never intended the Defendant to pay rent on her home at 602 Atlantic Street, Mount Pleasant, SC 29464.

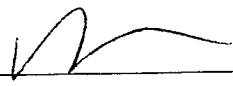
13. Admit that Exhibit "C" (attached hereto and incorporated herein by reference) is a true and correct copy of a text message exchange between Defendant and her sister Muriel Clarkin Kennedy, wherein Defendant admits that she owes Muriel W. Clarkin \$6,000.00 as well as \$1,500.00, and that she has an obligation to pay monthly rent to Muriel

W. Clarkin. If you deny this request please state in detail the basis for denial, pursuant to Rule 36, SCRCP.

RESPONSE: DENY. Counsel has taken numerous text messages which are undated, out of context, and pieced them together to attempt to show that the Defendant is indebted to Muriel W. Clarkin in the amount of \$7,500.00 and paying monthly rent. At a mediation that was held in counsel's office, it became apparent that Muriel Clarkin Kennedy had converted monies that Muriel W. Clarkin had received by virtue of an insurance pontoon boat settlement to her own account. On that date and time, Muriel W. Clarkin, in the presence of Ellen Babb, forgave both daughters of any outstanding debts.

Respectfully submitted this 11th day of February 2018.

**URICCHIO, HOWE, KRELL, JACOBSON,
TOPOREK, THEOS & KEITH, P.A.**



Alan D. Toporek
17 ½ Broad Street
Post Office Box 399
Charleston, South Carolina 29401
Phone: 843/723-7491
Facsimile: 843/577-4179
alan@uricchio.com
Attorney for the Defendant

Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN AND FOR THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2017-CP-10-5427

Family Services, Inc, Conservator for)
Muriel W. Clarkin,)
)
Plaintiff,)

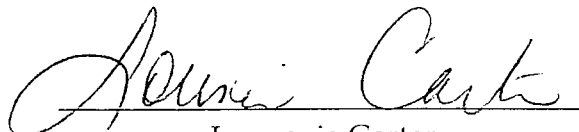
versus)

CERTIFICATE OF SERVICE

Patricia Clarkin Smith and Wells Fargo)
N.A,)
)
Defendant.)
_____)

The undersigned certifies that Defendant's Responses to Plaintiff's Request for Admission was delivered to the below listed address by US Mail on the 16th day of February, 2018.

David Connor Keys, Esquire
Post Office Box 14225
Charleston, South Carolina 29422



Louvenia Carter
Paralegal to Alan D.Toporek, Esquire

Charleston, SC

URICCHIO, HOWE, KRELL, JACOBSON, TOPOREK, THEOS & KEITH, P.A.

ATTORNEYS AT LAW
17½ BROAD STREET
CHARLESTON, SC 29401

PAUL N. URICCHIO, JR. (1922-2000)
ARTHUR G. HOWE (1927-2004)
BARRY KRELL
CARL H. JACOBSON
ALAN D. TOPOREK
JERRY N. THEOS
GREGORY D. KEITH
JONATHAN F. KRELL
JEFF BUNCHER, JR.
MARGARET THEOS GUERRY
J. DEVEAUX STOCKTON

February 15, 2018

MAILING ADDRESS:
P.O. BOX 399
CHAS., SC 29402-0399

TELEPHONES:
(843) 723-7491
1-800-899-1683
FAX (843) 577-4179

David Connor Keys, Esquire
Post Office Box 14225
Charleston, South Carolina 29422

Re: Family Services, Inc Conservator for Muriel W. Clarkin vs.
Patricia Clarkin Smith and Wells Fargo Bank, NA
Case No: 2017-CP-10-5427

Dear David:

Enclosed please find Defendant's Responses to Plaintiff's Requests for Admissions relative to the above referenced matter.

With kindest personal regards,

URICCHIO HOWE KRELL JACOBSON
TOPOREK THEOS & KEITH, P.A.


Alan D. Toporek

ADT/lc
Enclosures

EXHIBIT C

URICCHIO, HOWE, KRELL, JACOBSON, TOPOREK, THEOS & KEITH, P.A.

ATTORNEYS AT LAW
17½ BROAD STREET
CHARLESTON, SC 29401

PAUL N. URICCHIO, JR. (1922-2000)
ARTHUR G. HOWE (1927-2004)
BARRY KRELL
CARL H. JACOBSON
ALAN D. TOPOREK
JERRY N. THEOS
GREGORY D. KEITH
JONATHAN F. KRELL
JEFF BUNCHER, JR.
MARGARET THEOS GUERRY
J. DEVEAUX STOCKTON

June 19, 2018

MAILING ADDRESS:
P.O. BOX 399
CHAS., SC 29402-0399

TELEPHONES:
(843) 723-7491
1-800-899-1683
FAX (843) 577-4179

David Connor Keys, Esquire
Post Office Box 14225
Charleston, South Carolina 29422

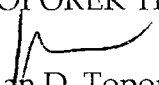
Re: Family Services, Inc Conservator for Muriel W. Clarkin vs.
Patricia Clarkin Smith and Wells Fargo Bank, NA
Case No: 2017-CP-10-5427

Dear David:

Enclosed please find Defendant's Answers to Plaintiff's First Set of Interrogatories and Responses to Plaintiff's Requests for Production relative to the above referenced matter.

With kindest personal regards,

URICCHIO HOWE KRELL JACOBSON
TOPOREK THEOS & KEITH, P.A.


Alan D. Toporek

ADT/lc
Enclosures

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

)IN THE COURT OF COMMON PLEAS
)FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO: 2016-CP-10-5427

FAMILY SERVICES, INC., as Conservator
For Muriel W. Clarkin,

Plaintiff,

Vs.

PATRICIA CLARKIN SMITH and WELLS
FARGO BANK, N.A.

Defendant.

)
)
)
) **DEFENDANT, PATRICIA CLARKIN**
) **SMITH, ANSWERS TO PLAINTIFFS**
) **FIRST SET OF INTERROGATORIES**

TO: DAVID CONOR KEYS, ATTORNEY FOR PLAINTIFF:

The Plaintiff, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, hereby Answers to the Defendant's Interrogatories as follows:

1. Give the names and addresses of persons known to the party or counsel to be a witness concerning the facts of this case and/or persons You intend to use as a witness at a trial in this matter, and indicate whether or not written or recorded statements have been taken from the witness and indicate who has possession of such statements.

ANSWER: Patricia Clarkin Smith
602 Atlantic Street
Mt. Pleasant, South Carolina 29464

Patricia Clarkin Smith is one of the Defendants in this action. She is expected to testify concerning the issues of this action and the results thereof. No written or recorded statement has been taken from this witness.

Teri and Steve Roberts

Address Unknown
[REDACTED]

Teri and Steve Roberts are neighbors of Defendant Smith. These witnesses are expected to testify concerning conversations had with Muriel W. Clarkin about her desired ownership of the 602 Atlantic Street property. No written or recorded statement has been taken from these witnesses.

Mary Clarkin Taylor

Address Unknown
[REDACTED]

Mary Clarkin Taylor is a niece of Defendant Smith. She is expected to testify concerning a conversation she had with Muriel W. Clarkin concerning the monies raised in the Complaint of this action. No written or recorded statement has been taken from this witness.

Mary Mamie Bennett

Address Unknown
[REDACTED]

Mary Mamie Bennett is a former sister-in-law of Defendant Smith. She is expected to testify concerning the relationship between the Muriel W. Clarkin and Defendant Smith. No written or recorded statement has been taken from this witness.

Dr. John Roberts

Roper St. Francis Physician

843-881-0455

Dr. John Roberts is a board certified psychiatrist. He is currently licensed to practice medicine in South Carolina and is an affiliated with the Medical University of South Carolina. He is expected to testify regarding the competency test used to measure Muriel W. Clarkin. No written or recorded statement has been taken from this witness.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or the defense in the case. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: Defendant Smith is in possession of a handwritten note from Muriel C. Clarkin concerning her finances, a handwritten note from Muriel C. Clarkin concerning the property at Shemwood and Wells Fargo letter dated December 16, 2014 regarding the HELOC Payoff. .

3. List the names and addresses of any expert witness whom the party proposes to use as a witness at the trial of the case.

ANSWER: Defendant Smith has not yet named any expert in this action and reserves the right to supplement this interrogatory as discovery continues.

4. For each expert witness identified in Interrogatory No. 3, provide a brief summary of the opinion(s) you anticipate the expert will render in this case.

ANSWER: None.

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 witness.

ANSWER: Please see Defendant Smith answer to Interrogatory No. 1.

6. List all exhibits you propose to introduce into evidence at trial. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: Defendant Smith has not yet listed any exhibits to introduce as evidence at trial, however, reserve the right to supplement this interrogatory as discovery continues.

7. If a defendant is improperly identified, give the property identification and state whether you will accept service on an amended summons and pleading reflecting the correct information.

ANSWER: Upon information and belief, the Defendant is properly identified.

8. Please state all information, knowledge, and documentation in your possession or control which refers or relates to the drafting, creation, execution, and recording of that certain deed alleged to have been executed on November 17, 2014 and recorded on November 18, 2014, in Book 0441 at Page 484 on the Charleston County Register of Deeds Office. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: This deed was drafted by Attorney Dennis O'Neil of Mt. Pleasant. Mr. O'Neil was called by Defendant Smith to draft the deed and provide all paperwork to complete this transaction. Attorney O'Neil was paid for preparing the Deed.

9. Please state any basis or assertion why you believe you do not have an obligation to repay Plaintiff for the \$6,000.00 you obtained from Defendant on November 18, 2014.

ANSWER: Defendant Smith was given the \$6,000.00 by the Plaintiff to assist in maintaining her bills while she was out of work on medical leave. Defendant Smith agreed to repay the Plaintiff upon receipt of monies she realized from her employment Charleston County School District. Defendant Smith began to pay bills on her mother's behalf as of August 8, 2017, more specifically the HELOC delinquencies in the amount \$590.00 and \$660.00 per month to present date. As such, Defendant Smith feels that she has more than satisfied the \$6,000.00 loan.

10. Please state all information, knowledge and documentation in Your possession or control which you allege provided You with a basis to take a \$10,000.00 cash advance on December 23, 2014, from Plaintiffs Wells Fargo credit card account bearing an account number with the last four digits 5793. For any document identified in this response please produce said document as part of your response to Plaintiffs Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: Defendant Smith utilized the Plaintiff's credit card to withdraw \$10,000.00 to satisfy the legal fees to Attorney Alan Toporek who represented her in the onset of the legal action. Defendant Smith, at the time, believed she was retaining Mr. Toporek for her mother's sake until Mr. Toporek made it clear to her that he was not Plaintiff's counsel.

11. For the period from 2012 through February of 2015 please identify every bank account and/or credit union account, including but not limited to any Heritage Trust Federal Credit Union account, for which 1) you are or were a named owner on the account; 2) You are or were an authorized user; and 3) from which you accessed funds of Plaintiff. For each account identified please state the name of the owner or owners of the account, the name of the bank or credit union, and the account number in full. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: Defendant Smith has a personal checking and savings account and line of credit at Heritage Trust Federal Credit Union since on or before early 2000s.

Defendant Smith closed Clarkin Trust Savings and Clarkin Trust Checking last month. Defendant Smith does not have anyone else associated with these accounts. Defendant Smith also has bank accounts with Wells Fargo. Defendant Smith is the only person on these accounts. Defendant Smith will supplement account numbers upon receipt of the same.

12. Please state whether you every paid Muriel Clarkin (Your Mother) rent for Your occupation the Subject Property. For every payment please state the amount of the payment, the date made, the method of payment, and whether you deposited money into a bank account as payment of said rent. For any document identified in this response please produce said document as part of Your response to Plaintiffs Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: Defendant Smith has not paid rent to her mother.

13. For the period from 2012 through February of 2015 please identify any and all documentation in your possession or control which is or was located on any cell phone, blackberry, 'phone, iPad, or other mobile communication device, including an itemization of any incoming and outgoing calls, text messages, emails, picture files, as well as an indication of the sender and/or recipient, which relate to you obtain, borrowing, or paying money to the Plaintiff Muriel Clarkin, including rent payments. For any document identified in this response please produce said document as part of Your response to Plaintiffs Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: Defendant Smith does not understand this request.

14. Please identify any and all information and/or documentation which would evidence that you paid back Plaintiff the amounts claimed owed and referenced in Paragraphs 11, 18, and 32 of the Complaint filed on October 20, 2017 in this matter. For

any document identified in this response please produce said document as part of Your response to Plaintiffs Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: Defendant Smith will produce bank statements and receipts from Wells Fargo proving she has satisfied the delinquent balance of the HELOC on behalf of Muriel Clarkin.

15. Please state the date you agreed to begin paying Muriel Clarkin (Your Mother) monthly rent for Your residing in the Subject Property, and the amount of the rent you were suppose to pay each month. Further please state the date of the last payment of rent and the amount paid. For any document identified in this response please produce said document as part of Your response to Plaintiffs Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

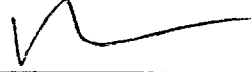
ANSWER: Defendant Smith has not paid rent to her mother, however, she has given her monies on a monthly basis, at no set amount, beginning August, 2012 to present.

16. Have you withheld any information and/or documentation regarding or related to any of these Interrogatories or not produced any requested documents in response to the Requests for Production? If so, please identify the information or those documents withheld and describe the legal and/or factual basis for their non-production.

ANSWER: None at this time. Defendant Smith reserves the right to supplement this interrogatory as discovery continues.

Respectfully submitted this 19 day of June, 2018.

URICCHIO, HOWE, KRELL, JACOBSON,
TOPOREK, THEOS & KEITH, P.A.



Alan D. Toporek
17 ½ Broad Street
Post Office Box 399
Charleston, South Carolina 29401
Phone: 843/723-7491
Facsimile: 843/577-4179
alan@uricchio.com
Attorney for the Defendant

Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN AND FOR THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2017-CP-10-5427

Family Services, Inc, Conservator for)
Muriel W. Clarkin,)
)
Plaintiff,)

versus)

Patricia Clarkin Smith and Wells Fargo)
N.A,)
)
Defendant.)
_____)

**DEFENDANT SMITH RESPONSES
TO PLAINTIFF'S REQUESTS FOR
PRODUCTION**

TO THE PLAINTIFF AND THEIR ATTORNEY, DAVID CONNER KEYS, ESQUIRE:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Defendant Smith responses to Plaintiff's Requests for Production as follows:

1. Please produce any and all copies of any information, document or agreement in your possession or control which evidence an agreement to purchase, sell, or transfer any interest in the Subject Property. In responding to this request please identify by bates number the documents you are producing in response to this request. In responding to this request please identify by bates number the documents you are producing in response to this request.

RESPONSE: Defendant Smith will produce herein a handwritten note from Muriel W. Clarkin outlining instructions pertaining to Defendant Smith's financial status towards a home loan.

2. For the time period from 2012 through February 2015, Please produce every bank statement from every bank account and/or credit union account, including

but not limited to any Heritage Trust Federal Credit Union account, for which 1) You are or were a named owner on the account; 2) You are or were an authorized user; and 3) from which you accessed funds of Plaintiff. In responding to this request please identify by bates number the documents you are producing in response to this request.

RESPONSE: Defendant Smith is not yet in possession of the requested documents in this discovery request. Defendant Smith will produce these documents upon receipt of the same.

3. Please produce in document in your possession which related to any claim or defense in this matter. In responding to this request please identify by bates number the documents you are producing in response to this request.

RESPONSE: Defendant Smith will produce herein two handwritten notes from Muriel W. Clarkin and a "Payoff and Close" Demand Statement from Wells Fargo dated December 16, 2014. Defendant Smith reserves the right to supplement this request as discovery continues.

4. Please produce all documents which you intend to introduce as an Exhibit at a trial in this matter. In responding to this request please identify by bates number the documents you are producing in response to this request.

RESPONSE: Defendant Smith counsel has not yet named any document to introduce at trial at this time. Counsel reserves the right to supplement this request as discovery continues.

5. For the period from 2012 through February of 2015, please produce a copy of any and all emails, writing or receipts in your possession or control which relate to or evidence You obtaining money from Muriel W. Clarkin (Your Mother), You paying

Muriel W. Clarkin money, and/or You paying Muriel W. Clarkin payments for rent for residing in the Subject Property.

RESPONSE: None.

6. For the period from 2012 through February of 2015, please produce a copy of any and all text messages in your possession or control which relate to or evidence You obtaining money from Muriel W. Clarkin (Your Mother), You paying Muriel W. Clarkin money, and/or You paying Muriel Clarkin payments for rent for residing in the Subject Property.

RESPONSE: None.

7. If you have withheld any documents requested in these requests under a claim of privilege, confidentiality, or otherwise, please produce a list of the documents withheld in conformity with Rule 26, SCRCP.

RESPONSE: None at this time. Defendant Smith reserves the right to supplement this request as discovery continues.

Respectfully submitted this 14 day of February 2018.

**URICCHIO, HOWE, KRELL, JACOBSON,
TOPOREK, THEOS & KEITH, P.A.**



Alan D. Toporek
17 ½ Broad Street
Post Office Box 399
Charleston, South Carolina 29401
Phone: 843/723-7491
Facsimile: 843/577-4179
alan@uricchio.com
Attorney for the Defendant

Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN AND FOR THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO.: 2017-CP-10-5427

Family Services, Inc, Conservator for)
Muriel W. Clarkin,)
)
Plaintiff,)

versus)

CERTIFICATE OF SERVICE

Patricia Clarkin Smith and Wells Fargo)
N.A,)
)
Defendant.)
_____)

The undersigned certifies that Defendant's Answers to Plaintiff's First Set of Interrogatories and Responses to the Plaintiff's Requests for Production was mailed to the below listed address by US Mail on the 19th day of June, 2018.

David Connor Keys, Esquire
Post Office Box 14225
Charleston, South Carolina 29422


Louvenia Carter

Paralegal to Alan D. Toporek, Esquire

Charleston, SC

Notes written by Muriel W Clarkin.

- Wells Fargo's decision to deny request for "balance in full" demand by Patricia in writing → then by Muriel W Clarkin at bank

1. Bank accepts interest only payments until she dies. Then given 30 days for loan to be paid.

2. If loan is not paid after you die, the bank forecloses - 30 - ~~to~~ 90 days.

3. Patricia makes \$34,000 retirement salary & will not qualify for a loan to pay house.

4. House is not insured today. Talked to Paul Wiser.

TYPE UP BULLET POINTS ON SHEMWOOD SALE

1. MOMMA WANTED SHEMWOOD TO BE THERE FOR MICHAEL
2. IF SHEMWOOD WERE TO BE SOLD, IT WOULD ASK MOMMA TO HANDLE IT AS YOU THOUGHT THE SALE WAS TO BE HANDLED BY THE THREE PARTIES WITH A GAG ORDER
3. MOMMA HAS TOLD HER IN PHONE CONVERSATION THAT SHE HEARS THE CAREGIVERS TALKING ABOUT SHEMWOOD
4. THERE ARE OTHER WAYS TO PROTECT SHEMWOOD (IE RESTRICTING IT) UNTIL AFTER MOMMA'S DEATH

I do not want to agree to sell Shemwood since Mama is being confused by "talk." I just need to buy time!! Don't expect litigation



DEMAND STATEMENT

Wire Transfer Instructions:

Wire funds to: Wells Fargo Bank, N.A.
Account Number: [REDACTED] 2213
Routing Number: [REDACTED]
Please include: Customer name & account number

Express Delivery:

Payoff Processing/Lien Release
MAC B6955-01B
2324 Overland Ave.
Billings, MT 59102-6401

Response to your request to

PAYOFF AND CLOSE

this revolving line of credit

Tuesday, December 16, 2014

MURIEL W CLARKIN
602 ATLANTIC ST
MOUNT PLEASANT SC 29464

Account: [REDACTED] 1998

Daily Per Diem: \$17.93

Dear Muriel W Clarkin:

This letter is in response to your request to payoff and close the account shown above. You are receiving this letter in response to a request made by you for the amount needed to pay your Wells Fargo home equity account referenced above (your "Account") in full.

- Do not write any more Account advance checks¹ or make any additional advances on the account.
- Call us immediately if you believe there may be any recent transactions that have not yet posted to your Account.
- Continue to make your Account payments until it is paid in full.

The amount required to payoff the account as of the payoff date is shown to the right.

Please remit the required funds to the address shown above. For proper credit, please return this letter with your payment.

After 12/16/2014 interest will accrue at an estimated \$17.93 per day to the date funds are actually received by us at the above address. After receipt of your funds, you will receive a final statement which will reflect any amounts owed as applicable.

If you do not wish to close your account at this time, no response is necessary.

This statement has been prepared for use by the borrower(s) addressed above. It is not valid for use in third party payoffs (i.e., title, escrow, etc.). Wells Fargo or affiliates are not liable for any use of the above information for other than its intended purpose.

Payoff And Close Revolving Line Of Credit As Of	
12/16/2014	
Outstanding Balance	\$147,394.95
Termination Fees	\$0.00
Fee Rebate Amt	\$0.00
Escrow Amount	\$0.00
<u>Amount Due Under Note/Security Instrument</u>	<u>\$147,394.95</u>
Additional Contractual/Other Fees/Charges Due	
Lien Release/Recording Cost	\$5.00
Demand Statement Fee	\$0.00
Fax Fee	\$0.00
Total Amount due to Payoff and Close	\$147,399.95

Prepared by: Wells Fargo Demand Processing Department - Español: 866-297-4535

FRANKD

¹ May not be available in Texas.

000001

Pet. Ex. A-000180

ROA-000167

SMITH

02-00003

EXHIBIT D

June 26, 2018

Via Email

Alan D. Toporek
PO Box 399
Charleston, SC 29402
Alan@uricchio.com

**RE: Family Services, Inc., Conservator for Muriel W. Clarkin v. Patricia
Clarkin Smith and Wells Fargo Bank, NA
Case No. 2017-CP-10-5427**

Alan:

I am writing in response to, the Defendant, Bridget D. Inman's responses to Plaintiff's First Set of Interrogatories and First Set of Requests for Production which I received on or about June 22, 2018. Plaintiff would assert that Defendant's responses are deficient in part and/or in whole, and do not comply with the Rules of Civil Procedure as is explained seriatim below.

Additionally, Defendant's Responses Requests for Admission numbers 2 and 13 are deficient in part and/or in whole, and do not comply with the Rules of Civil Procedure as is explained seriatim below.

RESPONSES TO INTERROGATORIES

Defendants Responses to Interrogatories are inappropriate and/or deficient in regard to Interrogatory Numbers 8, 11, 13, 15, and 16

8. Defendant states that she retained Dennis O'Neil to draft the deed and paid him for the services. This by necessity makes reference to transactional documents, invoices, and receipts. The request states: "For any documents identified in this response please produce said document." However, Defendant has not produced any such documents.

11. The interrogatory requests that for each account identified you name the owners of the account; identify any accounts Defendant was an authorized user, and any account of Plaintiff's which Defendant accessed funds. The interrogatory further requests that Defendant for each account identified state the bank name and account number. Defendant has failed to respond to this request nearly in its entirety for all accounts named she did not state all the named account holders for each account, nor provide any account number. Further Defendant appears to reference two account which she was a named account holder with her mother, but does not identify the bank or account number and states that defendant closed these accounts last month. I do not wish to have an issue spoliation of evidence. Please identify the accounts and provide all documents in or possession or control relating to the accounts. Plaintiff is particularly interested in any account

in which Defendant was a named account holder with her mother and/or an account of Plaintiff upon which Defendant was an authorized user.

13. Defendant did not respond to the request. The request asks Defendant identify all text messages, emails, and/or pictures in defendants possession or control which relate to the subject matter of this action. Plaintiff has already provided to Defendant statements made by Defendant in the form of text messages which would be relevant to this request but Defendant has failed identify and produce any such text messages. Please provide all relevant information and documentation. Further Please identify Defendant's cell phone number, carrier, and account number, so the Plaintiff may subpoena Defendant's records since Defendant appears unwilling to provide such information.

15. If it is Defendant's contention that she has provided her mother money on a monthly basis since 2012, please identify every time money was provided, the amount, the method or form in which it was provided, and the source from which it came including any relevant bank account number.

16. Defendant has clearly withheld information and documentation, please supplement this request.

RESPONSES TO REQUESTS FOR PRODUCTION

Defendants Responses to Requests for Production are inappropriate and/or deficient in regard to Request Numbers 1, 2, 3, 6, and 7

1: Defendant did not produce in documents related the drafting of the deed or closing conducted by Dennis O'neal.

2. As stated above regarding Defendant's response to interrogatory number 11, Defendant has failed to properly identify any accounts which would be responsive to this request and did not produce any documents in response to this request. Please produced the requested documents. To the extent Defendant paid her mother money on a monthly basis her account should evidence such transactions. Further as previously stated Plaintiff is particularly interested in any account in which Defendant was a named account holder with her mother and/or an account of Plaintiff upon which Defendant was an authorized user. To the extent Defendant closed any such account after receiving discovery requests but prior to requesting statements from said bank, then that account needs to be named, identified, and all relevant statements in her possession or control need to be provided.

3. Defendant has failed to produce the majority of documents which would be responsive to this request including but not limited to closing documents involving the deed, bank statements, and text messages.

6. Plaintiff has already produced text messages to Defendant which would be responsive to this request. Defendant's response to this request appears to be in bad faith.

7. Defendant has clearly withheld information and documentation, please supplement this request. Defendant even states that in response to request that she will supplement when the requested documents are in her possession, Defendant has control of many of the requested documents whether or not she is in possession of them and needs to undertake those steps necessary to provide them in response to these requests.

RESPONSES TO REQUESTS FOR ADMISSION

2. If Defendant has not paid Clarkin the \$1,500 then just admit it. Please supplement this response.

13. Attached to this request were actual text message statements made by Defendant regardless of whether they are fragments of multiple statements or not. Rule 36, SCRCP, requires that a denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter which the admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. Defendant's answer as currently provided could be perceived to be evasive. Please supplement this response or Plaintiff will seek to have it deemed admitted.

If Plaintiff does not receive timely appropriate supplemental responses to Defendant's Responses to Interrogatories, Production and Requests for Admissions as identified herein, then Plaintiff will seek and order from the Court compelling Defendant to respond to the requests, and will further request an award from the Court for attorney's fees Plaintiff has incurred for the time Plaintiff has spent attempting to get Defendant to provide appropriate responses to discovery in this matter.

With kind regards,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC


D. Conor Keys

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Family Services, Inc.

vs.

Patricia Clarkin Smith

Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-5427

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
D. Conor Keys
The Law Office of David Conor Keys, LLC, Bar
No. 100148
Address:
PO Box 14225
Charleston, SC 29422
Phone: 843-906-3998 Fax _____
E-mail: conor@dconorkeyslaw.com Other: _____

Defendant's Attorney:

_____, Bar No. _____

Address: _____

Phone: _____ Fax _____

E-mail: _____ Other: _____

- ☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **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: Motion to enforce Settlement

Estimated Time Needed: 15 min.

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

7/9/19
/Date submitted

SECTION III: Motion Fee

☒ 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, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Family Services, Inc., as Conservator)
For Muriel W. Clarkin,)
)
Plaintiff,)
)
vs.)
)
Patricia Clarkin Smith and Wells Fargo)
Bank, NA.)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2016-CP-10-

**MOTION TO ENFORCE THE
SETTLEMENT AGREEMENT DATED
12/12/18**

FILED
2019 JUL 10 AM 11:13
JULIE J. JAMES, CLERK OF COURT

TO: THE ABOVE NAMED PARTIES:

PLEASE TAKE NOTICE that the Plaintiff, Family Services, Inc. as Conservator for Muriel W. Clarkin (hereinafter "Plaintiff"), by and through his undersigned counsel, will move before this Court on the 10th day after service, or at such other time and place as is convenient to the Court, for an order granting Plaintiff's Motion for to enforce the settlement agreement dated 12/12/18, pursuant to Rule 43(k), SCRPC.

This motion will be based on the pleadings of record, the recorded records of Charleston County, applicable statutory and common law, and any memorandum or exhibits Plaintiff may seek to submit to the Court prior to a hearing on this matter. The grounds for the motion are as follows:

1. Plaintiff was appointed conservator for the assets, affairs and estate of Muriel W. Clarkin by and order dated March 27, 2015, in case number 2014-GC-10-0209, by the Honorable Tamara C. Curry, Charleston Count Probate Judge. Muriel W. Clarkin (hereinafter "Clarkin") is an eighty-six year old widow who has four living children, and Clarkin requires finances and funds to provide for Clarkin's necessary assisted living care. Defendant, Patricia Clarkin Smith

(hereinafter “Defendant”) is a daughter of Clarkin. On December 22, 2014, in the probate court, case number 2014-GC-10-209, the Honorable Tamara C. Curry by Ex Parte Order made a preliminary finding of fact that “Muriel W. Clarkin’s physician had certified in writing that Muriel W. Clarkin is incapacitated and unable to make decisions for herself and in her best interest” and thereafter as a matter of law Judge Curry ordered Muriel W. Clarkin is adjudged to be an incapacitated person, as defined by South Carolina Probate Code §62-5-101(1). The Temporary Order was subsequently reconfirmed by orders dated 1/16/15 and 3/27/15. Defendant objected to and opposed the ruling of the Probate Court.

2. This action was filed against Defendant on October 20, 2017, wherein Plaintiffs asserted claims for Declaratory Injunctive Relief, Fraudulent Conveyance, Quiet Title, Conversion, Unjust Enrichment, Money had and Received, Promissory Estoppel, and Quantum Meruit. Plaintiff alleged that on multiple occasions Defendant converted funds of Clarkin’s to her own use and benefit and further caused execution and recordings of a deed causing Clarkin’s remaining half interest real property owned by Clarkin and Defendant with rights of survivorship to be transferred to Defendant.

3. The Parties undertook discovery and then began the discussion of a settlement proposal. See Exhibit “A” attached hereto and incorporated herein by reference.

4. The parties came to a settlement agreement (hereinafter “Agreement”) which was executed by Defendant, notarized by Defendant’s counsel and delivered to Plaintiff’s Counsel, see Exhibit “B” attached hereto and incorporated herein by reference.

5. The Agreement provided that in exchange for Plaintiff dismissing this action with prejudice that Defendant would deed to Clarkin a third of an interest in real property which Defendant owned along with Clarkin, and the Defendant’s sister. The parties agreed that Defendant

and Plaintiff would execute the settlement agreement; that Defendant would execute the deed and thereafter all parties counsel would execute a consent stipulation of dismissal. Prior to execution of the deed and settlement agreement terms were agreed upon by Plaintiff, Defendant, and all parties counsel including Wells Fargo's counsel agreed to language for executing a consent stipulation of dismissal with prejudice.

6. On December 12, 2018, Defendant executed the Agreement and Deed in the presence of two witnesses and before Defendant's Counsel who notarized the Agreement.

7. Plaintiff's Counsel did not receive the executed Agreement and deed until Plaintiff's signing agent had departed town for the Christmas holiday. Thereafter on 1/7/19 at 12:04 am Defendant sent an email to all counsel of record revoking the agreement. See Exhibit "C" attached hereto and incorporated herein by reference.

8. Given that Plaintiff's signing agent was out of town for the holiday Plaintiff was unable to execute the Agreement prior to Defendant revoking the Agreement.

9. Thereafter Plaintiff's counsel discussed trying to get the settlement back on track with Defendant's counsel but no resolution was reached.

10. The matter appeared on the jury trial roster and shortly thereafter Defendant's counsel filed a motion to be relieved as counsel *and stated in the filed motion: "counsel and the Defendant, Patricia Clarkin Smith, have come to a disagreement on how the case should be handled. Counsel for Defendant negotiated a settlement for Defendant Smith that Defendant Smith had agreed to Defendant Smith signed documents acknowledging that Agreement. In counsel's belief, the Agreement is in the Defendant's Smith's best interest. Defendant Smith now states that she will not go forward with the Settlement and has insisted on going to trial. Counsel is concerned*

for the health and welfare of Defendant Smith and believes it would be deleterious for her to go to trial.” (Mtn to be Relieved, filed 4/4/19).

11. The executed Agreement and executed Deed remain in the possession of Plaintiff and/or Plaintiff’s counsel at present.

12. On 5/23/19 a consent settlement order was executed relieving Alan D. Toporek as attorney for Defendant, substituting Karen Dejong as attorney Defendant, and dismissing Wells Fargo as a party to this matter. The Order further states that this matter shall be called for trial after July 31, 2019. (Consent Order, filed 5/23/19)

13. “It has long been the policy of the court to encourage settlement in lieu of litigation, and courts have usually enforced settlement agreements. There can be no doubt but that the trial court retains inherent jurisdiction and power to enforce agreements entered into in settlement of litigation before that court.” *Rock Smith Chevrolet, Inc. v. Smith*, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct. App. 1992). Rule 43(k), SCRCP states: “No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.” “This rule is intended to prevent disputes as to the existence and terms of agreements regarding pending litigation and to relieve the court of the necessity of determining such disputes.” *Kinghorn v. Sakakini*, Opinion No. 5632 (Ct. App. 3/6/19).

14. Here Plaintiff remains willing, able and ready to sign the Agreement. When the executed Agreement and Deed were delivered to Plaintiff, the cover letter from Defendant’s counsel stated: “Please hold these documents in trust until the Release is signed by your Client. The sole reason Plaintiff has refrained from signing the Agreement is because Defendant revoked

her execution of the Agreement prior to the Plaintiff having opportunity to execute the Agreement. Defendant's counsel, Alan D. Toporek executed the settlement Agreement as a Notary Public averring as to the fact that he witnessed Defendant sign the Agreement. Thereafter Mr. Toporek signed and filed pleadings pursuant to Rule 11, SCRCF, stating that the Agreement and Deed had been executed by the Defendant, that the Agreement was in the best interest of Defendant, and that trial was not in the best interest of the Defendant.

15. Exhibit "A" evidences that upon execution of the Agreement by Plaintiff and Defendant all counsel of record had agreed to dismissing this matter with prejudice, and Wells Fargo has already been dismissed from this matter by consent order, leaving only Plaintiff and Defendant as parties to this matter. Defendant has asserted no counterclaims or defenses in the matter.

16. Plaintiff would assert that the conditions of Rule 43(K), SCRCF have been met and this Court should issue and order enforcing the settlement agreement, dismissing this matter with prejudice, and permitting Plaintiff to record the Deed previously delivered to Plaintiff by Defendant in the Register of Deeds for Charleston County.

RESPECTUFLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC



D. Conor Keys

P.O. Box 14225

Charleston, SC 29422

Phone: 843-906-3998

conor@dconorkeyslaw.com

Attorney for Plaintiff.

2017-CP-10.5427

CERTIFICATE OF SERVICE

I Certify that on this 9th day of July a copy of Plaintiff's Motion to Enforce Settlement was placed in the United States Mail postage pre-paid, addressed as follows:

Karen Marie DeJong
Dejong Law Firm, LLC
222 West Coleman Boulevard, Suite 110
Mt. Pleasant, SC 29464
Attorney for Defendant



FILED
2019 JUL 10 AM 11:13
JULIE J. ARNS, JUD
CLERK OF COURT
40

EXHIBIT A

From: Alan Toporek
Sent: Wednesday, December 19, 2018 10:40 AM
To: David Conor keys; Kathryn Cockrill
Cc: Lou Carter
Subject: RE: Muriel Clarkin matter

We mailed you the executed documents Friday.

Alan D. Toporek
Uricchio, Howe, Krell, Jacobson,
Toporek, Theos & Keith, P.A.
Telephone: (843) 723-7491
Facsimile: (843) 577-4179
Cell: (843) 693-1426
alan@uricchio.com

From: David Conor keys [<mailto:conor@dconorkeyslaw.com>]
Sent: Wednesday, December 19, 2018 9:26 AM
To: Alan Toporek <alan@uricchio.com>; Kathryn Cockrill <kathryn@cockrillestatelaw.com>
Cc: Lou Carter <lou@uricchio.com>
Subject: RE: Muriel Clarkin matter

Alan

Do you have an update on this matter?

D. Conor Keys
The Law Office of
David Conor Keys, LLC
[PO Box 14225](mailto:conor@dconorkeyslaw.com)
[Charleston, SC 29422](mailto:conor@dconorkeyslaw.com)
[843-906-3998](mailto:conor@dconorkeyslaw.com)
conor@dconorkeyslaw.com

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From: Alan Toporek <alan@uricchio.com>
Sent: Tuesday, December 11, 2018 3:40:27 PM
To: David Conor keys; Kathryn Cockrill
Cc: Lou Carter
Subject: RE: Muriel Clarkin matter

Conor, I apologize for the delay. Patricia is coming in tomorrow afternoon.

Alan D. Toporek
Uricchio, Howe, Krell, Jacobson,
Toporek, Theos & Keith, P.A.
Telephone: (843) 723-7491
Facsimile: (843) 577-4179
Cell: (843) 693-1426
alan@uricchio.com

From: David Conor keys [<mailto:conor@dconorkeyslaw.com>]
Sent: Tuesday, December 11, 2018 11:25 AM
To: Kathryn Cockrill <kathryn@cockrillestatelaw.com>
Cc: Alan Toporek <alan@uricchio.com>; Lou Carter <lou@uricchio.com>
Subject: RE: Muriel Clarkin matter

Alan

Do you have an update on this matter, where do we stand?

D. Conor Keys
The Law Office of
David Conor Keys, LLC
[PO Box 14225](mailto:conor@dconorkeyslaw.com)
[Charleston, SC 29422](mailto:conor@dconorkeyslaw.com)
[843-906-3998](mailto:conor@dconorkeyslaw.com)
conor@dconorkeyslaw.com

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From: Kathryn Cockrill <kathryn@cockrillestatelaw.com>

Sent: Thursday, November 29, 2018 11:27:13 AM

To: David Conor keys

Cc: Alan Toporek; Lou Carter

Subject: Re: Muriel Clarkin matter

Thank you!

I have reviewed the release - looks fine to me.

I left a voicemail for Elizabeth Sykes at the Probate Court. I am not sure if the Court needs to approve this settlement before filing it with the circuit court. I am also not sure if all parties (other children) need to sign this agreement - at least for the probate court. I know the Judges are in training today so we may not get an answer until tomorrow or next week.

Kathryn

On Thu, Nov 29, 2018 at 7:59 AM David Conor keys <conor@dconorkeyslaw.com> wrote:

Sorry I failed to attach this to the email yesterday

D. Conor Keys
The Law Office of
David Conor Keys, LLC
PO Box 14225
Charleston, SC 29422
843-906-3998
conor@dconorkeyslaw.com

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From: David Conor keys

Sent: Wednesday, November 28, 2018 4:51:07 PM

To: Alan Toporek; Kathryn Cockrill

Cc: Lou Carter
Subject: RE: Muriel Clarkin matter

Alan

Attached is a proposed release with accompanying documents for this matter. Let me know your thoughts.

D. Conor Keys
The Law Office of
David Conor Keys, LLC
PO Box 14225
Charleston, SC 29422
843-906-3998
conor@dconorkeyslaw.com

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From: Alan Toporek <alan@uricchio.com>
Sent: Tuesday, November 13, 2018 12:03:20 PM
To: David Conor keys; Kathryn Cockrill
Cc: Lou Carter
Subject: RE: Muriel Clarkin matter

Conor, I would prefer you take a stab at it. Thanks

Alan D. Toporek
Uricchio, Howe, Krell, Jacobson,
Toporek, Theos & Keith, P.A.
Telephone: (843) 723-7491
Facsimile: (843) 577-4179
Cell: (843) 693-1426
alan@uricchio.com

From: David Conor keys [mailto:conor@dconorkeyslaw.com]
Sent: Tuesday, November 13, 2018 11:43 AM
To: Alan Toporek <alan@uricchio.com>; Kathryn Cockrill <kathryn@cockrillestatelaw.com>
Cc: Lou Carter <lou@uricchio.com>
Subject: RE: Muriel Clarkin matter

Alan

Sounds good do you want me to do a settlement agreement and a proposed order or do you want to do it?

D. Conor Keys
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David Conor Keys, LLC
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Charleston, SC 29422
843-906-3998
conor@dconorkeyslaw.com

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From: Alan Toporek <alan@uricchio.com>
Sent: Tuesday, November 13, 2018 11:35:46 AM
To: Kathryn Cockrill; David Conor keys
Cc: Lou Carter
Subject: RE: Muriel Clarkin matter

Patricia is willing to convey her undivided one third interest in her Mother's home on Shem Drive in consideration of Family Services dismissing its lawsuit against her.

Alan D. Toporek
Uricchio, Howe, Krell, Jacobson,
Toporek, Theos & Keith, P.A.
Telephone: (843) 723-7491
Facsimile: (843) 577-4179

Cell: (843) 693-1426
alan@uricchio.com

From: Kathryn Cockrill [<mailto:kathryn@cockrillestatelaw.com>]
Sent: Tuesday, November 13, 2018 11:32 AM
To: David Conor keys <conor@dconorkeys.com>; Alan Toporek <alan@uricchio.com>
Subject: Muriel Clarkin matter

I understand we have an agreement to settle all pending lawsuits. Alan, please email me the details of the agreement. I will have to get the other parties to the G/C action to consent. I hope to get this wrapped up before Thanksgiving.

Kathryn

--

Kathryn Cockrill, Esq.
Law Office of Kathryn M. Cockrill, LLC
P.O. Box 12367
Charleston, South Carolina 29422
[843.212.7042](tel:843.212.7042)
www.CockrillEstateLaw.com

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--

Kathryn Cockrill, Esq.
Law Office of Kathryn M. Cockrill, LLC
P.O. Box 12367
Charleston, South Carolina 29422
[843.212.7042](tel:843.212.7042)
www.CockrillEstateLaw.com

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From: Alan Toporek
Sent: Thursday, December 20, 2018 11:43 AM
To: Hawk, John
Cc: David Conor keys; Laney, Sterling
Subject: Re: Family Services/Clarkin v. Wells Fargo; 2017-CP-10-5427; mediation

That is fine then

Sent from my iPhone

On Dec 20, 2018, at 11:01 AM, Hawk, John <John.Hawk@wbd-us.com> wrote:

Alan,

Not that I am aware of. We like to include that language in dismissals so that Borrowers don't later try to argue that Wells Fargo waived its right to bring a foreclosure action when it dismissed a prior lawsuit with prejudice.

From: Alan Toporek [<mailto:alan@uricchio.com>]
Sent: Wednesday, December 19, 2018 11:31 AM
To: David Conor keys; Hawk, John
Cc: Laney, Sterling
Subject: RE: Family Services/Clarkin v. Wells Fargo; 2017-CP-10-5427; mediation

My understanding is that he payments are current. Does Wells Fargo anticipate bringing a foreclosure action at this time?

Alan D. Toporek
Uricchio, Howe, Krell, Jacobson,
Toporek, Theos & Keith, P.A.
Telephone: (843) 723-7491
Facsimile: (843) 577-4179
Cell: (843) 693-1426
alan@uricchio.com

From: David Conor keys [<mailto:conor@dconorkeyslaw.com>]
Sent: Wednesday, December 19, 2018 10:46 AM
To: Hawk, John <John.Hawk@wbd-us.com>; Alan Toporek <alan@uricchio.com>
Cc: Laney, Sterling <Sterling.Laney@wbd-us.com>
Subject: RE: Family Services/Clarkin v. Wells Fargo; 2017-CP-10-5427; mediation

John

The agreement between Plaintiff and Smith does not reference the mortgaged property or Wells Fargo. I would have no objection to including the language you inserted below in the SOD though. Alan what is your stance?

D. Conor Keys
The Law Office of
David Conor Keys, LLC
PO Box 14225
Charleston, SC 29422
843-906-3998
conor@dconorkeyslaw.com

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From: Hawk, John <John.Hawk@wbd-us.com>
Sent: Tuesday, December 11, 2018 5:15:58 PM
To: David Conor keys; Alan Toporek
Cc: Laney, Sterling
Subject: RE: Family Services/Clarkin v. Wells Fargo; 2017-CP-10-5427; mediation

Thanks, Conor. I would like to see the agreement. Depending on the language in the agreement, I might need to add some language to this effect:

Pursuant to Rule 41(a) of the *South Carolina Rules of Civil Procedure*, Plaintiff ~~Mark~~ Family Services, Inc., in the above-captioned case, by and through the undersigned counsel, hereby dismisses its causes of action against Patricia Clarkin Smith and Wells Fargo Bank, N.A. with prejudice. Patricia Clarkin Smith and Wells Fargo Bank, N.A. consent to this dismissal with prejudice. By consenting to this dismissal, Wells Fargo does not waive any rights related to the mortgage in question, including the right to bring a foreclosure action. The parties agree to bear their own attorneys' fees and respective costs.

From: David Conor keys [<mailto:conor@dconorkeyslaw.com>]
Sent: Tuesday, December 11, 2018 3:53 PM
To: Hawk, John; Alan Toporek
Subject: RE: Family Services/Clarkin v. Wells Fargo; 2017-CP-10-5427; mediation

John

Sorry for the delay in responding. Alan just confirmed that he is meeting with his client tomorrow to review the proposed settlement agreement between our clients. As to your client if they were to consent here is a stipulation of dismissal we would file with the Court.

D. Conor Keys
The Law Office of
David Conor Keys, LLC
PO Box 14225
Charleston, SC 29422
843-906-3998
conor@dconorkeyslaw.com

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From: Hawk, John <John.Hawk@wbd-us.com>
Sent: Tuesday, December 4, 2018 12:47:26 PM
To: David Conor keys
Subject: RE: Family Services/Clarkin v. Wells Fargo; 2017-CP-10-5427; mediation

Hi Conor,

Any update on this? Is there a stipulation of dismissal or a settlement agreement for me to review?

Thanks-

John Hawk

Partner

Womble Bond Dickinson (US) LLP

d: 843-720-4626

m: 843-864-7524

e: John.Hawk@wbd-us.com

5 Exchange Street

PO Box 999 (29402)

Charleston, SC 29401

womblebond Dickinson.com

<image001.png>

<image002.png> <image003.png> <image004.png>

From: David Conor keys [<mailto:conor@dconorkeyslaw.com>]

Sent: Monday, November 19, 2018 5:19 PM

To: Hawk, John

Subject: RE: Family Services/Clarkin v. Wells Fargo; 2017-CP-10-5427; mediation

Sorry for not getting back to you John

It looks like we have an agreement on settlement. I will let you know and attach you on the proposed order when its all wrapped up. I am presuming that your client would consent to this thing going away.

D. Conor Keys

The Law Office of

David Conor Keys, LLC

PO Box 14225

Charleston, SC 29422

843-906-3998

conor@dconorkeyslaw.com

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EXHIBIT B

URICCHIO, HOWE, KRELL, JACOBSON, TOPOREK, THEOS & KEITH, P.A.

ATTORNEYS AT LAW
17^{1/2} BROAD STREET
CHARLESTON, SC 29401

PAUL N. URICCHIO, JR. (1922-2000)
ARTHUR G. HOWE (1927-2004)
BARRY KRELL
CARL H. JACOBSON
ALAN D. TOPOREK
JERRY N. THEOS
GREGORY D. KEITH
JONATHAN F. KRELL
JEFF BUNCHER, JR.
MARGARET THEOS GUERRY
J. DEVEAUX STOCKTON

December 13, 2018

MAILING ADDRESS:
P.O. BOX 399
CHAS., SC 29402-0399

TELEPHONES:
(843) 723-7491
1-800-899-1683
FAX (843) 577-4179

David Connor Keys, Esquire
Post Office Box 14225
Charleston, South Carolina 29422

Re: Family Services, Inc Conservator for Muriel W. Clarkin vs.
Patricia Clarkin Smith and Wells Fargo Bank, NA
Case No: 2017-CP-10-5427

Dear Conner:

Enclosed please find the executed Settlement Agreement and Deed relative to the above referenced matter. Please hold these documents in trust until the Release is signed by your client and the documents are approved by Wells Fargo. It has been a pleasure working with you in this matter.

With kindest personal regards,

URICCHIO HOWE KRELL JACOBSON
TOPOREK THEOS & KEITH, P.A.


Alan D. Toporek

ADT/lc
Enclosures
cc: Patricia Clarkin Smith

Defendant.

SETTLEMENT AGREEMENT
BETWEEN FAMILY SERVICES, INC.
AS CONSERVATOR FOR
MURIEL W. CLARKIN AND
PATRICIA CLARKIN SMITH
AND GENERAL RELEASE

FOR AND IN CONSIDERATION of Smith Executing the Deed (hereinafter "Deed", a copy of which is attached hereto as "Exhibit A" and incorporated herein by reference) transferring all of Smith's interest in that certain real property located at 911 South Shem Street, Mt. Pleasant, SC 29464, bearing TMS# 535-15-00-043 to Muriel W. Clarkin, by or on behalf of Smith her heirs, executors, administrators, personal representatives, predecessors in interest, successors, estates, insurers, attorneys, and assigns, for a full and final settlement of the above matter, receipt and sufficiency of which is hereby acknowledged, the undersigned, Family Services, on behalf of Muriel W. Clarkin and itself, its administrators, and assigns, does hereby RELEASE, REMISE, ACQUIT, AND FOREVER DISCHARGE, Smith from any and all causes of action, claims, demands, costs, suits at law, suits in equity, judgments, liens, costs, expenses, loss of service, and all claims of any nature and kind whatsoever, known or unknown, foreseen and unforeseen, which

the undersigned has or may in the future be entitled to have against Smith, on account of, or in any way growing out of, or in any way related to transactions and occurrences which are more fully set forth in the Complaint and Amended Complaint on file in the Court of Common Pleas for Charleston County bearing Case No. 2017-CP-10-5427 (hereinafter "Lawsuit").

IT IS FURTHER AGREED THAT Family services intends this as a final release as to Smith regardless of known, unknown, foreseen, unforeseen, patent or latent, especially all claims which were or could have been presented against Smith in the Lawsuit and all claims against Smith which Family Services may have arising out of the facts and circumstances described in the Lawsuit and/or in any way related to the Lawsuit. Family Services understands and acknowledges the significance and consequences of such specific intention to release all claims asserted against Smith. Family Services agree to execute a Stipulation of Dismissal with Prejudice of the Lawsuit (a copy of which is attached hereto as Exhibit "B" and incorporated herein by reference), as to the parties to the Lawsuit.

IT IS FURTHER AGREED THAT Family Services understands Smith admits no liability of any sort by reason of the facts and circumstances described in the Lawsuit, and the terms of this Agreement are made to terminate further controversy and litigation respecting all claims and damages that Family Services have or could have asserted against Smith in the Lawsuit.

IT IS FURTHER AGREED THAT Family Services freely and voluntarily executes this Agreement in compromise of disputed claims after having been apprised fully of relevant information and data supplied by Family Services' attorney, in addition to all relevant information and data possessed by Family Services independently of its attorney.

Family Services further understands that execution of the Deed by Smith is not to be construed as an admission of liability on the part of Smith, who expressly denies liability. Family Services, in executing this Agreement, do not rely on any inducements, promises, or representations made by Smith or her lawyer.

IT IS FURTHER AGREED THAT Family Services has read this Agreement and had the terms used herein, and the consequences thereof, explained by its lawyer. This Agreement contains the entire agreement between the parties, and the terms of this Agreement are contractual and not mere recitals. The signors of this Agreement warrant each is an adult person, *sui juris*, and laboring under no legal disability and has legal authority to execute this Agreement on behalf of Family Services thereby binding Family Services to its terms.

IT IS FURTHER AGREED THAT Family Services further agrees each party shall be responsible for their own attorney's fees and costs arising from the actions of its counsel in connection with the Lawsuit, this Release, and the matters and documents referred to herein.

IT IS FURTHER AGREED THAT Family Services undersigned, further agree this agreement shall be construed and interpreted in accordance with the laws of the State of South Carolina, United States of America.

NOW, THEREFORE, in consideration of Family Services agreement to dismiss with prejudice Family Services causes of action in the Lawsuit against Smith, the sufficiency of which Smith hereby acknowledges, Smith agrees as follows:

IT IS FURTHER AGREED THAT Smith on behalf of herself, heirs, administrators, agents and assigns, do hereby fully release, acquit, and forever discharge Family Services, its agents, members, shareholders, owners, employees, directors, officers, heirs, successors, assigns, predecessors, executors, subsidiaries, affiliates, insurers, and lawyers of and from all actions, causes of action, costs, expenses, compensation, attorneys' fees, or any other thing whatsoever that Smith had, now has, or may have in the future against Family Services that were brought, could have been brought, or could be brought in correlation to the Lawsuit.

IT IS FURTHER AGREED THAT Smith agrees each party shall be responsible for their own attorney's fees and costs arising from the actions of its counsel in connection with the Lawsuit, this Agreement, and the matters and documents referred to herein.

IT IS FURTHER AGREED THAT Smith the undersigned, further agree this Agreement shall be construed and interpreted in accordance with the laws of the State of South Carolina, United States of America.

[signature page to follow]

YOU ARE MAKING A FINAL SETTLEMENT
READ BEFORE SIGNING

I HAVE READ THE FOREGOING FULL AND FINAL RELEASE AGREEMENT. I
ACCEPT THESE TERMS AND AGREE TO ABIDE BY THEM.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this _____ day
of _____, 2018.

WITNESSES:

On behalf of Family Services as its
Authorized Agent

Sworn to and subscribed before me
this _____ day of _____, 2018.

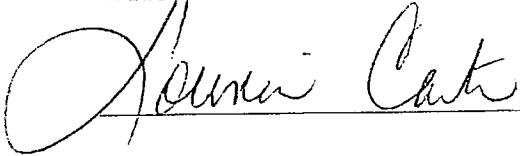
Notary Public for
My Commission Expires:

(SEAL)

I HAVE READ THE FOREGOING FULL AND FINAL RELEASE AGREEMENT. I
ACCEPT THESE TERMS AND AGREE TO ABIDE BY THEM.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this 12 day
of Dec, 2018.

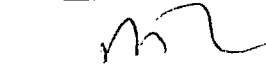
WITNESSES:




Patricia Clarkin Smith



Sworn to and subscribed before me
this 12 day of December, 2018.


Notary Public for
My Commission Expires: 4/4/22

ALAN D TOPOREK
SOUTH CAROLINA
(SEAL) NOTARY PUBLIC
MY COMMISSION EXPIRES
April 4, 2022

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE TO REAL ESTATE

TITLE NEITHER EXAMINED NOR CERTIFIED

WHEREAS, Muriel W. Clarkin by deed dated 20th day of December 2013, and recorded December 27, 2013, in the Register of Deeds Office for Charleston County in Book 0380 at Page 802, conveyed her interest in that certain real property located 911 South Shem Street, Mt. Pleasant, SC 29464, bearing TMS# 535-15-00-043 (hereinafter "Property") to Muriel W. Clarkin, Muriel C. Kennedy, and Patricia Clarkin Smith as joint tenants with rights of survivorship, not as tenants in common; with the intent that Muriel W. Clarkin, Muriel C. Kennedy, and Patricia Clarkin Smith would each possess a one-third interest in the Property as joint tenants with rights of survivorship, not as tenants in common.

WHEREAS, Patricia Clarkin Smith now desires to transfer her one-third undivided interest in the Property, solely to Muriel W. Clarkin and not to Muriel C. Kennedy.

KNOW ALL MEN BY THESE PRESENTS, that **I, PATRICIA CLARKIN SMITH** (the "Grantor"), in the State aforesaid, for/and in consideration of the sum of Five and 00/100 Dollars (\$5.00) and love and affection, to the Grantor in hand paid at and before the sealing of these presents by, **MURIEL WALSH CLARKIN** in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto **MURIEL WALSH CLARKIN, a one-third undivided interest as a joint tenant with rights of survivorship, and not as tenancy in common**, the following described property, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO
AND INCORPORATED HEREIN BY REFERENCE FOR LEGAL DESCRIPTION

TMS #: 535-15-00-043

Grantees' Address
1857 Palmetto Isle Dr.
Mt. Pleasant, SC 29466

BEING the same property conveyed from MURIEL WALSH CLARKIN by deed of conveyance to MURIEL WALSH CLARKIN, MURIEL C. KENNEDY, AND PATRICIA CLARKIN SMITH, dated December 20, 2013 and recorded December 27, 2013 in Book 0380 at Page 802 in the Office of the Office of the Register of Deeds for Charleston County.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **PATRICIA CLARKIN SMITH, a one-third undivided interest as a joint tenant with rights of survivorship, and not as tenancy in common**, her Heirs, and Assigns and against all persons

whomsoever lawfully claiming or to claim the same or any part thereof. This conveyance of Patricia Clarkin Smith of her one-third interest in the Property to Muriel Walsh Clarkin when combined with Muriel Walsh Clarkin existing one-third interest does convey in Muriel Walsh Clarkin a total interest in the property of two-thirds undivided interest as joint tenant with rights of survivorship, and not as tenancy in common.

THIS CONVEYANCE is made subject to the restrictions, conditions and limitations set forth in an instrument executed by Brookgreen Realty Company dated the 11th day of May, 1956, and recorded in the RMC Office for Charleston County in Book C-62, at Page 361.

THIS CONVEYANCE is made subject to easements, conditions and restrictions of record, including matters appearing on plats of record.

AND subject to the exceptions set forth above, the said **Patricia Clarkin Smith** does hereby bind her Heirs, Personal Representative, Executors and Administrators to warrant and forever defend, and singular, the said Premises unto the said **MURIEL WALSH CLARKIN**, as possessing a two-thirds interest in the Property as a joint tenant with rights of survivorship, not as tenants in common, their Heirs, and Assigns and against all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS our Hands and Seals this 12 day of December, in the year of our Lord Two Thousand Eighteen and in the Two Hundred and Forty-Second year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED

IN THE PRESENCE OF:

Witness #1

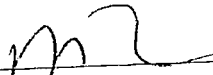
Patricia Clarkin Smith
Patricia Clarkin Smith


Witness #2

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

We, Levenia Carter and Alan D Toporek do hereby certify that Patricia Clarkin Smith, personally appeared before us this day and acknowledged the due executed of the foregoing instrument this 12 day of December 2018.

 (SEAL)
Notary Public for South Carolina

My commission expires: 4/4/22

ALAN D TOPOREK
SOUTH CAROLINA
NOTARY PUBLIC
MY COMMISSION EXPIRES
April 4, 2022

EXHIBIT A

ALL that lot, piece or parcel of land situate, lying and being in Shemwood Subdivision, Town of Mt. Pleasant, Christ Church Parish, Charleston County, State of South Carolina, known and designated as Lot 6, Block C, on a plat of Shemwood Subdivision made by John McCrady Company, November 1955, which plat is duly recorded in the R.M.C. Office for Charleston County in Plat Book K, at Page 53; said lot in general having such size, shape and dimensions, more or less, as will by reference to said plat more fully appear, and being bounded as shown on said plat; that said plat having such actual size, shape and dimensions as a survey of the said individual lot will show.

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-5427

Family Services, Inc., Conservator)
for Muriel W Clarkin)
Plaintiff)
vs)
)
Patricia Clarkin Smith)
Defendant)

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:
David Conor Keys, Esq., Bar No. _____
Address:
PO Box 14225, Charleston, SC
29422 Phone: 906-3998 Fax _____
E-mail: conor@dconorkeyslaw.com Other:

Defendant's Attorney: Disqualified November 3, 2019
Pro Se/Defendant:
Patricia Clarkin Smith
Address:
602 Atlantic St, Mount Pleasant, SC 29464
Phone: 8433450158, 8434527237 Fax-none
E-mail: patricia@nbct2001.com

Nature of Motion: CONTINUANCE
Estimated Time Needed: **SECTION I: Hearing Information**
Court Reporter Needed: NO

SECTION II: Motion/Order Type
MOTION FOR
CONTINUANCE
Written Motion attached

Signature of Pro Se/Defendant  submitted: November 27, 2019

SECTION III: Motion Fee
PAID — AMOUNT: \$ _____
EXEMPT: Rule to Show Cause in Child or Spousal Support (check
reason) 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. JUDGE CODE _____
Other: Date:

CLERK'S VERIFICATION
Collected by: _____ Date Filed: _____
MOTION FEE COLLECTED: \$ _____
CONTESTED — AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-5427

Family Services, Inc., Conservator)
for Muriel W Clarkin)
Plaintiff)
versus)
Patricia Clarkin Smith)
Defendant)

**NOTICE OF MOTION AND -
MOTION FOR CONTINUANCE**

Judge Jefferson
cc Judge Young

FILED
2019 NOV 27 PM 4:19
JULIE J. ARMSTRONG
CLERK OF COURT

I, Patricia Clarkin Smith, respectfully request the Charleston County Court of Common Pleas allow a continuance of the Motion Hearing regarding the Motion to Enforce Settlement Agreement Dated 12/12/18, which was filed by Plaintiff's Attorney, David Conor Keys, on July 10, 2019 and is presently scheduled before Judge Jefferson on December 17, 2019 at 2:30 pm for the reasons appearing below:

1. My Response Letter to Judge Young filed on November 1, 2019

Judge Young disqualified my attorney and provided 30 days for me to obtain another attorney in his Order signed October 3, 2019. I only filed Pro Se because of unknown consequences of not meeting that deadline. I should have clearly stated in my letter that I needed an attorney or asked for additional time to get an attorney.

I also should have explained my present financial means as a retired teacher and full-time college student, as well as my medical expenses for injuries sustained in a tornado in 2017, debt due to being a Respondent on behalf of my Mother in Probate Court since December, 2014, and debt due to paying the loan delinquency and ongoing payments since August, 2017 on my Mother's HELOC that she used to loan money to loved one(s) who defaulted in May, 2017. Reference Civil Case Number 2017-CP-10-5426.

2. Present Efforts for Legal Representation Ongoing

I simply don't have the necessary retainer fee required by any private attorney contacted to date, so I am researching and applying for legal assistance available. I respectfully request time to complete the application process and then schedule an appointment if I am qualified.

3. I need advice of counsel for so many reasons, including, but not limited to the following:

a. Time Frame of the agreement

I signed the Settlement Agreement on December 12, 2018 and revoked it on January 7, 2019 before it was filed in Charleston County Court, yet Attorney Keys filed his Motion six (6) months later. I revoked the agreement because I did not fully understand the agreement, such as the scope of the release, missing necessary agreement to remove lien, and I wanted to honor my parents' wishes and not sell our family home.

b. Information in the Motion

I allege Attorney Keys' Motion contains inaccuracies.

4. A continuance is not prejudicial to Plaintiff in light of the fact that mediation has not yet been scheduled and this motion could be heard mid-Winter 2020 if even still necessary. At present, the Jury Trial date has been continued.

For these reasons, Patricia Clarkin Smith, Defendant, hereby respectfully requests this Court grant a continuance in this matter.


Patricia Clarkin Smith

602 Atlantic St.
Mount Pleasant, SC 29464
(843) 345-0158, (843) 452-7237
Defendant Pro Se

Charleston, South Carolina
November 27, 2019

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Family Services, Inc., as Conservator
for Muriel W. Clarkin,

Plaintiff,

v.

Patricia Clarkin Smith and Wells
Fargo Bank, NA,

Defendants.

) IN THE COURT OF COMMON PLEAS

)

) CASE NO.: 2016-CP-10-5427

)

)

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**ORDER GRANTING PLAINTIFF'S
MOTION TO DISQUALIFY COUNSEL
AND CONTINUING MOTION TO
ENFORCE SETTLEMENT**

On August 30, 2019 this matter came before the Court on two Motions. The Court heard Plaintiff's Motion to Enforcement Settlement, and Plaintiff's Motion to Disqualify Karen DeJong as Counsel for Patricia Clarkin Smith. After hearing arguments, and reviewing the matters, the Court rules as follows:

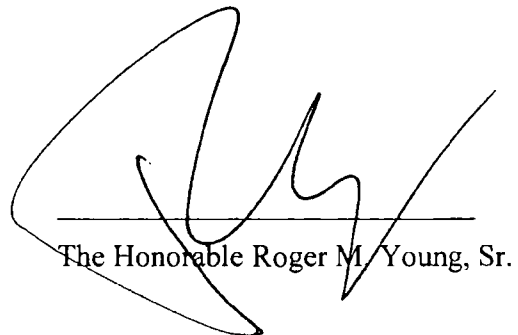
As for Plaintiff's Motion to Disqualify Counsel, Attorney Karen DeJong is hereby disqualified as counsel for Patricia Clarkin because Attorney DeJong previously acted as a mediator in a related action. Defendant Patricia Clarkin Smith has 30 days from this Order to obtain a new attorney for this matter.

As to Plaintiff's Motion to Enforce Settlement, this Motion is continued until Defendant Patricia Clarkin Smith obtains a new attorney. The Clerk's Office will reschedule the Motion to Enforce Settlement after 30 days have passed.

AND IT IS SO ORDERED.

October 3, 2019

Charleston, South Carolina



The Honorable Roger M. Young, Sr.

cc
Judge
Young

Patricia C Smith
602 Atlantic Street
Mount Pleasant, SC 29464
patricia@nbct2001.com

*843-345-0158 calls only 843 452 737 calls & texts
November 1, 2019

Hon. Roger M Young, Sr.
Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

Re: Family Services v. Smith
Case No. 2017-CP-10-5427

Dear Judge Young:

I am in receipt of your Order dated October 3, 2019. I will be proceeding Pro Se on this matter as I am not able to afford an attorney within the 30 day time period that the Court had given me.

If I am able to hire an attorney prior to the Motion to Enforce Settlement re-schedule date, I will let the Court know.

Very truly yours,

Patricia C Smith

Patricia C Smith

FILED
2019 NOV -1 PM 4:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-5427
	)	
Family Services, Inc., as Conservator	)	
For Muriel W. Clarkin,	)	
	)	MOTION FOR ORDER OF REFERENCE
Plaintiff,	)	
	)	
vs.	)	
	)	
Patricia Clarkin Smith and Wells Fargo	)	
Bank, NA.	)	
	)	
Defendant.	)	
	)	

TO: THE ABOVE NAMED PARTIES:

PLEASE TAKE NOTICE that the Plaintiff, Family Services, Inc. as Conservator for Muriel W. Clarkin (hereinafter "Plaintiff"), by and through its undersigned counsel, will move before this Court on the 10th day after service, or at such other time and place as is convenient to the Court, for an order of referenced pursuant to Rule 53(b), SCRCF.

This motion will be based on the pleadings of record, the recorded records of Charleston County, applicable statutory and common law, and any memorandum or exhibits Plaintiff may seek to submit to the Court prior to a hearing on this matter. The grounds for the motion are as follows:

1) Plaintiff filled the summons and complaint in this matter on October 20, 2017 asserting a jury trial demand and asserting causes of actions for Quiet Title, Declaratory Injunctive Relief, Unjust Enrichment, Quantum Meruit, Promissory Estoppel, Fraudulent Conveyance, Conversion, and Money had and Received. The factual basis of Plaintiff's claims is that Defendant improperly caused a deed to be executed and record giving her a half interest in real property owned by Plaintiff which Plaintiff requests this court declare void. Further, Defendant has

received funds from Plaintiff that pursuant to the principles of equity and for good cause Plaintiff would assert belong to Plaintiff.

2) Defendant Patricia Clarkin Smith (hereinafter “Defendant”) filed an answer on November 28, 2017, wherein she did not assert counterclaims and did not demand a jury trial.

3) Defendant, Wells Fargo, filed an answer on August 15, 2018.

4) Defendant’s counsel Alan Toporek moved to be relieved as counsel by motion filed on April 4, 2019, wherein Mr. Toporek asserted that he had come to disagreement with his client on how the case should be handled because he had negotiated a settlement in resolution of the matter which his client executed and delivered to Plaintiff but then Defendant revoked the agreement.

5) By Order filed on May 23, 2019 Karen Dejong was substituted in place of Mr. Toporek as counsel for Defendant and Wells Fargo was dismissed as a party to this action.

6) Plaintiff, filed a motion to enforce the Settlement Agreement, which has been continued by order of the court three times and is currently scheduled to be heard on February 25, 2020.

7) By Order filed on October 10, 2019 Karen Dejong was disqualified as counsel for Defendant. The order states: “Defendant Patricia Clarkin Smith has 30 days from this Order to obtain a new attorney for this matter.”

8) In a letter filed on November 1, 2019, Defendant states: “I will be proceeding Pro Se on this matter as I am not able to afford an attorney within the 30 day time period that the Court had given me.”

9) Ms. Smith has not retained new counsel in this matter.

10) This matter is likely to be called for trial on the Jury Roster in the near future.

11) Plaintiff does not believe at this time that it would be in interest of judicial economy for Plaintiff to prosecute this action against a pro se defendant in the form of a jury trial. Defendant did not demand a jury trial in her answer and Plaintiff hereby waives its demand for a jury trial.

12) Given the principle nature of the action and causes asserted Plaintiff would assert that pursuant to Rule 53(b) SCRPC the herein action is an appropriate action to be referred to Mikell R. Scarborough, Master-In-Equity for Charleston County with authority to enter a final judgment in this case.

13) Pursuant to S.C. Code Ann. §14-11-310, the Master-In-Equity shall collect fees from the parties to an action referred to the Master-In-Equity and Plaintiff agrees to pay such fees at the time the order of reference is signed.

14) Prior to filing this motion Plaintiff's counsel has spoken with Defendant on multiple occasions and asked if she would consent to the Motion. Without giving legal advice Plaintiff's counsel has explained to Defendant what the Master in Equity is and his role. Defendant has stated that she does not understand what was being asked of her and could not consent to this Motion without first seeking to obtain the advice of new counsel. Plaintiff was given 30 days to obtained new counsel by the Order dated October 10, 2019 and at present has not done so.

RESPECTUFLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC
D. Conor Keys
D. Conor Keys
P.O. Box 14225
Charleston, SC 29422
Phone: 843-906-3998
conor@dconorkeyslaw.com
Attorney for Plaintiff.

CERTIFICATE OF SERVICE

I Certify that on this 11th day of February 2020 a copy of Plaintiff's Motion for Order of Reference was emailed and placed in the United States Mail postage pre-paid, addressed as follows:

Patricia Clarkin Smith
602 Atlantic Street
Mount Pleasant, SC 29464
patricia@nbct2001.com

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC
D. Conor Keys
D. Conor Keys
P.O. Box 14225
Charleston, SC 29422
Phone: 843-906-3998
conor@dconorkeyslaw.com
Attorney for Plaintiff.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-5427
	)	
Family Services, Inc., as Conservator	)	
For Muriel W. Clarkin,	)	
	)	MEMORANDUM IN SUPPORT OF
	)	THE MOTION TO ENFORCE THE
Plaintiff,	)	SETTLEMENT AGREEMENT DATED
	)	12/12/18
vs.	)	
	)	
Patricia Clarkin Smith and Wells Fargo	)	
Bank, NA.	)	
	)	
Defendant.	)	
	)	

I. PROCEDURAL HISTORY

1. October 20, 2017: Plaintiff filed the Summons and Complaint and asserted claims for Declaratory Injunctive Relief, Fraudulent Conveyance, Quiet Title, Conversion, Unjust Enrichment, Money had and Received, Promissory Estoppel, and Quantum Meruit.
2. November 28, 2017, Defendant Patricia Smith (hereinafter "Smith") filed an answer and did not assert any affirmative defense.
3. January 25, 2018, Plaintiff served discovery requests on Defendant.
4. July 24, 2018, Plaintiff deposed Defendant.
5. November 2018, the parties undertook settlement negotiations.
6. December 12, 2018, Defendant and Defendant's counsel executed the Settlement Agreement and Defendant executed a Deed in consideration of Settlement.
7. December 19, 2018, Plaintiff's counsel emailed Defense Counsel to ask the status of Defendant executing the Settlement Agreement, and Defense counsel stated that they had been mailed to Plaintiff's counsel.
8. On or about Friday December 21, 2018, Plaintiff's counsel received the executed Settlement Agreement in the mail. Contemporaneous thereto Plaintiff's signing agent and Plaintiff's counsel's primary contact for the matter left town for the holiday's and did not return to work until January 7, 2019.

9. 12:04 am January 7, 2019, Defendant sent the email (attached hereto as Exhibit "C") to all counsel of record declaring to revoke the Settlement Agreement she executed on December 12, 2018.
10. Thereafter Plaintiff counsel discussed with Defense Counsel trying to get the settlement back on track.
11. April 4, 2019, Defendants Counsel's filed motion to be relieved as counsel sighting Defendant's alleged revocation of the Settlement Agreement as the basis for the motion.
12. April 15, 2019, the matter was placed on the jury trial roster for the week but did not proceed forward because of Defendant's Counsel's motion to be relieved of counsel.
13. May 23, 2019, a consent order dismissing Wells Fargo as a party and substituting attorney Karen DeJong as Defendants Counsel in place of attorney Alan Toporek.
14. July 10, 2019, Plaintiff filed this Motion to Enforce Settlement as well as a Motion to Disqualify Karen DeJong as counsel for Defendant.
15. August 19, 2019, the matter was placed on the jury trial roster for the week but did not proceed forward because the motion to enforce settlement and the motion to disqualify counsel were pending.
16. On August 30, 2019, the Honorable Roger M. Young, Sr. heard the Motion to Enforce Settlement and the Motion to Disqualify Defendants Counsel.
17. On October 10 ,2019, Judge Young filed and Order Disqualifying Defendants Counsel Karen DeJong and stated in regard to the Motion to Enforce Settlement: "As to Plaintiff's Motion to Enforce Settlement, this Motion is continued until Defendant Patricia Clarkin Smith obtains a new attorney. The Clerk's Office will reschedule the Motion to Enforce Settlement after 30 days have passed.
18. November 1, 2019, Defendant filed a letter to Judge Young stating she would be proceeding in the matter Pro Se.
19. Thereafter the Motion was scheduled to be heard December 17, 2019.
20. November 18, 2019, the matter was placed on the jury trial roster for the week but did not proceed forward because the motion to enforce settlement was pending.
21. November 27, 2019, Defendant filed a motion requesting a continuance and requesting more time to obtain counsel, which was granted by the Court.
22. Thereafter the Motion was scheduled to be heard January 30, 2020.

23. January 27, 2020, Defendant filed a motion for a continuance stating that she had surgery scheduled for January 30, 2020. The motion was granted.
24. February 11, 2020 Plaintiff moved to have the matter referred to the Master in Equity, which was granted by order filed the following day.
25. Contemporaneously, the motion was scheduled to before the Court on Common Pleas for February 25, 2020.
26. February 18, 2020, Plaintiff filed a Motion for a continuance stating that she had a surgery scheduled for February 18, 2020, because the matter had been referred the Court did not hear the motion.
27. Thereafter, the Motion was scheduled for March 31, 2020.
28. March 11, 2020, Defendant wrote this Court requesting a continuance stating she had a third surgery scheduled for March 18, 2020, this Court granted the continuance.
29. Thereafter the Motion was scheduled for May 18, 2020, but was continued for reasons related to the Pandemic.
30. Thereafter the Motion is scheduled to be heard June 25, 2020.

I. CONCISE SUMMARY OF THE NATURE OF THE CASE

The Parties undertook discovery and then began the discussion of a settlement proposal in or around November of 2018. See **Exhibit “A”** attached to the Motion. The parties came to a settlement agreement (hereinafter “Agreement”) which was executed by Defendant, notarized by Defendant’s counsel and delivered to Plaintiff’s Counsel, see **Exhibit “B”** attached hereto and incorporated herein by reference. The Agreement provided that in exchange for Plaintiff dismissing this action with prejudice that Defendant would deed to Clarkin a third of an interest in real property which Defendant owned along with Clarkin, and the Defendant’s sister.¹ The parties

¹ The Defendant does not reside in the Property in question. The Property has been vacant for a couple of years. Plaintiff, Defendant and Defendant’s sister Kennedy have been struggling to come to an agreement to sell the Property. The parties recently agreed to list the property for sale and Defendant signed and listing agreement. However, Defendant shortly thereafter revoked her agreement to sell the Property. Therefore, if this motion is not granted Plaintiff anticipates having to bring a partition action before your Honor in the immediate future to finally sell the Property.

agreed that Defendant and Plaintiff would execute the settlement agreement; that Defendant would execute the deed and thereafter all parties counsel would execute a consent stipulation of dismissal. Prior to execution of the deed and settlement agreement terms were agreed upon by Plaintiff, Defendant, and all parties counsel including Wells Fargo's counsel agreed to language for executing a consent stipulation of dismissal with prejudice.

On December 12, 2018, Defendant executed the Agreement and Deed in the presence of two witnesses and before Defendant's Counsel who notarized the Agreement. Plaintiff's Counsel did not receive the executed Agreement and deed until Plaintiff's signing agent had departed town for the Christmas holiday. Thereafter on 1/7/19 at 12:04 am Defendant sent an email to all counsel of record revoking the agreement. See **Exhibit "C"** attached hereto and incorporated herein by reference (Exhibit "C" was referenced in the Motion but was inadvertently not attached to the filing. Given that Plaintiff's signing agent was out of town for the holiday Plaintiff was unable to execute the Agreement prior to Defendant revoking the Agreement. Thereafter Plaintiff's counsel discussed trying to get the settlement back on track with Defendant's counsel, but no resolution was reached.

The matter appeared on the jury trial roster and shortly thereafter Defendant's counsel filed a motion to be relieved as counsel *and stated in the filed motion: "counsel and the Defendant, Patricia Clarkin Smith, have come to a disagreement on how the case should be handled. Counsel for Defendant negotiated a settlement for Defendant Smith that Defendant Smith had agreed to Defendant Smith signed documents acknowledging that Agreement. In counsel's belief, the Agreement is in the Defendant's Smith's best interest. Defendant Smith now states that she will not go forward with the Settlement and has insisted on going to trial. Counsel is concerned for*

the health and welfare of Defendant Smith and believes it would be deleterious for her to go to trial.” (Mtn to be Relieved, filed 4/419).

Plaintiff would assert in its own opinion the Settlement Agreement is in the best interest of both Plaintiff and Defendant. If Defendant no longer owns an interest in the Property Plaintiff believes that Plaintiff and Defendant’s sister will be in agreement to sell the Property allowing Plaintiff to access sale proceeds from a sale of the Property much faster than Plaintiff would if Plaintiff has to bring a partition action against Defendant to sell the Property. By Contrast, if the motion to enforce settlement is not granted then Plaintiff will request that a trial on this matter be scheduled in the near future. Plaintiff will have to incur further expenses to prepare and try this matter, but Plaintiff has a strong expectation that it will successful in prosecuting this action against Defendant resulting in an award of a significant money judgment against Defendant as well as reclaiming title to a half interest in property which Defendant actually resides. Because Plaintiff is of the opinion and belief that Defendant is not in possession of funds sufficient to satisfy such a judgment, Plaintiff believes its only recourse in that circumstance may have to be to ask the sheriff to levy a lien against the property Defendant resides in order access the much needed funds Plaintiff requires to pay for Ms. Clarkin’s assisted living needs and care. Therefore Plaintiff would assert that enforcement of settlement is actually in the interest of both parties.

The executed Agreement and executed Deed remain in the possession of Plaintiff and/or Plaintiff’s counsel at present.

III. LEGAL DISCUSSION

“It has long been the policy of the court to encourage settlement in lieu of litigation, and courts have usually enforced settlement agreements. There can be no doubt but that the trial court

retains inherent jurisdiction and power to enforce agreements entered into in settlement of litigation before that court.” *Rock Smith Chevrolet, Inc. v. Smith*, 309 S.C. 91, 93, 419 S.E.2d 841, 842 (Ct. App. 1992). Rule 43(k), SCRPC states: “No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.” “This rule is intended to prevent disputes as to the existence and terms of agreements regarding pending litigation and to relieve the court of the necessity of determining such disputes.” *Kinghorn v. Sakakini*, Opinion No. 5632 (Ct. App. 3/6/19).

“The rule is well established that, Delivery of a deed includes, not only an act by which the grantor evinces a purpose to part with the control of the instrument, but a concurring intent thereby to vest the title in the grantee.” *May v. Jeter* 245 S.C. 529, 540 141 S.E.2d 655 (1965). “It was only necessary for the grantor to deliver the deed to some one for the grantee to divest himself of the legal title . . .” *Branton v. Martin*, 243 S.C. 90, 99, 132 S.E.2d 285 (1963). “It is a well established rule of law that a deed is not legally effective until it has been delivered.” *First Un. Nat. Bank of SC v. Shealy*, 479 S.E.2d 846, 848 (Ct. App. 1996). Under all of the authorities “delivery,” as applied to a deed, means not so much a manual act but the intention of the maker. “Delivery is a question of intent. *The intent referred to is, of course, that existing at the time of the transaction not subsequently and not subject to later change of mind.*” *Little v. Little* 53 S.E.2d 884 (1949). “The proper execution and delivery of a deed is effective to convey real property from grantor to grantee. As between grantor and grantee, a properly drawn deed is valid and dispositive of their respective ownership and rights in the property regardless of whether the deed is publicly recorded.” *Spence v. Spence*, 368 S.C.106, 119, 628 S.E.2d 869 (2006).

Here, Defendant executed the Deed in the presence of Defendant's counsel and the intent to vest title in the grantee Ms. Clarkin was conferred by delivery of the Deed to Plaintiff's counsel who remains in possession of the Deed. The deed was effective upon delivery and the Defendant no longer possesses title to the Property at issue. Further in doing so Defendant satisfied all of her conditions pursuant to the terms of her Settlement Agreement.

Here Plaintiff remains willing, able and ready to sign the Agreement. When the executed Agreement and Deed were delivered to Plaintiff, the cover letter from Defendant's counsel stated: "Please hold these documents in trust until the Release is signed by your Client. The sole reason Plaintiff has refrained from signing the Agreement is because Defendant claimed to revoke her execution of the Agreement prior to the Plaintiff having opportunity to execute the Agreement. Defendant's counsel, Alan D. Toporek executed the settlement Agreement as a Notary Public averring as to the fact that he witnessed Defendant sign the Agreement. Thereafter Mr. Toporek signed and filed pleadings pursuant to Rule 11, SCRPC, stating that the Agreement and Deed had been executed by the Defendant, that the Agreement was in the best interest of Defendant, and that trial was not in the best interest of the Defendant.

Exhibit "A" evidences that upon execution of the Agreement by Plaintiff and Defendant all counsel of record had agreed to dismissing this matter with prejudice, and Wells Fargo has already been dismissed from this matter by consent order, leaving only Plaintiff and Defendant as parties to this matter. Defendant has asserted no counterclaims or defenses in the matter.

Plaintiff would assert that the conditions of Rule 43(K), SCRPC have been met. Moreover, the purpose of the rule is prevent disputes as to the existence and terms of agreements. Here, there is no dispute as to the terms of the Agreement.

Therefore for the reasons set forth herein above this Court should issue and order enforcing the settlement agreement, dismissing this matter with prejudice, and permitting Plaintiff to record the Deed previously delivered to Plaintiff by Defendant in the Register of Deeds for Charleston County.

RESPECTUFLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC

s/ D. Conor Keys

D. Conor Keys

P.O. Box 14225

Charleston, SC 29422

Phone: 843-906-3998

conor@dconorkeyslaw.com

Attorney for Plaintiff.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-5427
Family Services of Charleston, Inc., as	)	
Conservator for Muriel W. Clarkin,	)	
	)	
Plaintiff,	)	
vs.	)	DEFENDANT SMITH'S MEMORANDUM
	)	IN OPPOSITION TO PLAINTIFF'S MOTION
	)	TO ENFORCE THE SETTLEMENT
Patricia Clarkin Smith & Wells Fargo Bank	)	AGREEMENT, DATED 12/12/18
NA,	)	
	)	
Defendants.	)	
	)	

The Plaintiff has moved this Court to enforce an alleged settlement agreement which is patently unenforceable under SCRCP 43(k) and *Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 627 S.E.2d 724 (2006). To grant the motion would be plain error.

RELEVANT FACTS

Plaintiff has supplied much information about the background of this case, and almost all of it is completely superfluous and irrelevant to the enquiry at hand. There are only two questions before this court: (1) is there now, or was there ever, an enforceable agreement between the parties; and (2) if there was only a mere offer of settlement, can the Plaintiff still accept the offer? The answer to both questions based upon the material facts asserted and represented to this Honorable Court by the Plaintiff is no.

1. Plaintiff has represented to this Court that

December 12, 2018, Defendant and Defendant's counsel executed the Settlement Agreement and Defendant executed a Deed in consideration of Settlement. Plaintiff's Memorandum in Support of Motion to Enforce the Settlement Agreement Dated 12/12/18, Procedural Background, Para 6.

2. Plaintiff then further admits that **prior to the Plaintiff and its counsel signing the proposed settlement agreement,**

the Defendant sent the email (attached hereto as Exhibit “C”) to all counsel of record declaring to revoke the Settlement Agreement she executed on December 12, 2018. Plaintiff’s Memorandum in Support of Motion to Enforce the Settlement Agreement Dated 12/12/18, Procedural Background, Para 9. (This exhibit is incorporated by reference herein)

3. The email which Plaintiff submitted as exhibit C was directed to, among others, the attorney for the Plaintiff and expressly states.

I, Patricia Clarkin Smith, revoke the SETTLEMENT AGREEMENT BETWEEN FAMILY SERVICES INC. AS CONSERVATOR FOR MURIEL W. CLARKIN AND PATRICIA CLARKIN SMITH AND GENERAL RELEASE, etc. (This exhibit is incorporated by reference herein)

4. No other facts or background as outlined in the motion or memorandum are pertinent.

DISCUSSION

Assuming the veracity of the Plaintiff’s claims and representations to the Court, not only is the alleged settlement not enforceable, the alleged settlement does not qualify as a settlement.

SCRCP 43(k)

What constitutes an **enforceable** agreement in South Carolina is unambiguously set forth in SCRCP 43(k). It states in full:

No agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel. Settlement agreements shall be handled in accordance with Rule 41.1, SCRCP.

When examining this provision the Court must consider the mandatory language of the Rule –

“**[n]o agreement** between counsel affecting the proceedings in an action **shall be binding unless...**” *Id.* (Emphasis added). Accordingly, unless the strictures of SCRCP 43(k) are

observed, the Court has no authority to enforce the agreement because the agreement is not “binding.”

To be enforceable, one of three conditions must be met: (1) there must be a writing signed by **all** counsel, and the writing must be entered into the record. (There is no such writing signed by all counsel and entered into the record in this case.) An alternative condition is that the settlement was made in open court and noted upon the record. (Such is not the case in this case.) Lastly, the settlement will be binding when it was signed by **all** “the parties and their counsel.” (The Plaintiff has conceded that the agreement was not signed by Plaintiff nor its Plaintiff’s counsel.)

Plaintiff “would assert that the conditions of Rule 43(K), SCRCP have been met.” (Plaintiff’s Memorandum in Support of Motion to Enforce the Settlement Agreement Dated 12/12/18.) However, it is inescapably manifest from Plaintiff’s admitted facts that **NONE** of the mandatory requirements for enforceability under SCRCP 43(k) have been met in this case.

An Unaccepted Offer

Having conclusively established that the settlement is not enforceable as is, it then is necessary to ascertain the status of the matter at hand. Under South Carolina Law, settlement agreements reached during litigation are viewed as contracts. See *Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass’n*, 343 S.C. 335, 540 S.E.2d 843 (2001); *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009); & *Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 177, 557 S.E.2d 708, 711 (Ct. App. 2001). Enforcement and construction of such agreements must be accomplished in accordance with SCRCP 43(k) and the established principles, canons and applications of contract law. See e.g. *Patricia Grand*

Hotel, LLC v. MacGuire Enters., 372 S.C. 634, 640, 643 S.E.2d 692, 695 (Ct.App.2007) & *Byrd v. Livingston*, 398 S.C. 237, 727 S.E.2d 620 (Ct. App. 2012).

“The necessary elements of a contract are an offer, acceptance, and valuable consideration.” *Clardy v. Bodolosky*, 383 S.C. 418, 425, 679 S.E.2d 527, 530 (Ct.App.2009) (quoting *Roberts v. Gaskins*, 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct.App.1997)). With the affixation of the signature of the Defendant and her attorney, and with the transmission of the same to the Plaintiff and its attorney, the Defendant did nothing more than make an offer to settle or an offer to contract. Until accepted, no agreement arises between the parties. There was no acceptance prior to revocation of the offer in this case.

Plaintiff openly admits to this Court that “[w]hen the executed Agreement and Deed where delivered to Plaintiff, the cover letter from Defendant’s counsel stated: “Please hold these documents in trust until the Release is signed by your Client.” (Plaintiff’s Memorandum in Support of Motion to Enforce the Settlement Agreement Dated 12/12/18.) The offer manifested the method of acceptance, which was the signature of the Plaintiff and its attorney, and clearly indicated that the delivery of the deed and settlement agreement was nothing more than a conditional delivery pending acceptance by the signature of the Plaintiff. Plaintiff concedes that it had not signed the document as of 6 January 2019, which as a matter of law in accordance with SCRCP 43(k) and South Carolina contract law demonstrates that the settlement had not been accepted at that time and was not binding at that point.

The Right of Revocation

With the facts clearly demonstrating that on 6 January 2019, the Defendant had submitted an offer to settle which had not been accepted, Plaintiff seeks the Court to allow it to accept the offer now. (“Here Plaintiff remains willing, able and ready to sign the Agreement.” Plaintiff’s

Memorandum in Support of Motion the Settlement Agreement Dated 12/12/18). However, there is no offer outstanding to which the Court could permit the Plaintiff to accept.

The South Carolina Supreme Court has made it unambiguously clear that a party may withdraw an offer to settle prior to its validity under one of the three methods set forth in SCRCP 43(k). *Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. 634, 637, 627 S.E.2d 724, 725 (2006). In *Farnsworth*, under facts identical to this case, one party delivered a signed settlement to another and prior to the other accepting, the offerer conveyed notice of withdrawal of the offer to the opposing counsel prior to the other party signing the settlement, which again is precisely what happened in this case. The Supreme Court explained that “Rule 43(k) provides that “[n]o agreement ... shall be binding unless” one of the three conditions listed above is met. In other words, an agreement is non-binding until a condition is satisfied. **Until a party is bound, she is entitled to withdraw her assent.**” *Id.* (Emphasis added).

The Defendant in this case had the right to withdraw from the settlement until one of the three conditions set forth in SCRCP 43(k) are met, which she did by delivering notice to the Plaintiff’s attorney as a carbon copy which Plaintiff’s attorney concedes Plaintiff has no basis for seeking this Court to abrogate Defendant’s right to withdraw an offer of settlement prior to acceptance.

Ashfort Corp Dictum

There has been some confusion in the past as to the viability of a settlement which did not comport to SCRCP 43, but was agreed upon by the parties, or admitted or conceded by the parties or fully performed by the parties. This confusion arose out of *dictum* set forth in *Ashfort Corp. v. Palmetto Constr. Group, Inc.*, 318 S.C. 492, 458 S.E.2d 533 (1995). The confusion has been removed by a subsequent Supreme Court case. “The *Ashfort* dictum does not comport with

the language of Rule 43(k). The rule is plainly worded: ‘No agreement ... shall be binding unless" one of the three requirements is met.’” *Farnsworth v. Davis Heating & Air Conditioning, Inc.*, 367 S.C. at 637, 627 S.E.2d at 726. Thus, regardless of whether or not this agreement was fully performed, the Defendant has a right to withdraw as long as the Plaintiff has not complied with SCRCP 43(k) which it has not.

The Deed

The deed in question did not constitute a conveyance as Plaintiff argues, and must be returned to the Defendant. Plaintiff cites *Little v. Little*, 215 S.C. 52, 53 S.E.2d 884 (1949) in its brief, but fails to note the most important aspect of *Little* as applied to the facts Plaintiff has admitted in this case. The Court held “[t]he delivery of a deed for record, by one who has executed and acknowledged it, **with unqualified instructions to record it**, will raise the presumption in the absence of any rebutting circumstance that the grantor intends to part with his title.” *Id.* 215 S.C. at 60, 53 S.E.2d at 888, quoting C.J. S., Deeds, § 187, page 600. (Emphasis added). Plaintiff has conceded that “[w]hen the executed Agreement and Deed were delivered to Plaintiff, the cover letter from Defendant’s counsel stated: “Please hold these documents in trust until the Release is signed by your Client.” Plaintiff’s Memorandum in Support of Motion to Enforce the Settlement Agreement Dated 12/12/18. Plaintiff even filed Defendant’s counsel’s cover letter as an exhibit to its Motion.

The delivery was clearly qualified. However, Plaintiff fails to see that as a matter of law, the deed was not delivered to Plaintiff, nor to Plaintiff’s attorney as attorney for Plaintiff. It was submitted to Plaintiff’s attorney as an escrow agent. “An escrow is a written instrument, which, by its terms, imports a legal obligation, and which is deposited by the grantor, promisor, or obligor, or his agent with a stranger or third party, to be kept by the depositary until the

performance of a condition or the happening of a certain event, **and then to be delivered over to the grantee, promisee or obligor.**” *Brockington v. Lynch*, 112 S.E. 94, 119 S.C. 273 (1922) (Emphasis added).

The deed was not delivered to Plaintiff. The deed was “deposited” in escrow. Not only was the deed sent to Plaintiff’s attorney as an agent of escrow, it was accepted by Plaintiff’s attorney subject to the stated terms of the escrow to “hold these documents in trust until the Release is signed by your Client.” See also, *First Union Nat’l Bank of S.C. v. Shealy*, 325 S.C. 351, 355, 479 S.E.2d 846, 848 (Ct. App. 1996). Had he not wished to accept the terms of escrow he was free to return the same to the Defendant’s attorney. However, he did not.

In summary, citing *Little*, the Court of Appeals has recently held that “delivery occurs when the grantor, at the time of the purported delivery, intends to divest himself of title and vest title in the grantee.” *Id.* As a matter of law the deed was sent to Plaintiff’s attorney in escrow with delivery to be made when the Plaintiff signed the agreement. Plaintiff did not sign the agreement and the condition for release of the escrowed deed never arose. The deed was not delivered, and title did not pass as a matter of law. The Defendant has a right to have the deed returned from her escrow agent.

CONCLUSION

The facts show that the Defendant in this case offered settlement on certain terms. She sent the settlement to Plaintiff’s counsel along with a deed which the Plaintiff’s counsel was to hold in escrow until Plaintiff executed the Settlement. Prior to Plaintiff signing the Settlement, the Defendant withdrew the offer from settlement as it was her unqualified right to do.

Plaintiff has no legal basis upon which to claim enforcement. As the Supreme Court has made clear in *Farnsworth* the Courts may not compel the settlement of any case that is not in compliance with SCRCP 43(k) even if substantial performance had been made. This alleged settlement is not in compliance with SCRCP 43(k). To grant the motion would be plain error in light of the facts and the law. Accordingly, the Court should deny the motion and direct the Plaintiff for the attorney to return the deed to Defendant unrecorded forthwith.

Charleston, South Carolina

30 June 2020

//s M. Richardson Hyman, Jr
M. Richardson Hyman, Jr.
P.O. Box 127
Charleston, South Carolina 29402
843 416 1047
843 323 4010
South Carolina Bar No.: 64867

Attorney for the Defendant for the Limited
Purpose of the Motion

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2017-CP-10-5427
	)	
Family Services, Inc., as Conservator	)	
For Muriel W. Clarkin,	)	
	)	
Plaintiff,	)	MOTION FOR
	)	SUMMARY JUDGMENT
	)	
vs.	)	
	)	
Patricia Clarkin Smith and Wells Fargo	)	
Bank, NA.	)	
	)	
Defendant.	)	
_____	)	

TO: THE ABOVE NAMED PARTIES:

PLEASE TAKE NOTICE that the Plaintiff, Family Services, Inc. as Conservator for Muriel W. Clarkin (hereinafter "Plaintiff"), by and through it undersigned counsel, will move before this Court on the 10th day after service, or at such other time and place as is convenient to the Court, for an order granting Plaintiff's Motion for Summary Judgement as to Plaintiff's causes of action for Conversion, Unjust Enrichment, Money Had and Received, Promissory Estoppel, Quantum Meruit, Declaratory Judgment, Fraudulent Conveyance, and Quiet Title pursuant to Rules 56 SCRPC.

This motion will be based on the pleadings of record, the recorded records of Charleston County, applicable statutory and common law, and any memorandum or exhibits Plaintiffs may seek to submit to the Court prior to a hearing on this matter. The grounds for the motion are as follows:

BACKGROUND

Plaintiff was appointed conservator for the assets, affairs and estate of Muriel W. Clarkin by a temporary order dated January 16, 2015, and a permanent order dated March 27, 2015, in case

number 2014-GC-10-0209, by the Honorable Tamara C. Curry, Charleston Count Probate Judge (hereinafter “Probate Matter”). Muriel W. Clarkin (hereinafter “Clarkin”) is an eighty-seven year old widow who has four living children, and Clarkin requires finances and funds to provide for Clarkin’s necessary assisted living care. Defendant, Patricia Clarkin Smith (hereinafter “Defendant”) is a daughter of Clarkin. On December 22, 2014, in the Probate Matter the Honorable Tamara C. Curry by Ex Parte Order made a preliminary finding of fact that Clarkin’s physician had certified in writing that Clarkin is incapacitated and unable to make decisions for herself and in her best interest and thereafter as a matter of law Judge Curry ordered Clarkin is adjudged to be an incapacitated person, as defined by South Carolina Probate Code §62-5-101(1). (A copy of the Probate Orders and Petition will be provided by the Court at the time of hearing but are not being filed for purposes of confidentiality). The Temporary Order was subsequently reconfirmed by orders dated 1/16/15 and 3/27/15. Defendant contested the Petition.

It is important to note that many of the pertinent facts and events in this case took place in November and December of 2014. Defendant stated in her Deposition that in October or November of 2014, her sister Muriel Kennedy (hereinafter “Kennedy”) called Defendant and said

A. “You know Mama’s memory is getting bad. And [Defendant] said: Yeah. Well she’s in her 80’s. Muriel Said: I want you to come –I’m paraphrasing. I’m definitely paraphrasing. Muriel called me wanting me to sign paperwork.

Q. For what?

A. Saying that Mama could not take care of herself.

Q When was this?

A. It was – it was October, November. Because that’s when my warning lights went off. And I said. No, hell no” (Depo Excerpts pg. 81 ln 20 – pg 82 ln 10; Attached hereto as Exhibit “A” and incorporated herein by reference)

On or about November 1, 2012, Defendant received \$6,000.00 (hereinafter “11/1/12 \$6,000”) from Clarkin which Defendant has acknowledged she has an obligation to repay but has not repaid said funds. (Exhibit “A” pg. 105, ln. 22 – pg. 108, ln. 12; Exhibit “B”; Exhibit “C”)

On July 7, 2013 a deed was recorded in the RMC office of Charleston County in Book 0351 at Page 348 (Exhibit “**D**”, hereinafter “First Deed”) wherein Clarkin conveyed a half interest in real property she owned at 602 Atlantic St., Mt. Pleasant, SC 29464 (hereinafter “the Property”) to Defendant as Joint Tenant with rights of survivorship.¹² On or about August 21, 2013, Defendant obtained \$1,500.00 (hereinafter “8/21/13 \$1,500”) from Clarkin which she agreed to repay Clarkin and has acknowledged that she had an obligation to repay Clarkin for said funds but has not done so.³ In or around August of 2013 Defendant began residing in the Property and began paying Clarkin monthly rent in the amount of \$450 to \$500 dollars (hereinafter “Rent”). (see Exhibit “**A**” pg. 27, lns. 1-7, pg. 28, lns. 17-25, pg. 29, ln 18 – pg. 31, ln. 3, pg. 89 lns. 15 – 19, pg. 143, ln. 11 – pg.151, ln. 9, pg. 176, lns 11-16, pg. 178 ln 21 – pg. ln 9, pg. 185, ln. 21 – pg. 186, ln. 12,; Exhibit “**B**” pgs. 6, 12, 16, 39, 40; Exhibit “**E**”).

On November 18, 2014, Defendant recorded a deed in the RMC office for Charleston County in Book 0441, Page 484 (hereinafter “November 18th Deed”) (Exhibit “**F**”), which is alleged to have been executed by Clarkin and which conveyed to Defendant, Clarkin’s remaining half interest in the in the Property originally owned wholly by Clarkin. Defendant has stated that the reason she caused the November 18th Deed to be drafted, executed and recorded was that she was concerned that Clarkin may be declared incapacitated and in which case Clarkin would not be able to sign a mortgage for the Property and therefore Defendant would not be able to get a loan

¹ Defendant stated the reason that Clarkin conveyed her a half interest in the Property was to reduce the taxes owed to primary residence taxes and/or from 6% to 4 %. (Exhibit “**A**” pg. 100, ln 3 – 13.)

² The Property is, was at that time, and is currently subject to a mortgage lien to Wells Fargo which was originally taken out by Clarkin for the benefit of her granddaughter Bridget Inman (Kennedy’s daughter) to purchase a house on the condition that Inman make the monthly payments upon the mortgage and repay Clarkin the money she loaned Inman which Inman has ceased doing (see 2017-CP-10-5426, currently on Appeal prior to finding on the merits) causing further family strife and financial concern for Plaintiff as conservator of Clarkin.

³ Defendant admitted she owed this \$1,500.00 in Paragraph 1 of her answer in response to the allegations of Paragraphs 11 and 12 of the Complaint. See also Exhibit “**B**” pg 21 where Defendant acknowledge to her sister on 4/1/14, that she owes Clarkin the \$1,500.00

in her own name secured by the Property. However, if Defendant owned the Property in whole she would not require her mother's signature to undertake such a transaction. Defendant testified in her deposition to the following:

- Q. The deed to 602 Atlantic, drafted by Mac Gibson, record on August 7, 2013. It gives you joint tenancy with right of survivorship and not as tenancy in common. So if your mother passed away, you would take complete title to the home, correct?
- A. We talked about that. I thought I was supposed to bring it today. I have a copy for your today.
- Q. So you understand that?
- A. Yes.
- Q. That you would have been the sole owner of the property without the second deed once your mother passed away?
- A. Yes.
- Q. Okay.
- A. *But I wouldn't have been able to get a loan in my name without my mother's signature. She can't do that when she is ward of the state.*
- Q. Was your mother a ward of the state on November 18, 2014?
- A. *No. But Muriel had called me and asked me to sign papers about Mama's not being able to take care of herself. I didn't know in regards to what. It didn't sound good. . . (Exhibit "A" pg. 141 ln. 12 – pg. 142 ln. 11)*

Defendant did not pay Clarkin any consideration for the November 18th Deed. The November 18th Deed was not drafted by Clarkin's Attorney Gibson in contrast to the previous deeds, wills and powers of attorney of record in Charleston County which Clarkin had Gibson draft in past recent years. Defendant, herself recorded the November 18th Deed.

Further on November 18, 2014, Defendant also obtained \$6,000.00 (hereinafter "11/18/14 \$6,000") from Clarkin. Defendant has acknowledged that she has an obligation to pay back Clarkin for the \$6,000.00 (Exhibit "A" pg. 105, ln. 22 – pg. 108, ln. 12, pg. 126, lns. 11-16; Exhibit "C") (Exhibit "G" Response to Interrogatory #9).

On or about December 8, 2014, Defendant took Clarkin to attorney Bolin who had done work for Defendant but was not Clarkin's Attorney Gibson and Defendant paid Bolin to draft a second durable power of attorney giving Defendant power of attorney over Clarkin. This second

power of attorney was separate from Clarkin's existing power of attorney drafted by Gibson.⁴ (Exhibit "A", pg. 35, ln 19 -pg. 37, ln 6) Defendant then took the December 8th POA and had it recorded in the Charleston RMC Office in Book 0445 at Pate 144.⁵

On December 22, 2014, the Honorable Tamara C. Curry by order adjudged Clarkin to be an incapacitated person based upon the written certification of Clarkin's physician and a diagnosis of Alzheimer's (Probate Order which will be provided to the Court at the time of hearing, but which are not being filed for reasons of confidentiality). At a temporary hearing of January 9, 2015, the Court again adjudged the finding. Thereafter the Court held a full hearing on the issue of the permanent appointment of a guardian and conservator for Clarkin on March 19, 2015, wherein Defendant was present and represented by counsel. With the consent of Defendant and all other parties the Court made findings of facts stating that based on testimony of designated medical examiners Clarkin was diagnosed with Major Depressive Disorder and Neuro Cognitive Disorder, Mild, which rendered Clarkin susceptible to undue influence. The Medical examiners testified that Clarkin lacked sufficient understanding or capacity to make responsible decisions concerning her finances and assets. (Probate Orders).

On December 23, 2014, the police came to Defendant's residence to see Clarkin who was there at the time and informed Clarkin and Defendant that Clarkin had been declared incompetent by the Court. Thereafter on December 23, 2014, Defendant as an alleged authorized user of a Wells Fargo Credit Card account owned by Clarkin, signed for and received a \$10,000 (hereinafter "12/23/14 10,000") cash advance upon Clarkin's account. (See Exhibit "A" pg 37, ln 2-25, pg. 55,

⁴ Gibson recorded a POA in the Register of Deeds in Book 0319 Pg 644 on March 27, 2013. The POA name Defendants sister Kennedy as the attorney in fact and Defendant as successor in the event Kennedy was deceased or unable to serve.

⁵ By Order dated March 27, 2015, in case number 2014-GC-10-0209, the Honorable Tamara C. Curry, Charleston Count Probate Judge, declared the December 8th POA "renounced as null and void."

ln 19 – pg. 57, ln. 12). Clarkin was the sole owner of the credit card account. Plaintiff has incurred significant damages in the form of interest upon the December 23, 2014, \$10,000 advance (Exhibit “A” pg. 136, ln 18 - pg. 138, ln. 20). Thereafter Defendant retained her counsel Alan Toporek to represent Defendant in the Probate Matter and paid Mr. Toporek a retainer fee using the \$10,000.00 Defendant had obtain from Clarkin’s account. Mr. Toporek made clear to Defendant that he was representing Defendant and did not represent Clarkin the matter (Exhibit “G”, Response to Interrogatory #10, Exhibit “A” pg. 65, ln 25 – pg. 66, ln. 2, pg. 69, ln. 23 – pg. 69, ln. 23). Defendant testified in her deposition that she is not responsible for paying the \$10,000.00 stating: “I maintain that the funds are –came out of the family fund. And whether I maintain it or not, it’s not my debt, according to the user agreement. I’m not paying back that \$10,000.00 . . .Q. So your mother should be responsible for your actions? A. No. My mother should - - no.” (Exhibit “A” pg. 120, ln. 21 – pg. 121 ln. 6). However, Defendant in January and February of 2015 did make two interest and principle payments upon the debt of her own volition. (Exhibit “A” pg. 93, ln. 1 – pg. 94, ln. 23). On January 9, 2015, Defendant attended a formal hearing in the Probate Matter, wherein the Court reconfirmed Ms. Clarkin’s incapacitation and appointed Plaintiff as conservator by temporary order. Then on January 27, 2015, Defendant again charged Ms. Clarkin’s visa credit card to pay her counsel Alan Toporek an additional \$7,500.00 retainer fee (Exhibit “A” pg. 116, ln. 116 – pg. 118, ln. 20).⁶ On February 25, 2015, Defendant left a voice message with Plaintiff stating: “

Hi. Patricia again. The credit card, seventeen five. On the 23rd when Muriel sent the police here and Mama found out, Mama knew that I was going to get a \$10, 000 cash advance. I had not told her about 7,500 because obviously 10,000 was an upsetting amount of money. And if she only knew what it really was going to cost,

⁶ In March or April of 2015, Plaintiff after being permanently appointed conservator was reviewing Ms. Clarkin’s credit card records and notice the 1/27/2015, charge directly to Mr. Toporek’s firm and contacted Mr. Toporek to notify him that the charge was not authorized resulting in Mr. Toporek returning the \$7,500.00 to Plaintiff. (Exhibit “A” pg. 116, ln. 116 – pg. 118, ln. 20)

it's just not worth telling her. *I'll take care of it. I have made I think it's like, and 841 payment in January, a \$800 payment in February, and I will continue to do so. I had them amortize seventeen five at the percentage rate, and I've just been getting it bigger. But, again, that my responsibility. I'm paying the legal fees to Mr. Toporek to get my mother her legal rights back. My name is on the card. I have a card. I'll make you a copy of it. I'm an authorized user. Well Thank you very much. Bye.*

A. Yes. That's true. (Exhibit "A" pg. 105, ln. 22 – pg. 118, ln. 20)

Plaintiff has sent Defendant multiple communications requesting that Defendant repay the funds, referenced herein, which she received from Clarkin but Defendant has refused (Exhibit "H").

On March 31, 2016, after the December 22, 2014, probate petition filed by Kennedy alleging as one of the basis for the appointment of a conservator for Ms. Clarkin that Defendant has caused the November 18th Deed to be executed and record and further after Plaintiff was formally appointed as conservator and began inquiring to Defendant about her wrongful acts in regard to Ms. Clarkin, Defendant sought to further remove from Plaintiff's reach Ms. Clarkin's half interest in the Property by transferring title to the Property from Defendant to Patricia Clarkin Smith, Trustee of the Patricia Clarkin Trust dated March 31, 2016, and recording the deed in the RMC Office for Charleston County on April 6, 2016, in BK 0545 at PG 374 (hereinafter "Trust Deed") (Exhibit "I").

STANDARD

"Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial." *Regions Bank v. Schmauch*, 354 S.C. 648, 660, 582 S.E. 2d 432 (2003).

ANALYSIS

Conversion

“Conversion is defined as the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. Money may be the subject of conversion when it is capable of being identified and there may be conversion of determinate sums even though the specific coins and bills are not identified.” *Moore v. Weinberg*, 383 S.C. 583, 589, 681 S.E.2d 875 (2009). “To establish the tort of conversion, it is essential that the plaintiff establish either title to or right to the possession of the personal property. Conversion may arise by some illegal use or misuse, or by illegal detention of another’s personal property. Conversion is a wrongful act which emanates by either a wrongful taking or wrongful detention.” *Regions Bank v. Schmauch*, 354 S.C. 648, 667, 528 S.E.2d 432 (Ct. App. 2003) (citations omitted). Ordinarily the plaintiff bears the burden of proof in a conversion action, however the burden may shift when a case involves a confidential relationship. *See. Gordon v. Busbee*, 397 S.C. 119, 723 S.E.2d 822 (Ct. App. 2011). “A presumption of undue influence arises if the alleged wrongdoer was in a confidential relationship with the donor and there were suspicious circumstances surrounding the preparation, formulation, or execution of the donative transfer, whether the transfer was by gift, trust, will, will substitute, or a donative transfer of any other type. The effect of the presumption is to shift to the proponent the burden of going forward with the evidence, not the burden of persuasion. The presumption justifies a judgment for the contestant as a matter of law only if the proponent does not come forward with evidence to rebut the presumption.” *Id.* at 140. “In South Carolina pre-judgment interest may also be awarded in equity cases, conversion cases, and property cases.” *Vaugh Dev. v. Westvaco Development, Inc.*, 372 S.C. 576, 579, 642, S.E. 2d 757 (Ct. App. 2007)

In this case Defendant has conceded that a confidential relationship exists between her and her mother Clarkin, admitting in response to Paragraph 6 of Plaintiff's complaint that Clarkin imposed a special confidence in Defendant (Defendant's Ans., Para 1). It is an undisputed fact that Defendant received the following funds from Clarkin: 11/1/12 \$6,000, 8/21/13 \$1,500, 11/18/14 \$6,000, and the 12/23/14 \$10,000. It is an undisputed fact that with regard to each of these allotment of funds Defendant has made statement's that she has an obligation to repay each amount. It is also an undisputed fact that Defendant has not repaid Clarkin or Plaintiff any of the said funds despite Plaintiff demanding payment. Defendant has wrongfully detained identifiable funds of Clarkin, and this Court should, absent coming forward with evidence to rebut the presumption undue influence, order as a matter of law that Defendant is liable to Plaintiff for the \$23,500.00 along with an award of prejudgment interest on the amount from January 7, 2015 when Plaintiff was initially appointed as conservator. ⁷

Unjust Enrichment

"A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another. Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff."

Dema v. Tenet Physician Services-Hilton, 383 S.C. 115, 123, 678 S.E.2d 430 (2009). "In South Carolina pre-judgment interest may also be awarded in equity cases, conversion cases, and

⁷ Plaintiff has presented evidence to establish Defendants obligation as to each allotment of funds dating back to their date of receipt and if there Court were to find that Plaintiff should be awarded those additional amounts of prejudgment interest dating back to receipt of each allotment by Defendant then Plaintiff would request such an award. Further Defendant stated and acknowledged to Plaintiff in February of 2015 that she was obligated to repay all but the 8/21/13 \$1,500, and Plaintiff began submitting demands for payment of these funds to Defendant in 2015 Therefore Plaintiff believes it is both reasonable and beneficial to Defendant to request that the interest on the lump some only begin to accrue from Plaintiff's date of appointment which is after Defendant received the last allotment of said funds.

property cases.” Vaugh Dev. v. Westvaco Development, Inc., 372 S.C. 576, 579, 642, S.E. 2d 757 (Ct. App. 2007)

In this case it is an undisputed fact that Defendant received the following funds from Clarkin: 11/1/12 \$6,000, 8/21/13 \$1,500, 11/18/14 \$6,000, and the 12/23/14 \$10,000. It is an undisputed fact that with regard to each of these allotment of funds Defendant has made statement’s that she has an obligation to repay each amount. It is also an undisputed fact that Defendant has not repaid Clarkin or Plaintiff any of the said funds despite Plaintiff demanding payment.

Additionally evidence exists to find that Defendant promised to pay Clarkin \$450 to \$500 a month in Rent for the benefit of residing in the Property. Defendant never paid any consideration for receiving any alleged title to the Property.⁸ There is undisputed evidence that Defendant regularly made monthly Rent payments to Clarkin in 2013 and 2014 prior to Plaintiff being appointed Conservator in January of 2015, and it is undisputed that Defendant has not paid Plaintiff Rent since Plaintiff was appointed conservator in January of 2015.

Defendant has wrongfully retained the money which in justice and equity should have been paid to Clarkin, and this court should order as a matter of equity that Defendant is liable to Plaintiff for the \$23,500.00. Plaintiff further requests an award of damages for rent from January of 2015 when Plaintiff began acting as conservator to the date of an order of this Court awarding said damages at an amount of \$450.00 a month which at present amounts to \$31,500. Finally, Plaintiff requests that this Court award prejudgment interest on both amounts from January 7, 2015 when Plaintiff was initially appointed as conservator.

Money had and Received

⁸ This monthly amount is substantially below the market value of what it would cost to rent any single-family home in Old Town Mt. Pleasant.

“An action for money had and received exists where a defendant has money belonging to the plaintiff which in equity should be repaid to the plaintiff. In order to recover on a count for money had and received, ... the plaintiff must show he has equity and conscience on his side, and that he could recover in a court of equity. . . Once the requirements of an action for money had and received are proven, the equitable principles of unjust enrichment and restitution provide a remedy. An action for money had and received is based upon a quasi-contract or a contract implied in law. . . In addition, the court adopted the "Scudder May test as the sole test for a quantum meruit/quasi-contract/implied by law claim." *Id.* at 9, 532 S.E.2d at 872. This test mandates: (1) a benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value.” *Okatie River v. Southeastern Site Prep*, 353, S.C. 327, 334-35, 577 S.E.2d 468 (2003). “Because the applicable statute and case law do not exclude the award of prejudgment interest for a claim under the theory of quantum meruit, it appears that our appellate courts have implicitly recognized that such an award is permissible.” *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 206, 600 S.E.2d 105 (2004).

In this case it is an undisputed fact that Defendant received the following funds from Clarkin: 11/1/12 \$6,000, 8/21/13 \$1,500, 11/18/14 \$6,000, and the 12/23/14 \$10,000. It is an undisputed fact that with regard to each of these allotment of funds Defendant has made statement’s that she has an obligation to repay each amount. It is also an undisputed fact that Defendant has not repaid Clarkin or Plaintiff any of the said funds despite Plaintiff demanding payment. Defendant has wrongfully retained the money which in justice and equity should have been repaid to Clarkin, and this court should order as a matter of equity that Defendant is liable to

Plaintiff for the \$23,500.00 along with an award of prejudgment interest on the amount from January 7, 2015 when Plaintiff was initially appointed as conservator.

Promissory Estoppel

“A contract and promissory estoppel are two separate and distinct legal theories. They are two different creatures of the law; they are not legally synonymous; the birth of one does not spawn the other. Our courts recognize a remedy in equity if the claimant can prove: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise. The applicability of the doctrine depends on whether the refusal to apply it would be virtually to sanction the perpetration of a fraud or would result in other injustice. Unlike a contract which requires a meeting of the minds and consideration, promissory estoppel looks at a promise, its subsequent effect on the promisee . . .” *Satcher v. Satcher*, 351 S.C. 477, 483-84, 570 S.E.2d 535 (Ct. App. 2002). “In South Carolina pre-judgment interest may also be awarded in equity cases, conversion cases, and property cases.” *Vaugh Dev. v. Westvaco Development, Inc.*, 372 S.C. 576, 579, 642, S.E. 2d 757 (Ct. App. 2007)

In this case evidence exists to find that Defendant promised to pay Clarkin \$450 to \$500 a month in Rent for the benefit of residing in the Property which Defendant never paid any consideration for receiving any alleged title to. There is undisputed evidence that Defendant regularly made monthly Rent payments to Clarkin in 2013 and 2014 prior to Plaintiff being appointed Conservator in January of 2015, and it is undisputed that Defendant has not paid Plaintiff Rent since Plaintiff was appointed conservator in January of 2015. The promise to pay Rent to Clarkin is unambiguous, Clarkin’s reliance upon the promise by her daughter the Defendant was

to be expected and foreseeable by Defendant. The Defendant's failure to maintain that promise upon Plaintiff taking over as Conservator for Clarkin, caused Clarkin to suffer a sustained injury and failing to apply the equitable doctrine in this matter would result in an injustice to Plaintiff. Plaintiff requests an award of damages for rent from January of 2015 when Plaintiff began acting as conservator to the date of an order of this Court awarding said damages at an amount of \$450.00 a month which at present amounts to \$31,500. Finally, Plaintiff requests that this Court award prejudgment interest said amount from January 7, 2015 when Plaintiff was initially appointed as conservator.

Quantum Meruit

"The court adopted the "Scudder May test as the sole test for a quantum meruit/quasi-contract/implied by law claim." Id. at 9, 532 S.E.2d at 872. This test mandates: (1) a benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." *Okatie River v. Southeastern Site Prep*, 353, S.C. 327, 334-35, 577 S.E.2d 468 (2003). "Because the applicable statute and case law do not exclude the award of prejudgment interest for a claim under the theory of quantum meruit, it appears that our appellate courts have implicitly recognized that such an award is permissible." *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 206, 600 S.E.2d 105 (2004).

In this case it is an undisputed fact that Defendant received the following funds from Clarkin: 11/1/12 \$6,000, 8/21/13 \$1,500, 11/18/14 \$6,000, and the 12/23/14 \$10,000. It is an undisputed fact that with regard to each of these allotment of funds Defendant has made statement's that she has an obligation to repay each amount. It is also an undisputed fact that

Defendant has not repaid Clarkin or Plaintiff any of the said funds despite Plaintiff demanding payment.

Additionally evidence exists to find that Defendant promised to pay Clarkin \$450 to \$500 a month in Rent for the benefit of residing in the Property which Defendant never paid any consideration for receiving any alleged title too.⁹ There is undisputed evidence that Defendant regularly made monthly Rent payments to Clarkin in 2013 and 2014 prior to Plaintiff being appointed Conservator in January of 2015, and it is undisputed that Defendant has not paid Plaintiff Rent since Plaintiff was appointed conservator in January of 2015.

Clarkin conferred benefits upon Defendant in the form of Defendant receiving 11/1/12 \$6,000, 8/21/13 \$1,500, 11/18/14 \$6,000, and the 12/23/14 \$10,000. Clarkin further conferred upon Defendant the benefit of residing in the Property. Defendant has realized these benefits such that Defendant's retention of the benefits under circumstances make it inequitable for Defendant to retain the benefits without paying their value. This court should order as a matter of equity that Defendant is liable to Plaintiff for the \$23,500.00. Plaintiff further request an award of damages for rent from January of 2015 when Plaintiff began acting as conservator to the date of an order of this Court awarding said damages at an amount of \$450.00 a month which at present amounts to \$31,500. Finally, Plaintiff requests that this Court award prejudgment interest on both amounts from January 7, 2015 when Plaintiff was initially appointed as conservator.

Declaratory Injunctive Relief

“A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue.” *Felts v. Richland County*, 303 S.C. 354, 356, 400 S.E.2d 781 (1991). “An action to set aside a deed on the basis of undue influence is an action in equity.”

⁹ This monthly amount is substantially below the market value of what it would cost to rent any single-family home in Old Town Mt. Pleasant.

Skipper v. Perrone, 382 S.C. 53, 57, 674 S.E.2d 510 (Ct. App. 2009). “Generally, the party attacking a deed has the burden of proof. However, the supreme court held an inference of undue influence will arise upon a showing of great mental weakness of the grantor and gross inadequacy of consideration. The court explained: It is not necessary, in order to secure the aid of equity, to prove that the deceased (grantor) was at the time insane, or in such a state of mental imbecility as to render her entirely incapable of executing a valid deed. It is sufficient to show that from her sickness and infirmities she was at the time in a condition of great mental weakness, and that there was gross inadequacy of consideration for the conveyance. From these circumstances imposition of undue influence will be inferred. The court recognized this inference applies even absent a confidential relationship.” *Id.* at 57-58 (citations omitted). “Even absent a confidential relationship, this court has several times approved the principle that imposition or undue influence upon the grantor will be inferred from proof of great mental weakness, not amounting to incapacity to execute a valid deed, accompanied by gross inadequacy of consideration.” *Brooks v. Kay*, 339 S.C. 479, 490, 530 S.E.2d 120 (2000) (citations omitted). “A confidential relationship arises when the grantor has placed his trust and confidence in the grantee, and the grantee has exerted dominion over the grantor. The essence of the relationship is the trust and confidence. *Id.* Mere friendship between the parties is not sufficient. The relationship must be one implying confidence. Some evidence is required that the grantor actually reposed trust in the grantee in the handling of her affairs.” *Id.* at 488. (citations omitted). “Once a contestant has proven a confidential relationship existed at the time of conveyance, the burden shifts to the grantee to prove that the contestant's conveyance was not the product of undue influence.” *Dixon v. Dixon*, 362 S.C. 388, 398, 608, S.E.2d 849 (2005). In *Brooks* the court voided a deed on the ground of undue influence stating:

“Even if Brooks was mentally competent enough to execute a deed there is no doubt that she was rapidly approaching senility, if not already suffering from the Alzheimer's disease responsible for her commitment to the State Hospital only one year after the transaction in question.” at 490.

In this case on November 18, 2014, Defendant caused the November 18th Deed to be executed and recorded granting Defendant Clarkin's remaining half interest in the Property. Defendant paid no consideration for the November 18th Deed.

Here, the Probate Court established contemporaneous with the execution of the November 18th Deed that Clarkin was an incapacitated person. Further it is a matter of fact there was a gross inadequacy of consideration paid to Clarkin by Defendant for the November 18th Deed because Defendant paid no consideration, instead rather Defendant on the same day also coerced Clarkin to give Defendant and additional \$6,000.00.

Moreover, Defendant conceded in her Complaint that Clarkin imposed a special confidence in Defendant. Defendant testified that her mother places great trust and confidence in her (Exhibit “A” pg. 83, ln 24 – pg. 84, ln 4). Clarkin also imparted fiduciary responsibilities onto Defendant. On March 18, 2013, Clarkin executed a durable power of attorney which was record on March 27, 2013 in the RMC Office for Charleston County in BK 0319 at PG 644 (hereinafter “First POA”). The First POA named Defendant as the alternate successor attorney in fact. On December 8, 2014, Clarkin executed a second durable power of attorney, which conflicted with the still then operative First POA, in that it named Defendant as a dual attorney in fact with her sister Muriel Kennedy instead of as a successor to Kennedy (hereinafter “Second POA”). Defendant recorded the Second POA in the RMC Office of Charleston County in BK 0445 at PG 144.¹⁰ Therefore there is sufficient evidence to establish the existence of a confidential relationship between Defendant and

¹⁰ The Honorable Tamara C. Curry Ordered the Second POA renounced as null and void by Order dated March 27, 2015.

Clarkin such that the burden shifts to Defendant to prove that the conveyance of the November 18th Deed was not the product of undue influence.

However, even absent the finding of the existence of a confidential relationship between Defendant and Clarkin at the time of execution and even absent a finding that Clarkin was an not an incapacitated person at the time of execution, both of which Plaintiff affirmatively asserts this court should find existed on November 18, 2014, there is still ample evidence for this Court to infer that like in *Brooks* Clarkin at the time of execution suffered great mental weakness, not amounting to incapacity to execute a valid deed, accompanied by gross inadequacy of consideration, such that this Court should order the November 18th Deed void ab initio based on undue influence. Further because the Defendant as trustee of the Patricia Clarkin Trust dated March 31, 2016, was not a bona fide purchaser, Plaintiff further requests that this Court order that the Trust Deed void ab initio as well.

Fraudulent Conveyance

“The Statute of Elizabeth provides: Every gift, grant, alienation, bargain, transfer, and conveyance of lands ... for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties and forfeitures must be deemed and taken ... to be clearly and utterly void. In interpreting this statute, this Court has held conveyances shall be set aside under two conditions: First, where there was valuable consideration and the transfer is made by the grantor with the actual intent to defraud; and, second, where a transfer is made without actual intent to defraud but without valuable consideration.” *Oskin v. Johnson*, 400 S.C. 390, 735 S.E.2d 459 (2012). "Where transfers to members of the family are attacked either upon the ground of actual fraud or on account of their voluntary character, the law imposes the burden on the transferee to establish both a valuable consideration and the bona fides of the

transaction by clear and convincing testimony. . . Fraudulent intent in such instances can usually be shown only by a consideration of the attendant facts and circumstances, a resort to which must usually be had in order to distinguish between transactions which are bona fide, and those which are not. The Courts frequently must resort to evidence or circumstances which are not properly explained, when such circumstances lead to the belief that a fraudulent intent was present. . . Certain circumstances so frequently attend conveyances to defraud creditors that they are recognized and referred to as "badges of fraud". The badges tend to excite suspicions as to the bona fides of a challenged conveyance. Unexplained, they may warrant an inference of fraud. Whether the inference is warranted depends in large measure on whether a satisfactory explanation is presented. The facts which are recognized indicia of fraud are numerous, and no court could pretend to anticipate or catalog them all. Among the generally recognized badges of fraud are the insolvency or indebtedness of the transferor, lack of consideration for the conveyance, relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, departure from the usual method of business, the transfer of the debtor's entire estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property. Although it has been said that a single badge of fraud may stamp a transaction as fraudulent, it is more generally held that while one circumstance recognized as a badge of fraud may not alone prove fraud, where there is a concurrence of several such badges of fraud an inference of fraud may be warranted." *Coleman v. Daniel*, 261 S.C. 198, 208-210, 199 S.E.2d 74 (1973).

In this case the November 18th Deed and the Trust Deed constitute conveyance of lands for the purpose hindering others of their just and lawful actions. Both conveyances were without consideration, and the circumstances of the conveyances evidence multiple badges of fraud

including lack of consideration for the conveyance, relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, departure from the usual method of business, and the transfer of the Clarkin's entire interest in the Property when Defendant already possessed a half interest with rights of survivorship in the Property. The circumstances in case place the burden on Defendant to establish both a valuable consideration for the transfers and the bona fides of the transactions by clear and convincing evidence.

Here, Defendant already possessed a fifty percent interest in the Property with rights of survivorship. Defendant testified that that her sister Kennedy came to her a month or two prior to the execution of the November 18th Deed and asked her to sign papers declaring Clarkin incompetent. Defendant testified that she didn't know what Kennedy was up too, but she didn't think it was good. Defendant testified that the reason she caused the November 18th Deed to be executed and recorded was because if her mother Clarkin was declared incompetent then Clarkin would not be able to sign a mortgage on the property securing a loan for the benefit of Defendant, but if Defendant was the sole titleholder to the property she would not need her mother's signature. Defendant testified that she knew at the time that if full and complete title to the Property was transferred to her name it could cause Wells Fargo to call the note secured by the mortgage on the property immediately due and owing (Exhibit "A" pg. 139, ln. 5 – 142, ln. 12). The November 18th Deed was not drafted or recorded by Attorney Mac Gibson who had historically and only a year prior been Clarkin's usual attorney for drafting deeds, wills, and powers of attorney. Thereafter on December 8, 2014, Defendant caused the Second POA to be executed and recorded giving her power of attorney over her mother Clarkin and again not utilizing the services of Mac Gibson. These actions were undertaken in secrecy and concealment and without the knowledge of her sister Kennedy who had durable power of attorney over Clarkin at the time. These actions were taken a

month or less before Kennedy filed her petition with the probate court to declare Clarkin incompetent and to appoint a conservator, and in her petition Kennedy referenced both the November 18th Deed and the Second POA as a basis for her petition. Thereafter, Clarkin was declared incompetent, Plaintiff was appointed conservator and began communicating with Defendant about repaying Clarkin for various improper transaction (See Exhibit “E”). Defendant contested the Probate Matter and as the very litigious and contested Probate Matter continued Defendant learned through filings, hearing, and mediations that Plaintiff did not believe the November 18th conveyance was a proper and valid conveyance. Thereafter on March 31, 2016, and only a year before this action Defendant again conveyed the Property without consideration to a trust bearing her name and for which she is trustee with full knowledge that Plaintiff claimed she owed Clarkin both funds which Defendant did not have as well as a half interest in the Property.

Plaintiff would assert that the record is clear for this Court to find that under the Statute of Elizabeth that both the November 18th Deed and the Trust Deed are void ab initio absent Defendant establishing both a valuable consideration for the transfers and the bona fides of the transactions by clear and convincing evidence.

Quiet Title

“An action to remove a cloud on and quiet title to land is one in equity.” *Bryan v. Freeman*, 253 S.C. 50, 52, 168 S.E.2d 793 (1969) “In an action to quiet title, the plaintiff must recover on the strength of his own title, not on the alleged weakness of the defendant's title.” *Hoogenboom v. City of Beaufort*, 433 S.E.2d 875, 880 (Ct. App. 1992)

In this case Clarkin held clear title to the Property prior to November 18th Deed as evidence by the First Deed. As set forth herein above there is a strong basis for this Court to declare the November 18th Deed and the Trust Deed void ab initio. Plaintiff requests this Court find clear

unclouded title to the Property is vested in Muriel W. Clarkin and Patricia Clarkin Smith as joint tenants with rights of survivorship as title the Property evidenced upon the execution of the First Deed.

Conclusion

Based upon the allegations and evidence presented to this Court as set forth herein above, Plaintiff requests that this Court grant is Motion for Summary Judgment and award Plaintiff all of the relief it requested herein above.

RESPECTUFLLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC

s/ D. Conor Keys

D. Conor Keys

P.O. Box 14225

Charleston, SC 29422

Phone: 843-906-3998

conor@dconorkeyslaw.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I Certify that on this 6th day of October 2020 a copy of Plaintiff's Motion for Order of Reference was emailed and placed in the United States Mail postage pre-paid, addressed as follows:

Patricia Clarkin Smith
602 Atlantic Street
Mount Pleasant, SC 29464
patricia@nbct2001.com

THE LAW OFFICE OF
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Attorney for Plaintiff.

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 FAMILY SERVICES, INC., AS CONSERVATOR FOR
4 MURIEL W. CLARKIN,

Plaintiff,

5 vs. CASE NO. 2017-CP-10-5427

6 PATRICIA CLARKIN SMITH and WELLS FARGO BANK,
7 N.A.,

8 Defendants.

9
10 DEPOSITION OF: PATRICIA CLARKIN SMITH

11 DATE: July 24, 2018

12 TIME: 10:25 a.m.

13 LOCATION: Uricchio, Howe, Krell, Jacobson,
14 Toporek, Theos & Keith, P.A.
15 17 1/2 Broad Street
Charleston, SC

16 TAKEN BY: Counsel for the Plaintiff

17 REPORTED BY: KAREN NELLIUS, RPR

18
19 A. WILLIAM ROBERTS, JR., & ASSOCIATES

20 Fast, Accurate & Friendly

21
22 Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843) 722-8414 (843) 785-3263 (843) 839-3376

23 Columbia, SC Greenville, SC Charlotte, NC
24 (803) 731-5224 (864) 234-7030 (704) 573-3919



APPEARANCES OF COUNSEL:

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(INDEX AT REAR OF TRANSCRIPT)

1 PATRICIA CLARKIN SMITH,
2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. KEYS:

5 Q. This is the deposition of Patricia
6 Clarkin Smith taken pursuant to due and proper
7 notice given to all parties. Any defect as to
8 notice, time, and location of this deposition, if
9 any, are waived.

10 During the course of this deposition,
11 we are going to examine a bunch of un-redacted
12 records that contain personal information, such as
13 account numbers. All parties to this deposition
14 are on notice that any appropriate redactions
15 should be made prior to entering any of the
16 transcripts or evidence from this deposition into
17 the public record.

18 (PLF. EXH. 23, NOTICE OF DEPOSITION,
19 was marked for identification.)

20 BY MR. KEYS:

21 Q. And I have Plaintiff's Exhibit 23, the
22 notice of deposition, dated July 12th, served on
23 July 12th by courier, on Alan Toporek for Patricia
24 Clarkin Smith. The deposition is to take place at
25 10:00 today. It also contains a subpoena,

1 requesting that she bring some documents.

2 Did you bring anything with you today,
3 Ms. Smith?

4 A. Would you like to ask me specific
5 documents?

6 MR. TOPOREK: Just answer the question,
7 Patricia.

8 THE WITNESS: No. Well, I have
9 documents. Which one are you talking about?

10 BY MR. KEYS:

11 Q. It was stuff involving the deed of
12 November 18. Anything involving that, bank
13 statements from February 2012 through February 2015
14 that show you receiving -- go ahead.

15 A. One at a time.

16 Q. Okay.

17 A. The bank statements, they were
18 e-mailed, and so you should have them.

19 Q. Okay.

20 A. And then what was missing, May, June,
21 and July, off of Wells Fargo, and that came in, so
22 you should have April 25th, 2014 until February
23 2015, Wells Fargo, and you should have all 2012,
24 '13, '14, until February 2015, Heritage Trust
25 Federal Credit Union.

1 Q. I do not have anything from '13 from
2 the Federal Union.

3 A. I have the e-mails. It's a pdf file.
4 Each year was sent separately.

5 Q. We can work on that as we go along.

6 A. Okay. And then the other bank closed.

7 Q. What's the other one?

8 A. Sacred Heart Credit Union, Carolina
9 Federal, they closed in 2012 sometime.

10 Q. Okay.

11 A. And then the other question you asked?
12 You named another document.

13 Q. Any text messages relating --

14 A. No. Before that. You asked me about
15 deeds. We'll go right on to RNC. I printed them
16 off.

17 Q. Do you have any retainer agreements, or
18 anything, that you brought?

19 A. I brought the first deed and the second
20 deed and the deed of Muriel -- Mom and I on
21 Shemwood, Muriel's deed, Bridget's deed, a deed
22 from --

23 Q. Just the November 18, 2014.

24 A. That's the second deed.

25 Q. You just have the deed today?

1 MR. TOPOREK: He is asking about do you
2 have a retainer -- did you have --

3 If I might interrupt. If I'm out of
4 line, tell me, and I'll shut up.

5 He wants to know if, I think, you had a
6 retainer agreement with Mr. O'Neil. And --

7 THE WITNESS: A retainer agreement with
8 Mr. O'Neil? No. My mother asked me to call
9 Mr. O'Neil. She was sitting right there.

10 BY MR. KEYS:

11 Q. Okay. We can get more into that. That
12 is P-23. Let me mark it.

13 A. And text messages, you should have
14 gotten an e-mail.

15 Q. I received --

16 A. They are time and date stamped
17 sequence.

18 Q. Right. I received some between you --

19 A. 2012 -- it's not some. It's all that I
20 have. 2012 until -- well, until when you asked,
21 January 2015.

22 Q. All right. So let's go through kind of
23 our foundational steps for us going through this
24 deposition.

25 A. Okay.

1 Q. It will be very important for you to
2 verbalize your answers. Don't make gestures. Use
3 proper English terms, instead of slang terms, like
4 uh-huh or nods. Refrain from using those, please.

5 A. Okay.

6 Q. If you need any clarification on any
7 questions, please ask me. Now that the deposition
8 has begun, you are not to ask your counsel for
9 clarification on these questions.

10 Whenever you need to take a break, just
11 let me know.

12 A. Thank you.

13 Q. I would request that we finish the
14 question we're on at that time. After that it's
15 fine.

16 You are now under oath. You understand
17 what that means?

18 A. Yes, I do.

19 Q. You understand that if a statement you
20 made was untrue you could be found subject to
21 criminal perjury charges, possibly?

22 A. Yes, I do.

23 Q. Okay. If you will, go ahead and state
24 your full legal name for the record.

25 A. Patricia Clarkin Smith. Smith is my

1 legal last name. S-M-I-T-H.

2 Q. How old are you?

3 A. 56.

4 Q. What's your birth date?

5 A. January 9, 1962.

6 Q. Are you on any drugs or medication
7 today which would affect your ability to comprehend
8 the questions and answer them fully and truthfully?

9 A. No.

10 Q. Are you suffering from any mental or
11 emotional condition which would affect your ability
12 to comprehend any questions and answer them fully
13 and truthfully today?

14 A. Am I suffering? No.

15 Q. Okay. Have you ever taken a deposition
16 before?

17 A. No.

18 Q. Do you have any connections to any
19 judges in South Carolina?

20 A. Well, yes.

21 Q. Okay.

22 A. Not relationship-wise, in terms of love
23 relations.

24 Q. What are your connections to judges?

25 A. Lord. Let's see. I grew up in

1 Shemwood, Mt. Pleasant, a subdivision off of
2 Coleman Boulevard in Mt. Pleasant, South Carolina.
3 The Michelle (phonetic) family grew up around the
4 corner, and one of the Michelle boys is a judge.
5 And then down the street on Shemwood Circle was the
6 Dodds family, and Johnny Dodds is a judge. And
7 then there is Judge Dennis O'Neil --
8 He is more from Old Village.

9 -- was a magistrate. Not a magistrate.
10 I forget what kind of judge he was. But he was a
11 judge in Mt. Pleasant. He is presently, I believe,
12 with Seabrook. He is also an expert witness with
13 real estate, closing attorney. And then there is
14 Judge Sudalia (phonetic). He is deceased.

15 MR. TOPOREK: He passed away.

16 BY MR. KEYS:

17 Q. Okay.

18 A. There may be one or two judges that
19 aren't coming to mind right away.

20 Q. Okay. So you were born in Mt.
21 Pleasant?

22 A. No. I was born in Charleston. I was
23 raised in Mt. Pleasant.

24 Q. Okay. Where did you attend high
25 school?

1 A. Bishop England High School, except for
2 about a semester I switched over to Wando, and then
3 I switched back.

4 Q. Okay. Where did you graduate from?

5 A. Bishop England High School.

6 Q. What year did you graduate?

7 A. 1980.

8 Q. Okay. Did you attend college?

9 A. Yes.

10 Q. Where?

11 A. College of Charleston. I graduated
12 December 1983.

13 Q. Okay. What degrees do you possess?

14 A. Well, my undergraduate is elementary
15 and special education, mentally disabled. My
16 graduate is a double master's in special education,
17 emotional handicap, and learning disabilities.

18 THE WITNESS: I apologize.

19 (Off-the-record conference.)

20 THE WITNESS: So that's College of
21 Charleston, undergraduate; graduate school,
22 University of Florida; and then I obtained a
23 master's plus 30 between the College of Charleston
24 and the Citadel, additional credits; and since then
25 I've taken way more than that. And so that's

1 formal graduate credits.

2 BY MR. KEYS:

3 Q. Okay.

4 A. I have other certificates, but they are
5 not college.

6 Q. All within the education realm?

7 A. No. It's not college credit. You only
8 want college credit information?

9 Q. I'm just asking what your
10 certifications are.

11 A. Well, I'm a national certified guardian
12 from the Center For Guardianship, certification.
13 And it's not a certification. It's -- you get a
14 certificate of training, successful training,
15 guardian ad litem volunteer. It's a bit different.

16 Q. Are you currently employed?

17 A. Yes. For myself.

18 Q. What are you doing for yourself?

19 A. Special Needs Services, LLC.

20 Q. When did you incorporate that LLC?

21 A. Fall 2015. I can't recall the month.

22 Q. Okay. And tell me about that. What do
23 you do for that?

24 A. Well, it started with home school
25 teaching. I enjoyed that.

1 Q. Okay. What is it now?

2 A. And then it progressed. I added a
3 client for life skills training. A special needs
4 child.

5 Q. Okay.

6 A. And then it progressed on to doing
7 consulting work with students -- high school
8 students who were home-schooled, helping them
9 develop their time management skills and their
10 agenda to keep up with their studies.

11 And then that moved into being -- I ran
12 into someone I knew, and she needed a caregiver,
13 slash, homemaker. That's the terminology used by
14 her long-term care company, homemaker. And so I
15 have done that job for about -- since February
16 2017, but that's been very, very, very part time
17 since February of this year, 2018. Only two hours
18 a week. And I'm considering returning to the
19 teaching profession.

20 Q. Okay. What was -- prior to fall of
21 2015, what were you doing?

22 A. Regretfully I was still teaching
23 because I couldn't -- I had to keep teaching to
24 wait to get a loan for my home. But I was retired
25 already. I was in the South Carolina TERI program.

1 I did not intend to be, but I had to keep teaching
2 so that I would have the salary verification form
3 required by the bank when the lien got lifted from
4 the property, from the loan my mother made to my
5 niece, Muriel's daughter, that wasn't paid back on
6 time.

7 Q. Where did you teach at and how long?

8 A. Charleston County School District,
9 January 1984 until June 1984. Then I taught in
10 Ocala, Florida, 1984 to 1985. Then I did an
11 internship fall -- it was a regular school, but it
12 was a federally funded grant program at the
13 University of Florida, the Ross-Mercer Clinic. And
14 I did a graduate internship there, and that was
15 fall 1985. And then I started teaching again for
16 Charleston County School District December 17, 1985
17 at Stiles Point Elementary, and, except for a brief
18 break around Hurricane Hugo, I retired November
19 1st, 2012.

20 Q. Okay.

21 A. And then joined the TERI program.

22 Q. So what is the TERI program?

23 A. South Carolina T-E-R-I program. It's
24 closed down. It's when you are retired, you can
25 continue to work on a -- you lose a lot of your due

process rights, but as long as you are able to get a job, you are allowed to continue to work. And then your retirement goes into a fund, and then when you are 59 and a half, you can take it out without as much penalty, depending on what fund you put it in.

Q. So it's substituting?

A. Substituting? No. No. You are a regular certified teacher.

Q. Okay. What grades did you principally teach?

A. I swapped around. I had one career with three separate areas: special education, computer -- the first was special education. That was about half the career. Then in 1997, I switched to alternative ed. I'm the first teacher in the nation, nationally certified, in a secured setting, and that led to doing some lobby work for State Farm on behalf of the national board. I did that for about eight, 10 years.

And then I concluded, switching gears again, I taught technology. I was a computer technology teacher at Buist Academy, grades K to eight. And I was the first teacher in South Carolina to teach animation programming. Alice is

1 the nickname of it. Randy Pausch designed it.

2 It's taught at the College of Charleston as a
3 pre-Java course.

4 Q. Okay.

5 A. And so I was part of the Carnegie
6 Mellon grant, and I taught animation programming at
7 the middle school level. It would probably be the
8 equivalent of the first two and a half to three
9 weeks of a college course.

10 Q. Okay.

11 A. Following that agenda.

12 Q. Do you receive any government benefits
13 or subsidies?

14 A. Government benefits. You mean, like my
15 South Carolina state retirement check?

16 Q. Welfare, food stamps, stuff like that.

17 A. No.

18 Q. Okay. Let's move on to why we are
19 here. If you would like to -- so this is a bunch
20 of exhibits. You want to go to Plaintiff's Exhibit
21 8.

22 MR. TOPOREK: Are you looking at this?

23 MR. KEYS: Yes.

24 MR. TOPOREK: He wants you to go to
25 number 8.

1 THE WITNESS: Okay.

2 (PLF. EXH. 8, PLEADINGS EXCERPTS, was
3 marked for identification.)

4 BY MR. KEYS:

5 Q. So these are excerpts of the pleadings
6 in the probate matter.

7 A. And which one are you referring to? We
8 have had several here.

9 Q. Well, just that action.

10 MR. TOPOREK: He is looking at this
11 document right here.

12 I assume you are looking at this
13 document and the documents behind it that comprise
14 his number 8.

15 THE WITNESS: Okay.

16 BY MR. KEYS:

17 Q. If you flip to page 3 --

18 A. Are you starting with the emergency
19 hearing or are you starting with the dismissal
20 hearing?

21 Q. We'll go through a number of them.

22 A. Okay. Thank you.

23 MR. TOPOREK: Patricia.

24 Excuse me.

25 This is not your opportunity to ask

1 questions. This is his opportunity to ask
2 questions.

3 THE WITNESS: I'm sorry. I thought I
4 was supposed to clarify. Okay.

5 BY MR. KEYS:

6 Q. Flip it back one, if you would, please,
7 Patricia.

8 So this is the Petition For Protective
9 Order and Appointment of a Conservator filed in
10 2014, GC-10, case number 209, I believe, and it was
11 filed on December 22nd, 2014 in the Charleston
12 County Probate Court by your sister, Muriel Clarkin
13 Kennedy.

14 We go to page 3, under number 7, your
15 sister has written some different stuff here. She
16 says: While Mrs. Clarkin has throughout her life
17 been generous financially with her children, she is
18 now vulnerable and easily manipulated.

19 Mrs. Clarkin's daughter, Patricia C. Smith, has
20 taken Mrs. Clarkin to the bank in an effort to
21 obtain funds. She has requested an equity loan on
22 her home be paid off with Mrs. Clarkin's funds and
23 has been the recipient of monies to make repairs
24 for her home from Ms. Clarkin, though no repairs
25 have been made.

1 As to the beginning here, can you tell
2 me what she is talking about when she says that
3 you've taken your mother to the bank to get funds
4 from her?

5 MR. TOPOREK: Object to the form of the
6 question.

7 Patricia, we don't have any judge here
8 that can rule on objections. His latitude today is
9 very, very broad into what he can ask you.

10 THE WITNESS: All right.

11 MR. TOPOREK: All I can do is object.

12 THE WITNESS: Okay. Can you repeat the
13 question?

14 MR. TOPOREK: When I object to the form
15 of a question, it doesn't mean you don't answer.
16 You do answer. We don't have a judge here to tell
17 us whether it's appropriate.

18 So subject to my objection, either you
19 can repeat it or ask the court reporter to repeat
20 it.

21 BY MR. KEYS:

22 Q. I'll repeat the question for you,
23 Patricia. What would you like me to call you, by
24 the way?

25 A. My name is Patricia.

1 Q. Okay. So your sister alleged that you
2 took your mother to the bank to obtain funds. Do
3 you have anything you want to say about that? Do
4 you recall that ever happening?

5 A. More than once.

6 Q. Okay. Why is she making this
7 allegation, saying that you are taking advantage of
8 your mother?

9 MR. TOPOREK: Object to the form of the
10 question.

11 THE WITNESS: I can't speak for what my
12 sister was thinking. I disagree with this
13 terminology.

14 BY MR. KEYS:

15 Q. Okay. How would you phrase it?

16 A. Which sentence would you like me to
17 start with?

18 Q. That you had taken your mother to the
19 bank to obtain funds from her.

20 A. Yes. I can't remember the year, but
21 somewhere in the late 2000s -- no. It was
22 somewhere in the late -- somewhere around -- I'm
23 not sure of the year. But my mother loaned me
24 money to buy her favorite car. It could have been
25 right around when Daddy died. We were watching a

1 movie, and my mother told me that her favorite car
2 was a Cadillac Eldorado drop top, knew all about
3 it. So my mother loaned me \$8,800, which I paid
4 back in full with interest, and then I surprised my
5 mother. I sent the car off, the year 2013/14
6 school year, and the car was gone for eight months,
7 and I had it completely restored.

8 Q. Okay.

9 A. And even though my mother personally
10 couldn't drive it, it was designated as her Driving
11 Ms. Daisy car. And we got it back Mother's Day,
12 May 2014. And my son used it for prom, and then my
13 mother and my son and I, upon his graduation from
14 high school, we went on a vacation in it down to
15 Key Largo and then on a Bahama cruise and then back
16 home. That was one loan.

17 Q. Is there another loan that you recall?

18 A. Oh, sure. In November 2014, I was put
19 on medical leave for an undetermined amount of
20 time, expected to be a substantial amount of time,
21 two or three months or more. It was actually five
22 months, five and a half months. Went on leave
23 November 19th -- officially my first day of
24 official leave was November 19th, 2014, and my last
25 day of official leave was March 30th, 2015.

1 So my mother loaned me some money. It
2 was a gift. I told her: Mama -- because it was
3 out of the emergency fund. And in our family,
4 that's what the emergency fund is for. And I told
5 her, I said: You know, Mama -- she never knew
6 about the State Farm denial of the bathroom claim.
7 Daddy was dying back in 2010, around Christmas at
8 2010. It turned into 2011, right about the time we
9 got the letter. But y'all have the letter.

10 Anyway, I never burdened her with that,
11 with that news, so she never knew that State Farm
12 denied the bathroom claim and that I had gutted it
13 and been rebuilding it out of my own funds --

14 Q. Okay.

15 A. -- with the help of friends and then
16 with the help of professionals. So I've got those
17 receipts, if you need them. Most of them.

18 And so when Mama said this is from the
19 emergency fund, it reminded me how Daddy and she
20 felt about that: It was a gift. I said: Well,
21 Mama. It really doesn't need to be a gift. I
22 said: Now I can tell you about the State Farm
23 claim that was denied. And I did. And I showed
24 her a couple of things, the Excel spreadsheet which
25 I sent in to Kelley to get credited toward my

1 6,000.

2 And then the plumber --

3 Q. The loan was 6,000?

4 A. Well, no. That's just buying
5 materials.

6 Then the plumber, the electrician, the
7 Patten Construction. The whole thing, I've got it.
8 It's a little over twelve, \$13,000. So I've more
9 than paid Mama back on that \$6,000. We just laugh
10 about it. She said: You never told me. I said:
11 It just wasn't the time. It was Daddy dying.

12 Q. So for clarification, your mother gave
13 you 6,000 in November of '14?

14 A. My mother gave it to me. I called it a
15 loan. And then we called it even -- we called it
16 over even, is what she called it, because -- I
17 mean, you add up the spreadsheet I gave Kelley and
18 materials and equipment, and you add up the plumber
19 and the electrician and the carpenter, that -- and
20 it's still not complete. The interior is still not
21 finished. I had to demolish not just the
22 five-by-eight bathroom, but into about three, four
23 feet of the adjoining room.

24 Q. This is 602 Atlantic you are speaking
25 of?

1 A. Yes.

2 Q. When did these repairs begin?

3 A. Oh, they didn't begin -- see, Daddy --
4 I would have to look at the spreadsheet to see when
5 we really started buying a lot of stuff. But I
6 would say easily -- I would have to look at the
7 spreadsheet to give you a firm answer. But Daddy
8 died December 21st, 2011. I stayed with Mama week
9 nights for 18 months, all weeknights for 18 months,
10 except five. So a lot of repairs were seriously
11 done during 2012 and '13. Because I was doing this
12 out of pocket. There wasn't a loan. I never even
13 told Mama the claim was denied.

14 Q. Okay.

15 A. And so it was -- the bathroom was built
16 in. The interior needs to be done, but the guts of
17 it, it was rebuilt. We are talking completely
18 demolished.

19 And so by June, on the weekends, I
20 didn't necessarily stay there. Sometimes, but not
21 necessarily. It was more like camping. And so by
22 June it was ready. Well, it was ready about April.
23 Mama started coming over. She started making the
24 transition of not just going to Michael's on the
25 weekend, but coming to spend time with me, dinner,

1 watch TV, and then we converted my son's room into
2 her room, and she started spending the night. She
3 always spent the night on Thursday nights. Mostly
4 on Wednesday and then, depending on whether she and
5 Muriel got in a fight, which was usually every
6 week, every other week, then she would come more.

7 Q. Let's dial back into this a little bit.

8 A. Okay.

9 Q. You said your mother gave you \$6,000 in
10 November of 2014 from medical leave; is that
11 correct?

12 A. She -- no. I was on medical leave.
13 She gave it to me out of the family emergency
14 savings account. I have an emergency fund for the
15 family. I can't speak for the other children.
16 They treated us separate but equal. But I've
17 always had one since graduate school that's built
18 up over the years. I've only used it once, and it
19 was in this situation.

20 Q. And it was a loan for you while you
21 were out with your sick leave?

22 A. Well, Mama said it was a gift, but then
23 once I showed her all I spent on the bathroom, I
24 told her -- I said: We can call this a loan and
25 call it even. And she said: Well, you spent more

1 on the bathroom than \$6,000. We just laughed it
2 off.

3 Q. Okay. Going back to this page 3, your
4 sister alleges that you were supposed to pay your
5 mother rent in the amount of \$600 per month.

6 A. Starting when?

7 Q. Did you ever pay your mother rent?

8 A. No. Did I give my mother money all the
9 time? Absolutely.

10 Q. Okay. How much?

11 A. She was my mother.

12 Q. How much did you give your mother money
13 all the time? Was it a regular amount?

14 A. The same amount every month? No. Just
15 the opposite. When things were going well raising
16 Little John, from the time -- now, we are talking
17 from the time I didn't have a mortgage payment. I
18 sold -- okay. So --

19 Q. When are we talking about?

20 A. We're talking -- I brought it for you.
21 I have that deed, the closing deed.

22 Q. A year?

23 A. No. No. No. I was married. I am
24 married.

25 Q. When about are we speaking of?

1 A. We are speaking of when I finished the
2 -- when I sold John the townhouse and I didn't have
3 a mortgage payment --

4 Q. I don't know what year that is,
5 Patricia.

6 A. It's -- I've got it for you. It's July
7 2012.

8 Q. Okay.

9 A. And the reason we did it is because the
10 HELOC was supposed to be paid off, and in good
11 faith I did it with John, not even checking to see
12 if the HELOC had been paid off. And then turn
13 around, Mama calls Mac to get two deeds --

14 And Mac can verify that. You don't
15 have to believe me.

16 -- and we find out -- Mama finds out
17 that the HELOC has not been paid off as agreed
18 upon.

19 See, I'm retiring November 1st, 2012.
20 So I needed three months minimum to get my own loan
21 in my own name to fix up a 1952 house.

22 Q. Did you ever pay your mother any money
23 for living in the 602 Atlantic Street house?

24 A. Was the reason because I lived in the
25 602 Atlantic Street house? No. The reason was

1 because I love my mother. If I had extra money
2 after all she had done helping me raise Little
3 John? That word rent, that word was used by
4 Muriel, and it caused a little stir, and it just
5 wasn't worth it. I don't call what you call it.
6 Call it rent. Call it love. Call it gift. Call
7 it debt repayment. I don't care what you call it.
8 Because depending -- there were times like -- let's
9 see. When I got -- John -- here is a good example.
10 When John broke his ankle in eighth grade, he was
11 out --

12 Q. This is your son, John?

13 A. My son, John. He was out of school
14 well over a semester. That was extremely
15 expensive.

16 Q. In the early 2000s?

17 A. No. John graduated high school -- this
18 was, like, 2010, '11, when he broke his ankle.
19 Somewhere in there. Late eighth grade.

20 And so of course Mama and Daddy helped
21 me out. I mean, I had to keep going to work. I
22 had to teach. Big John stayed home. He was a
23 stay-at-home dad. It was a serious injury.

24 Q. Did you give your mother money on a
25 monthly basis?

1 A. No. Because sometimes she loaned me
2 money to help me out.

3 Q. Okay.

4 A. Example, 2000 -- let's see, spring
5 2014, I went out on FMLA leave for 12 weeks. And
6 that was a terrible time to go out because it was
7 right during contract time -- because it was right
8 during teacher contract time.

9 Q. Okay.

10 A. And so Deena McCracken (phonetic)
11 helped me make sure -- she was behind the scenes,
12 making sure that my due process rights were
13 honored, and I received a contract. FMLA was put
14 in place, and everything was fine.

15 Q. Okay. So your mother loaned you money
16 for that?

17 A. No. I used to give her money every
18 month, like whatever I could. Usually at least --
19 now, not just money. Sometimes I gave it in the
20 form of items, tangible items, and sometimes it was
21 in the form of pleasure, like the vacation in 2014.
22 Okay? Sometimes it was going out to movies, going
23 out to restaurants, but if I could spoil my Mama
24 back, absolutely. But I would say the majority of
25 it was cash.

1 Because Daddy died, see, and her income
2 got cut. Now, Muriel had me thinking it was cut
3 way worse than it really was. I discovered later
4 that it wasn't near what Muriel had me thinking.
5 Muriel had me thinking Mama was next to a pauper
6 when it came to disposable income on a monthly
7 basis. Now, that's separate from investments and
8 funds that you don't want to touch. This is just
9 net income versus what's going out. Muriel had me
10 thinking Mama was in the negative or close to the
11 negative.

12 But regardless, even if Mama had -- was
13 a millionaire, I still would have done little
14 things for her. Always have. My very first job I
15 was 19, first thing I did waiting tables was I
16 bought her a pair of 20-inch \$700 pearls from
17 LeRoy's on King Street.

18 Q. So when you regularly gave her cash,
19 about how much would you --

20 A. I didn't start it until probably August
21 or September. I don't recall exactly which month,
22 but it would have been after I sold the townhouse.

23 Q. August or September of what year?

24 A. 2012.

25 Q. Okay.

1 A. And, I mean, because in the beginning,
2 Muriel and I got along just fine with it. You got
3 the text. You saw it.

4 Q. About how much would you give her when
5 you gave her that?

6 A. Well, it depended. All right? So if
7 we went -- I would say starting off, between social
8 and tangible goods and money, it would have all
9 equalled about 450. And then I recertified,
10 national board certified teacher, the second time,
11 so I got my state -- I was grandfathered in, so I
12 got my state stipend from the legislative, state
13 stipend, and that net was about 5,000.

14 Q. When was that?

15 A. When I recertified?

16 Q. When you received your stipend.

17 A. I received it since 2001.

18 Q. Okay.

19 A. I'm not working now, so I'm not
20 receiving it, but I'm still certified through 2021.

21 Now, the purpose of giving Mama money
22 had multiple meanings. It wasn't just an I love
23 you. It was to make sure before -- it was to make
24 sure -- I always gave Mama a little bit here and
25 there, but it was to make sure we got the insurance

1 and the -- what do you call it -- homeowners
2 insurance and the property taxes paid. It
3 definitely -- she got that every year --

4 Q. Okay.

5 A. -- except for when I had the mortgage.
6 But she got -- that's when we had Little John
7 raising up. So no. She didn't get that much then.
8 Just little tiny things. That was usually more in
9 the form of presents.

10 Q. But sometimes there were vacations?

11 A. Yes. Well, but then -- from the time
12 Daddy died, six months later, when the HELOC was
13 supposed to be settled -- it was all planned for
14 years, since 2008. This is not a secret anywhere.
15 So Big John and I got a legal separation. I gave
16 him the townhouse for what I owed on it. And it
17 was worth way over 100,000 more. But that was our
18 deal. I have no problem with that. He is a good
19 father, and we raised Johnny good together. So
20 that's it.

21 Q. Were you reimbursed for those vacation
22 expenses in 2014?

23 A. That was the whole purpose, was to
24 spoil her. No.

25 Q. You were not --

1 A. I don't think she spent a dollar of her
2 own money. Maybe a little bit when she played
3 poker on the boat.

4 Q. Did Family Services reimburse you for
5 any vacations? This is 2014 you are talking about,
6 or later?

7 A. I'm talking about June. My son's high
8 school graduation when we took -- when we took the
9 restored Cadillac Eldorado convertible to Key
10 Largo, we stayed at the Hilton a couple of nights
11 and we went on a Bahama cruise. I've got a picture
12 of Mama parasailing, went snorkeling, playing with
13 the dolphins, and something else.

14 Q. So that was 2015?

15 A. No. My son graduated June -- the first
16 week of June 2014.

17 Q. Okay.

18 A. Let's see. Well, last year I took her
19 to Father's Day and Mother's Day and paid for that.
20 But that was food. She didn't have the funds.
21 Then March 2015, my son graduated from boot camp,
22 and Mama did pay -- Kelley gave me her cost for the
23 airline ticket, hotel room, all but one night. One
24 night I did. Just because I miscommunicated the
25 expenses to Kelley. And it was -- because we did

one night at the Marriott. I don't remember what Kelley gave me straight off. But Kelley gave me Marriott, a little bit toward the rental car, and the airline ticket. Kelley didn't give Mama much spending allowance. I bought Mama a watch at the mall.

Q. Okay.

A. And I paid for most of the meals, if not all. I don't recall. But we made it special because it was my son's boot camp graduation.

Q. All right. So if we flip --

A. I can't ask Kelley. Never mind.

But, anyway, there is a breakdown of the expenses on a sheet. I don't have it with me. You may have it. It lists exactly -- it is what she had to turn in to the judge, with the attachments of my reservation or Visa receipts, or whatever I gave Kelley that she asked for. There were e-mails that went back and forth and back and forth and back and forth with attachments. But what she submitted to the judge to approve because it was over \$500, that was exactly what Mama paid for.

Q. Okay.

A. And I can't say how much spending money

1 she went with because I didn't care about that
2 anyway, but it wasn't much.

3 Q. If you flip to the next pleading, it's
4 titled the Emergency Petition For Appointment of
5 Temporary Conservator, filed on December 22nd, 2014
6 in the probate court.

7 MR. TOPOREK: Is that number 9?

8 MR. KEYS: It says nine on the bottom
9 of the page.

10 THE WITNESS: Right. Are we
11 finished --

12 MR. KEYS: No. We are still in the
13 Exhibit 8.

14 MR. TOPOREK: Still in Exhibit 8. I'm
15 sorry.

16 THE WITNESS: I told -- which part did
17 you want me to disagree with? There is plenty to
18 disagree with still.

19 BY MR. KEYS:

20 Q. Well, let's move on from that one and
21 go to the next one.

22 A. Okay.

23 Q. You got the Emergency Petition For
24 Appointment of Temporary Conservator?

25 A. Is this it?

1 Q. This one.

2 MR. TOPOREK: Which page is that? No.
3 That's not it. This is page --

4 THE WITNESS: Still between eight and
5 nine tabs?

6 MR. TOPOREK: You are getting there. I
7 think this is it. Right?

8 MR. KEYS: It should be the next
9 pleading after that first one.

10 MR. TOPOREK: It says Emergency
11 Petition For Appointment.

12 THE WITNESS: This is what Muriel filed
13 behind everybody's back?

14 MR. TOPOREK: Just answer the question.
15 He asked you to find the document.

16 THE WITNESS: I found the document. I
17 hadn't seen it in a long time.

18 BY MR. KEYS:

19 Q. Paragraph 3 talks about a power of
20 attorney, dated December 8th, 2014, giving you and
21 Muriel power of attorney over your mother. Can you
22 tell me about that power of attorney?

23 A. This was dual power of attorney. The
24 one in 2013 was Muriel primary and me secondary.
25 And then the one -- the first one that Muriel

1 became power of attorney was right around 2007 or
2 '08.

3 Q. I'm just asking about this one right
4 now.

5 A. Okay.

6 Q. December 8th, 2014.

7 A. That was dual power of attorney.

8 Q. Okay. Who drafted that power of
9 attorney?

10 A. Jocelyn Bolin.

11 Q. Okay. Who contacted Ms. Bolin?

12 A. I didn't -- I did.

13 Q. Okay.

14 A. Because she was already doing work for
15 me at the time.

16 Q. What was she doing for you?

17 A. She did estate planning work for me.
18 She did a living trust and a few others, health
19 power of attorney, blah, blah, blah.

20 Q. Did she meet with your mother?

21 A. She did. Not alone. Well, I don't
22 remember. She might have been alone for a while
23 with us in the other room or me in the other room.
24 I really don't recall whether she was alone.

25 Q. Who drove to meet with Ms. Bolin?

1 A. Mama and I.

2 Q. Okay. Who paid Ms. Bolin to draft the
3 power of attorney?

4 A. Well, I loaned Mama the money on that
5 one. I had submitted a receipt to Kelley, more
6 than once. \$825 that was due me.

7 Ms. Bolin also represented Mama when
8 the police surrounded my house on December 23rd to
9 tell her she was a temporary ward of the state.
10 Ms. Bolin came within 18 minutes and stayed three
11 to five hours, easily.

12 Q. Okay.

13 A. And I have never been reimbursed. But
14 Ms. Bolin represented Mama. Not Mama and me. Not
15 me. Mama. I paid it, but I didn't pay it right
16 away. She invoiced it. But Kelley never would
17 give me the form to reimburse it.

18 Q. So Ms. Bolin did not represent you with
19 regard to this power of attorney?

20 A. Well, what do you mean represent me?
21 It was Mama's dual power of attorney.

22 Q. But you did pay for it?

23 A. No. I loaned my mother the money to
24 pay for it because she was mentally incapacitated
25 by the time the invoice came in.

1 Q. When was that?

2 A. I gave it to Kelley. I've got a copy
3 of it, I think.

4 Q. What do you mean --

5 A. \$825 --

6 Q. What do you mean --

7 A. -- was outstanding. And I paid on
8 it --

9 Q. Okay.

10 A. -- on behalf of my mother. Kelley
11 never would answer me on it. She didn't answer me.
12 She didn't send a reimbursement form. She ignored
13 it. You want a copy of it? I've got it.

14 Q. We can get to that later.

15 What do you mean when you say your
16 mother was mentally incapacitated when the invoice
17 came in?

18 A. Did I say my mother was mentally
19 incapacitated when the invoice came in?

20 Q. You did.

21 A. Okay. Mama wasn't ruled mentally
22 incapacitated until Dr. Mulbury -- and it wasn't --
23 I've never understood mentally incapacitated and
24 mild neurocognitive impairment meant the same
25 thing. I know -- so I misspoke. I scratch that.

1 So I totally misspoke.

2 Q. Okay.

3 A. When Mama became a temporary ward of
4 the state through the emergency hearing, Ms. Bolin
5 had done a dual power of attorney I think December
6 8th. But I'm going off the top of my head. It's
7 on the form Ms. Evans has. And then also on
8 December 23rd when the police surrounded my house
9 to tell Mama she was a temporary ward of the state,
10 Ms. Bolin came and represented Mama, my mother.
11 And so, of course, my mother is now a temporary
12 ward of the state. So when Ms. Bolin sent her
13 invoice, I paid it. You don't owe people. I paid
14 it. But then I sent it on to Kelley once she was
15 appointed.

16 Because there was this window where --
17 the police surrounded the house on December 23rd,
18 and we didn't hear who the conservator was because
19 it was going to be an attorney and then if not the
20 attorney then Family Services. So I wasn't sure
21 which one Judge Curry -- she had put him in
22 priority. It was an attorney was her first choice,
23 and then it was Family -- we got a letter saying
24 Family Services, introducing themselves.

25 Q. Okay. Let's flip to page 2, paragraph

1 5.

2 A. Okay.

3 Q. So herein your sister alleges on April
4 25th, 2014, Patricia Clarkin received 15,000 from
5 the equity line on 602 Atlantic. This is the
6 HELOC, correct?

7 A. I had to. We weren't keeping the
8 homeowners insurance. And Bridget still had not
9 settled the HELOC, and Muriel is guarantor of the
10 HELOC, and Muriel refused to honor her word to our
11 mother and settle the loan on behalf of her
12 daughter. That was the entire point of her getting
13 Goat Island, was to be able to mortgage it so she
14 could pay the HELOC.

15 Q. What was the purpose of your \$15,000
16 fund you received from the HELOC?

17 A. Home repairs, so that we could keep
18 homeowners insurance because hazard insurance was
19 required by the HELOC terms.

20 Q. Okay.

21 A. You'll see that there is a point there
22 that we didn't have hazard insurance. It's in
23 Mama's notes from her meeting with the bank.

24 Q. Okay. So what needed to be done?

25 A. Mostly -- the biggest thing -- several

1 things needed to be done, but the most costly was a
2 complete re-roof.

3 Q. Okay.

4 A. Complete new roof. It's a 1952 house
5 so they had to do some structural work, too.

6 Q. Did a new roof go on?

7 A. Sure.

8 Q. When did the new roof go on?

9 A. It was going on -- I'm not sure what
10 date they finished, I can't off the top of my head,
11 but it was going on when my loan was supposed to
12 close to pay off the HELOC, to pay off all the
13 debt. And that was April 8th, and they were
14 wrapping it up at my house, but my loan didn't
15 close because Family Services never sent the payoff
16 statement.

17 Q. What year are we talking about?

18 A. We are talking spring 2015. I got the
19 money in 2014, spring, and then Patten Contracting,
20 I have his letter where he wrote me saying he was
21 having surgery and asked if we could delay. So we
22 delayed. And then I got sick in November. Mama
23 gave me the other half --

24 Q. 2015 or 2014?

25 A. I got sick -- November 19th was my

1 first day on leave 2014. Patten -- I got the money
2 on April 25th. Because I opened a checking account
3 at Wells Fargo.

4 Q. Okay.

5 A. All right. I got the 15,000 to do home
6 repairs, which was very frustrating that I still
7 wasn't able to get my home loan. And then Patten
8 had hand surgery, and then I went on medical leave
9 November 19th, 2014, and then they started the
10 repairs after Christmas. Sometime in winter.

11 Q. Okay.

12 A. And the exact start date I'm not sure
13 of. They -- I had approval for my loan. I have
14 the document for you. When Mama gave me the second
15 half of Atlantic Street, and Mama called in the
16 loan from Wells Fargo, and said call it in, I want
17 the payoff statement, which -- I think you have a
18 copy of the payoff statement. If you don't, I have
19 a copy right here. Right here.

20 Q. Okay.

21 A. So the day Mama gave me the second part
22 of 602 Atlantic Street is the same day I went and
23 started the home loan application. And I was first
24 approved for 160,000. And I waited until after
25 Christmas, chewed on it a little bit to see what

1 was going on -- because this happened December 22nd
2 -- and I upped it to 200,000. Because the judge
3 said sisterly strife is a big source that -- Renee
4 Newman reported in the dismissal hearing, if you go
5 read the transcript, was sisterly strife, the
6 HELOC, and it was a huge source of contention.

7 My son was a senior in high school. He
8 was already taking college courses. And then here
9 I am with a 1952 house. I'm teaching two years
10 after I retired. Still teaching. I'm supposed to
11 be home with my mom. That is the plan I made with
12 my father and Muriel and Charlie. We all were on
13 the same page.

14 Q. Let's get back -- it was completed, it
15 sounds like, the spring of 2015?

16 A. It was completed -- I remember it was
17 completed a few days after April 8 because I came
18 home crying that I had gone to the bank to the
19 closing and they didn't have a payoff statement.
20 Which only takes a week or two to get, but it took
21 us a couple of months to get, and we didn't even
22 get it in time. The loan application period closed
23 on June 25th. I have this. I have the statement
24 from Heritage Trust Federal Credit Union saying the
25 only reason they couldn't close the loan and hold

1 off anymore was lack of payoff statement.

2 Q. Okay. How much did the roof cost?

3 A. Well, I spent the whole 15. I spent
4 way more than 15. To itemize it out off the top of
5 my head, I can't do that. I can look up the Patten
6 Contracting invoices for you and give them to you.

7 Q. Okay.

8 A. But I don't have them off the top of my
9 head. I don't have them, like, at my fingertips.
10 They are probably dead-filed in the attic with the
11 files.

12 Q. You repaid the 15,000 you owed on the
13 HELOC, correct?

14 A. You wouldn't know that from the August
15 8th letter, but yes, I did. August 8, 2018. 2017,
16 when Kelley said both Patricia and Bridget have
17 received funds, that made it sound like I -- first
18 you made it sound like I had a lot of funds.

19 Second, it made it sound like it was outstanding,
20 when, in fact, I paid mine off in March 2017, which
21 means I paid it off in under three years, with
22 interest.

23 Q. Okay.

24 A. And if you do the calculations, I paid
25 a lot of extra interest, but they didn't count it

1 in the payments I made prior to Family Services
2 taking over. I made two \$207 payments, and then
3 another big payment. That wasn't ever factored in.
4 Ms. Evans would testify that I had not started
5 making my payments, when, in fact, I had made two
6 big payments and then made a third. So I paid it
7 off March 2017.

8 Q. Okay.

9 A. In full. With extra interest.

10 Q. Okay.

11 A. Which you wouldn't know if you read the
12 August 8, 2017 letter to all about the delinquency,
13 which nobody knew about, even though it was five
14 months delinquent.

15 Q. Let's go to page 3, the next page, if
16 you flip over.

17 A. Page 3?

18 Q. Paragraph 10.

19 A. Okay.

20 Q. It says: In December 2014, Wells Fargo
21 Bank alerted the Petitioner that her mother was in
22 the bank with Patricia Clarkin Smith and bank
23 personnel were concerned about the requests being
24 made by Ms. Smith for information about Muriel
25 Clarkin's account.

1 A. This is an allegation by Muriel,
2 correct, or do you have facts from Wells Fargo?

3 Q. This is an allegation by your sister.

4 A. Okay. Well, then, you need to check
5 Wells Fargo's facts.

6 MR. TOPOREK: Just read the thing and
7 answer.

8 THE WITNESS: I answered it. It's not
9 -- I mean, it's silly. That's when Mama called --
10 you got the paperwork. That's when Mama and I went
11 to the bank. I drove Mama, and she called in her
12 loan. That was -- and she went back to the bank
13 more than once. Mama went to the bank a few times
14 in November and December because -- the amount of
15 money that was sitting in her savings and checking
16 was ridiculous compared to what it was in 2012.

17 BY MR. KEYS:

18 Q. Okay.

19 A. And then you've got her handwritten
20 note. She wanted to know what would happen with
21 the HELOC not being settled if she died. And I had
22 30 days. And then she wanted to know what would
23 happen if -- would my retirement salary cover it,
24 and my present credit score, which was good, but
25 no, it would not cover it. And so Mama -- that's

1 when Mama decided to force the issue. So she
2 called in the HELOC. She closed it, and she asked
3 for the payoff statement, and that's why we were at
4 the bank.

5 Now, as for Muriel's allegations, I
6 can't tell you whether the bank really reported
7 that or not. But the bank can tell you. They keep
8 meticulous notes. I love that bank. But I can
9 tell you that I never --

10 Q. Did they ask you to leave?

11 A. No. Ask me to leave? That's my bank,
12 too. No. They are wonderful.

13 Again, always refer back to their
14 records. They keep meticulous records.

15 Q. If you flip to the next petition, it's
16 entitled the Emergency Ex Parte Petition For
17 Appointment of Temporary Guardian, dated December
18 22nd, 2014, filed in probate court. We have --

19 A. You asked me did I seek clarification
20 from you. You have got to go back to that third
21 page, that big paragraph.

22 Q. You should seek clarification from me
23 if you don't understand a question.

24 A. Okay. Because you had told me that we
25 were going to cover all of that paragraph, but we

1 only covered two things in that paragraph. There
2 is, like, three more that are false.

3 Q. Okay. Well --

4 A. Okay. So we're on the Emergency Ex
5 Parte Petition, page 1.

6 Q. Yes. If you flip to page 2 of the
7 Emergency Ex Parte Petition For Temporary Guardian,
8 it talks about December 16th. We're in this
9 November/December 2014 time period.

10 Muriel Clarkin was with her daughter
11 Patricia Clarkin Smith. Muriel W. Clarkin had an
12 appointment at the Alzheimer's Research Center and
13 was to be transported to that appointment by your
14 sister. Patricia Clarkin insisted on attending the
15 appointment and was so loud and obnoxious that the
16 physician's office called security.

17 A. Do you have evidence of that?

18 Q. I'm asking for your opinion on the
19 matter.

20 A. My opinion of the matter is that either
21 there is -- either -- the hospital will be able to
22 show that security was called. But as I remember
23 it, I walked in, they were already -- as I remember
24 starting in the beginning, Mama did not want to go
25 to that appointment. She wanted to reschedule

1 until after Christmas. We were having fun at my
2 house. It was the holiday season. We were
3 wrapping presents. We were baking. We were having
4 a good time. She did not want to go, and Muriel
5 had the police call me and say that she had to go.

6 Q. Okay.

7 A. All right? And I thought that was
8 weird. But then Mama agreed to go. So she goes,
9 and she is huffing and puffing, and it's not a
10 comfortable situation, and she asked me to go with
11 her. But Muriel wouldn't tell me where exactly
12 it's located out of all of Roper. So no problem.
13 Let them go on their way. It's easy enough to call
14 information and find out where Dr. Menser's memory
15 loss study is.

16 And so I had the dual power of attorney
17 anyway, which I tried to give to Muriel before she
18 and Mama pulled off. Muriel is all huffy and
19 puffy. So when I walked in, I gave Muriel her
20 copy, showed her what it was, and then I went to
21 the window, and they told me that they needed to
22 check -- to wait.

23 And it seemed like forever to wait.
24 But I didn't know where Mama was and I didn't know
25 where Muriel was. But wherever I was, they came in

1 a couple of times to see if I wanted anything to
2 drink. But they told me that ultimately this was a
3 dual power of attorney. Muriel was still health
4 power of attorney. But they were going to cancel
5 the appointment for that day due to my mother's
6 upset. I told you she didn't even want to go to
7 the appointment, much less have the police call
8 saying she had to go. And then she didn't even
9 want to go anymore. She did it voluntarily for
10 fun. And she didn't want to go for a long time.
11 That was a big fight she and Muriel had ongoing.
12 Mama is a little scared of Muriel. We know that.
13 That's in the record. So no, I was never aware
14 that security was called. Never.

15 Q. Okay.

16 A. Never. All I know is when we left,
17 Muriel wanted Mama to ride home with her. I was
18 heading to Dr. DeHaven. I had a standard
19 appointment on the book.

20 Q. Okay.

21 A. And Mama told Muriel she wanted to go
22 with me to Dr. DeHaven, which made sense. Mama
23 went with me to Dr. DeHaven in November.

24 Q. Okay.

25 A. Mama has been with me to Dr. DeHaven

1 before. So I can see where Mama wanted to go.

2 Because that's -- that's the reason Mama went.

3 And so no, I was not aware security had
4 been called. I was aware that the appointment had
5 been canceled.

6 Q. Okay. Let's skip --

7 A. And that Muriel was health power of
8 attorney, which trumps dual power of attorney.

9 Q. So the next pleading after this one is
10 your Amended Petition to Dismiss. So flip over to
11 that. It's two pages.

12 A. Okay. So I can't ask you a question.
13 That's right. Okay.

14 So this is what Muriel alleged that I
15 just got finished talking about. Whether or not
16 you have --

17 Q. It's your sister's allegation.

18 A. Whether or not you have Roper's report,
19 I don't know. Okay.

20 Q. Flip over to your Petition to Dismiss.

21 MR. TOPOREK: You have it?

22 THE WITNESS: Are we on nine or keep
23 going?

24 BY MR. KEYS:

25 Q. We're still on 8.

1 A. Okay.

2 Q. These are all the probate pleadings.
3 Flip over that. We are trying to get to the Ex
4 Parte Order Appointing a Temporary Guardian, dated
5 12/22/14.

6 MR. TOPOREK: Do you want to go --

7 MR. KEYS: You've gone past her
8 petition, and then there is an Order Appointing
9 Temporary --

10 MR. TOPOREK: Let me find it for you.

11 THE WITNESS: Yes. Thank you.

12 BY MR. KEYS:

13 Q. We are still on 8. The fifth pleading,
14 basically.

15 A. That's the one she signed after the
16 March 19th hearing, right?

17 Q. Ex parte order.

18 MR. TOPOREK: Order Appointing Limited
19 Guardian. That's not it?

20 MR. KEYS: Temporary guardian, 12/22?

21 THE WITNESS: You are back to when
22 Muriel was appointed? We didn't know about that
23 until the police surrounded the house.

24 MR. TOPOREK: Patricia, answer the
25 questions as they come up.

1 THE WITNESS: Okay.

2 MR. KEYS: You have gone a little
3 farther. On the side it's got 12/22.

4 MR. TOPOREK: Order Appointing
5 Temporary Conservator. There is January. That's
6 mine.

7 MR. KEYS: All right. Now you have
8 gone too far. The other way.

9 MR. TOPOREK: This way?

10 MR. KEYS: Right past yours is the
11 temporary conservator. Past that one is the ex
12 parte order appointing the temporary guardian.

13 THE WITNESS: March? Are you talking
14 about that one?

15 MR. KEYS: 12/22.

16 MR. TOPOREK: 12/22. So this must not
17 be in order.

18 MR. KEYS: Do you want me to look at
19 it?

20 MR. TOPOREK: Please.

21 THE WITNESS: Thank you.

22 MR. TOPOREK: Sorry about that.

23 MR. KEYS: No problem.

24 MR. TOPOREK: Ex Parte Order Appointing
25 a Temporary Guardian. All right.

1 THE WITNESS: You are right. I don't
2 know if I raise my hand, or what. But do we go to
3 a point where you ask me if I have anything I want
4 to add to any of these questions?

5 BY MR. KEYS:

6 Q. I might ask you if you want to correct
7 anything.

8 A. Okay. If I want to correct anything.
9 I've definitely got something I want to correct.

10 Q. What did you say that you want to
11 correct?

12 A. Rent.

13 Q. Okay.

14 A. Look at Mama's tax returns. There is
15 no income stated on her tax returns, 2012, '13,
16 '14, '15, and there is no loss of rent stated on
17 her tax returns.

18 Q. Okay.

19 A. So there is no rent.

20 Q. Okay.

21 A. Per legal rent, tenant/landlord
22 relationship.

23 Q. Is there a distinction between legal
24 rent and rent --

25 A. There is a distinction between

1 tenant/landlord relationship where you are charged
2 rent and you have either a verbal or a nonverbal
3 binding lease, and I didn't have that. And there
4 was no rent because Mama didn't declare income from
5 rent, and Mama didn't declare loss of income from
6 rent. Therefore, there is no rent. That solves
7 that.

8 Q. Let's go back to this ex parte order
9 appointing the temporary guardian.

10 A. Okay.

11 Q. If you go to the second page where it
12 says: Based on the above findings, it is hereby
13 ordered as follows.

14 A. Okay.

15 Q. First paragraph says: Muriel Clarkin
16 is adjudged to be an incapacitated person, as
17 defined by South Carolina Probate Code 62-5-101,
18 Section 1.

19 The order is dated December 22nd, 2014.
20 When were you aware that, as you said, your mother
21 had been declared a ward of the state?

22 A. I was not aware of the term
23 incapacitated at all.

24 Q. Okay.

25 A. When the police surrounded my house on

1 December 23rd, they did not show me that two-page
2 document. I didn't even know --

3 Q. This document?

4 A. Well, no. This isn't the order they
5 showed Mama, is it? It's a two-page document.

6 Q. It's an order dated December 22nd --

7 A. Two pages. It was a two-page document.

8 No. I sat right there. I was quiet.
9 I didn't say a word. And only a couple of
10 policemen came in. And he sat down on the sofa and
11 just talked quietly to Mama. But as he came in and
12 stood and explained, my Mama looked up and said:
13 You mean I've lost my freedom? And then he
14 explained it. But he told Mama she was a temporary
15 ward of the state, and it wasn't until they had
16 been talking quite a while that he mentioned that
17 Muriel was the guardian, temporary.

18 And here is my living room. There is
19 the front door. Here is the sofa along this wall,
20 chair, chair. Here is the front door, sofa,
21 policeman, Mama. So if you open the front door,
22 you can see out this way. And here is my chair.

23 Q. When you were gesturing, she can't --
24 you have to use words.

25 A. Okay. I'm sorry.

1 Q. That's okay.

2 A. Okay.

3 Q. What time did the police come on
4 December 23rd?

5 A. Somewhere between one and 1:30. I'm
6 not exactly sure of the time.

7 Q. It was the afternoon?

8 A. Early afternoon.

9 Q. Okay.

10 A. Because they stayed close to three
11 hours, and I barely made it to the bank to get the
12 \$10,000 because I had to activate my card. All
13 these years of having money and blank checks signed
14 and deposit slips and then the credit card, I have
15 never activated the credit card.

16 Q. Okay. So your mother -- the police
17 came and showed your mother this temporary order,
18 dated 12/22/2014, which says that your mother was
19 declared incapacitated.

20 A. I believe you, but I didn't know it
21 that day.

22 Q. Okay. But they told her she was a ward
23 of the state.

24 A. Temporary. Temporary.

25 Q. And you were present.

1 A. And Jocelyn Bolin was her attorney --

2 Q. Okay.

3 A. -- on record that day.

4 Q. And then you went to the bank?

5 A. Not until everybody cleared out. I
6 didn't even know the street had been blocked off
7 until he -- the policeman made his decision and
8 explained to Mama that it was his decision that --
9 he was talking to Mama so I really didn't hear it
10 all. Because my sofa is on the adjacent wall to
11 the door, and Ms. Bolin had pulled up a dining room
12 chair next to Mama. So they were together on the
13 same plane. But I didn't quite hear it. But I did
14 understand enough that he was leaving Mama where
15 she was because Mama said -- he said: Ms. Clarkin,
16 it's clear you want to stay with your daughter,
17 Patricia.

18 And so then him making his decision and
19 explaining to Mama and then making the details
20 between the two of them, which I didn't catch all
21 of them, but Jocelyn Bolin did, he opened the door
22 to call whoever to the door. And when he opened
23 the door, I didn't see it right away, Mama saw it,
24 and she said: That's my daughter Muriel standing
25 on the sidewalk by the stop sign. And got up, and

1 he said: Ms. Clarkin, I need you to stay in the
2 house. And she said: I'm going outside. I'll
3 stand on the porch, but I'm going outside to face
4 my daughter Muriel. And she went out on the porch,
5 and just looked at her, as calm as can be. Mama was
6 so strong, and said in a very strong voice, no
7 tears: Muriel, how could you? How could you? And
8 then turned around and walked back in.

9 Q. Okay.

10 A. And that's when we saw fire trucks,
11 EMS. That's when I found out the street was
12 blocked off. I was mortified. I am a teacher
13 three blocks away, four blocks away. That didn't
14 last long, obviously.

15 Q. So did your mother stay at 602 Atlantic
16 after the police left?

17 A. Yes. With Jocelyn Bolin, her attorney.
18 And I left to go to the bank.

19 Well, first I had to get the card, and
20 then I went to the bank.

21 Q. So you went to the bank alone?

22 A. Yes.

23 Q. Okay.

24 A. No. Well, I went inside the bank
25 alone. Barbara Deal (phonetic), my dear friend,

1 met me at the bank.

2 Q. Okay. Did you tell your mother you
3 were taking \$10,000 out of the credit card account?

4 A. Did I say specifically, Mama, I'm going
5 to get \$10,000 out of the credit card account?

6 There was no need. I was already -- I understood
7 my instructions of what to do for an emergency --
8 during an emergency. I understood all the assets
9 that had been entrusted to me and under which
10 conditions to do what. I mean, I've had an
11 emergency fund given -- entrusted to me, a family
12 emergency fund, not a Patricia emergency fund for
13 John and Patricia, for anybody in the family. I've
14 had that entrusted to me since I graduated college
15 and started teaching. It's built up over the
16 years.

17 Q. But that is not the credit card account
18 we are referring to?

19 A. Absolutely. That is exactly where the
20 credit card came. I've never activated it until
21 that day. So I told Mama -- I told my mother I was
22 going to the bank. I said: Mama, I've got to go.
23 I've got things to attend to. I said: I'm going
24 straight to the bank and talking to Jim, the bank
25 manager. I've been banking there for decades.

1 Q. This is Wells Fargo?

2 A. No. Heritage Trust Federal Credit
3 Union. It was a Wells Fargo Visa that I had to
4 activate, but it was in a safe at my friend's
5 house. I never had had to use any of my emergency
6 funds over the years.

7 So first, I looked at the clock, and I
8 ran -- I live on Coleman. Here is -- Coleman is,
9 like, less than five minutes, six minutes with
10 parking. And I called Jim, heading to him, okay,
11 and when I walked in he was waiting at the door. I
12 told him what little bit I knew. And he told me,
13 he said: I'll call over there. I said \$20,000
14 card. It's got a \$10,000 cash advance. While I
15 was at Jim's -- I took out what I had in my
16 account, a couple thousand dollars. Pretty sure.
17 Yeah. I'm pretty sure I did. Because I didn't
18 take it out of Heritage Trust. That's not on the
19 receipt. I had all the paperwork from the \$10,000.

20 Q. How much did you take out of your
21 account?

22 A. I got -- I'm pretty sure I made a
23 withdrawal. If I didn't make a withdrawal that
24 day, then I made it the next day. Because I went
25 to see Dr. Roberts. But I took -- if you go check

1 my statement, whatever was in there December 23rd
2 was not in there by the time I -- by December 29th.
3 Because when I wrote -- I had to -- I either
4 checked the balance or I made a withdrawal. I
5 don't know if I checked the balance or made a
6 withdrawal.

7 But when I wrote through the Uricchio,
8 Howe, Krell, Toporek website, I said on my memo
9 line: I have \$12,000 plus deed to 602 Atlantic
10 Street. Please help my mother. I don't understand
11 what's going on.

12 Q. Okay.

13 A. But she is a temporary ward of the
14 state. And Barry Krell called me at 5:18 Christmas
15 Day and I e-mailed him on Christmas Eve. I was
16 amazed.

17 Q. So you did not tell your mother you
18 were taking the \$10,000 out?

19 A. I told her when I got back in front of
20 Jocelyn Bolin. She can verify that. Mama, I got
21 the \$10,000. I told her I was going to the bank,
22 as I recall it. I don't recall saying I'm going to
23 go get \$10,000. Let me tell you, everybody's head
24 is spinning. All I'm sitting here thinking is do I
25 even have a teaching career anymore? Muriel

1 surrounded -- they blocked off the block. They
2 didn't just come to the house. That's my community
3 school, Moultrie Middle. I was teaching. It was a
4 nightmare.

5 Q. Did your mother tell you you could go
6 to the bank and get money to hire an attorney or
7 get money to do what?

8 A. I honestly don't remember who said
9 what, but my mother knew I was going to the bank.
10 And my mother and I knew we needed an attorney. We
11 had Jocelyn, but we knew we needed a high power
12 attorney. We didn't know what was going on. In my
13 family, you go to the -- Jocelyn is a wonderful
14 estate attorney. But in my family, if you've got a
15 broken foot, you go to the orthopedic specialist.
16 If you have a serious legal matter, you go to the
17 best, and downtown Broad Street is considered, in
18 my Mama's eyes, who grew up downtown, downtown
19 Charleston, downtown Broad Street, those are the
20 best law firms.

21 Q. So the \$10,000 you took out of the
22 credit card on 12/23 was used to retain Mr. Toporek
23 here?

24 A. I didn't know who I was going to be
25 retaining at that point. All I knew was that I

1 didn't know what was going on. My Mama was a
2 temporary ward of the state. I didn't even know
3 you could do that to your own mother, much less do
4 it behind the other siblings' back. I didn't know
5 what was going on. I knew we needed legal counsel.
6 My mother needed legal counsel. She was a
7 temporary ward of the state. She had lost her
8 freedom.

9 Q. How was the money spent, the \$10,000
10 you took out on 12/23.

11 A. I got certified checks. Once I talked
12 -- I came home, and Mama told me -- I said -- this
13 time I came back from the bank. I don't know if
14 Jocelyn was there or if this is throughout the
15 evening. But it was December 23rd, and Mama said:
16 You get me -- I want a downtown Broad Street firm.
17 And call John Clarkin and Teri, and seen who John
18 uses because I know -- I can't remember the name of
19 the firm, but John is very, very happy, and he has
20 been with them for decades, since -- my cousin John
21 -- he is a very successful businessman.

22 And so I sent John a text, and he wrote
23 back: What the hell can I do? I said: All I need
24 to know is who is your attorney, if you don't mind
25 sharing? What firm do you use? That's who Mama

1 wants to use. Who you use, she wants to use. End
2 of discussion. And he told me. So I pulled it up
3 on the website.

4 Now, I know I didn't mail it -- e-mail
5 it until Christmas -- I don't know if I -- I would
6 have to look at my e-mail. I either e-mailed it
7 the 23rd that evening or the 24th. I honestly
8 don't recall when I e-mailed it. I have a copy of
9 the e-mail. 23rd or 24th. And I addressed it to
10 Pam, because reading the website that's what it
11 looked like. But I remember that memo line: I
12 have \$12,000 plus deed to house at 602 Atlantic
13 Street. Please help my mother.

14 Q. Okay. So when did you retain
15 Mr. Toporek?

16 A. I talked to Barry Krell at 5:18 on
17 Christmas Day. He told me to go to the courthouse,
18 told me where, at 8:30. I did. He called me at
19 8:32, 8:33. He told me what to get from Elizabeth.
20 I did. I didn't know she was Elizabeth then. I've
21 met her since then plenty. And then he said walk
22 on to our firm, and one of the partners will be
23 waiting for you. That's how I met Mr. Toporek,
24 Attorney Toporek.

25 Q. Did all of the \$10,000 of funds taken

1 out on 12/23 go to Mr. Toporek to be retained?

2 A. Yes. I double-checked, but I'm pretty
3 sure it was in two checks.

4 Q. Okay.

5 A. Two \$5,000 checks. Not one \$10,000
6 check. But I'm going off the top of my head, now.
7 I'm pretty sure. I've got that somewhere at home.
8 But I kept -- I've kept a lot of things filed.
9 Karen would know downstairs.

10 Q. The retainer agreement between you and
11 Mr. Toporek, who does it say the client is?

12 A. Honestly, I was in such a blur, I
13 didn't understand this whole thing. I honestly
14 thought he was Mama's attorney. It wasn't until he
15 clarified what a respondent was. I was responding
16 to my sister. My sister was telling the court my
17 Mama needs to be a ward of the state, and I need to
18 be her guardian. And I was responding no. Our
19 mother needs to have the life that she and Daddy
20 planned and sacrificed and saved for. Give her her
21 freedom. We will take care of her in Shemwood.
22 You can help or not help, according to the plan.
23 She has long-term care to supplement her care. Not
24 24/7 care. That was never the intent. It was the
25 daughters or daughter, depending on who wanted to

1 jump on the boat. But I was on the boat. I had
2 been on the boat since the night Daddy died. I was
3 still on the boat when Muriel did this.

4 Q. Mr. Toporek made it clear to you that
5 you would be his client and not your mother?

6 A. Not that --

7 MR. TOPOREK: Object to the form of the
8 question. I mean, you can't ask her about
9 conversations she had with me, I don't think.

10 MR. KEYS: This is just retainer
11 agreement stuff.

12 THE WITNESS: I honesty don't remember
13 signing a retainer agreement that morning at 8:30
14 in the morning. If I did I don't recall it. I was
15 just so overwhelmed. That was the 29th.

16 First of all, I spent the whole time --
17 because Muriel had parked in the neighbor's yard
18 screaming: I need that hearing on the 29th. You
19 had that hearing on the 29th. And I didn't hear
20 it. Terry and Stevie Roberts heard it because they
21 went out to the car and told Muriel cool it. She
22 was losing it in the car. And so they told me:
23 Hey, Muriel is trying to get a hearing scheduled
24 for the morning of the 29th. So if you read my
25 e-mail, I'm talking to Pam, I'm saying I am going

1 to --

2 BY MR. KEYS:

3 Q. What e-mail are you speaking of?

4 A. The e-mail where I went to the -- I
5 talked to my cousin John by text. He told me he
6 used Uricchio, Howe, Krell, Toporek, Theos. And
7 then I went to the website, and I e-mailed them
8 through their own website. I addressed a woman
9 named Pam in my e-mail, and I asked -- I told her I
10 was going to be at the courthouse when it opened
11 Monday morning and to please call me because if
12 there was a hearing I didn't know what to do. I
13 didn't even understand what was going on, and I
14 would need to be walked through it, if somebody
15 couldn't join me.

16 And then Mr. Krell called -- he called
17 on Christmas Day, 5:18. Because once he called,
18 what a party. I mean, Christmas just became a
19 party. Up until then, everybody was struggling to
20 smile and be social, but there was an undercurrent.
21 But once he called, I mean, I had people at my
22 house until midnight. My house was full.

23 Q. When did you learn that Mr. Toporek did
24 not represent your mother?

25 A. I honestly don't recall if it was in

1 the hallway here. It was -- I honestly don't
2 recall. But I remember him -- we were walking, and
3 he just looked at me --

4 Q. Is this the first time you retained
5 him?

6 A. Well, yes. I mean -- no. I thought I
7 retained -- I thought Mr. Krell told me our firm
8 will take care of your mother. When he -- when he
9 called me on Christmas Day, those were his words:
10 We will take care of your mother.

11 Q. When did you learn that you had
12 retained him on your own behalf?

13 A. I honest to God can't tell you if that
14 was the 29th, the first morning I met him after I
15 went to the court and picked up the papers, or if
16 it was the next day or later on on the 29th.

17 Q. 12/29 or 12/30/2014?

18 A. That's guessing. The truthful answer
19 is, I remember we were walking, and I said
20 something, and he said: No, I'm not your mother's
21 attorney. I'm your attorney. And that's when he
22 clarified to make sure I understood what is a
23 respondent. Because I went home and called my
24 brother Charlie, and I said: Hey, respond with me.
25 Jump on the ship, you know. I said: We'll both be

1 respondents. And Charlie said: I don't have any
2 money. And just he said: Well, you start it, and
3 then I'll see where I fit in. I just dropped it
4 with Charlie. I moved on.

5 Q. Once you learned that you were
6 retaining him to be your attorney and not your
7 mother's attorney, did you think it was appropriate
8 to use your mother's funds for that?

9 A. Absolutely. This is -- my mother was a
10 temporary ward of the state. This was a family
11 emergency. That is the purpose of the family
12 emergency fund. And I was all already -- that's
13 why I was an authorized user, because I had a
14 family emergency fund credit card with a \$20,000
15 limit and a \$10,000 cash advance. And I can't
16 think of any bigger emergency than your mother
17 being made a temporary ward of the state behind
18 your siblings' backs.

19 And so also I was an authorized user.
20 It's right on the website. I mean, you know, yeah,
21 yes, absolutely. This was for the benefit of my
22 mother.

23 Q. Okay.

24 A. Okay. Somebody had to respond,
25 apparently, or if you didn't respond, boom, she was

1 a ward of the state. Muriel won. So of course I
2 had to respond. Michael can't. He has a traumatic
3 brain injury.

4 Q. Let's go to Exhibit 19.

5 A. I'm sorry. I didn't finish my
6 sentence. On the Wells Fargo website is the Wells
7 Fargo Visa platinum user agreement statement, and
8 it's, like, Section 4, number 5 or Section 5,
9 number 4: The account owner is responsible for all
10 transactions made by the authorized user.

11 Q. Your mother did not tell you to go to
12 the bank and take out money, correct?

13 A. My mother did not tell me? My mother
14 knew I was going to the bank. I mean, that was a
15 given: Get to the bank.

16 Q. I thought you said she didn't know.
17 You told her you were going to the bank.

18 A. Yes, of course.

19 Q. Did she know why you were going to the
20 bank?

21 A. Of course she knew why I was going to
22 the bank. She gave me her pocketbook so I could
23 get out her credit card. I had never done this
24 before. And so I carried her credit card and then
25 got my credit card, and I showed both of them to

1 them, just to make sure there wasn't a problem. We
2 didn't have time for a problem. It was Christmas.

3 Mama knew I was going to the bank, and
4 she knew I had her credit card. She handed me her
5 pocketbook. And I fished it out and went running
6 out the door. I mean, running.

7 Q. When you came back, you told your
8 mother you had gotten \$10,000?

9 A. I told her I took the max out, plus the
10 max -- I either had found out the balance of my max
11 or I actually took a withdrawal at the Mt. Pleasant
12 branch. The Mt. Pleasant branch that the \$10,000
13 is the Sam Rittenberg Branch. Because I had to go
14 get the credit card from -- Barbara met me with it,
15 activated it, and then used it. This was my first
16 time.

17 Q. Was your mother upset when she found
18 out you took \$10,000 out?

19 A. No. She was, like, I want a Broad
20 Street attorney. What is going on? What is Muriel
21 doing? I said -- and then Ms. Bolin -- I was gone
22 a couple of hours, so Ms. Bolin really settled her
23 down by the time I got back.

24 Q. Okay.

25 A. By the time I got back, we had some hot

1 cocoa.

2 (PLF. EXH. 19, TEXT MESSAGES, was
3 marked for identification.)

4 BY MR. KEYS:

5 Q. Let's go to Exhibit 19. This is text
6 messages between you and your sister that -- the
7 orange tab on the side.

8 A. Right. Okay.

9 Q. Is this your phone number?

10 A. The first one? The very first one is
11 Muriel's cell. Are we on the same page?

12 Q. Yes. Is that your sister's number?

13 A. That's Muriel's number.

14 Q. Okay. Did you provide these messages
15 in discovery?

16 A. Yes. I printed -- actually, I had to
17 go dig them off an old computer, huh-hu.

18 Q. Okay. If you go to page 47 of 50, are
19 these text messages between you and your sister?

20 A. This is kind of hard. Are they between
21 Muriel and I? All of my text messages, page 1
22 through 50, are sequenced, date and time stamped.
23 So they are all between my sister and I. My sister
24 is on the left. She is gray. Whether she is the
25 sender or receiver, she is on the left. She's

1 gray. And I'm on the right. I'm green, whether
2 I'm the sender or receiver. We each have a bubble
3 box. Gray -- she is gray bubble box. I'm green
4 bubble box.

5 Q. So I'm looking at 12/17/2014 through
6 12/19/2014. It is pages 47 and 48. On 12/17/14
7 you speak about having chest pains?

8 A. I did.

9 Q. And then on 12/18 we're talking about
10 meeting a police officer with your mother.

11 A. Slow down. Which one are you at?
12 Because there is more than one.

13 Q. Take a moment and go through --

14 A. Okay. The second one?

15 Q. -- everything on 47 and 48.

16 A. All right. It was Michael's birthday.
17 12/17 is Michael's birthday.

18 I can't really read the first one in
19 orange. Sorry. But yes, I was at the doctor's
20 with chest pain. And I did want to talk to Mama.
21 And I did go to the hospital that night, I believe,
22 but I was released. Anxiety. Yeah, it was
23 anxiety. There was a lot going on.

24 Q. A police officer was eventually called?

25 A. I honestly don't recall all that. Was

1 Mama at my house when I got the chest -- no. I
2 have been at the hospital more than once with chest
3 pain. I am getting ready to go back through the
4 cardiology, all that nonsense. It's not nonsense,
5 It's wonderful. But I'm getting ready to go back
6 through that regimen of tests. I have been
7 referred again.

8 So there has been more than one time.
9 One time Mama -- I can't remember if Mama was
10 present, and I wanted to go to Nason. And Mama
11 rode -- I didn't drive. Lane, a good friend and
12 neighbor, picked us up. Or Lane got Mama from
13 Shemwood right next door, and then they came and
14 picked me up, and we went to Nason. Now, that
15 wasn't an anxiety attack. That was a failed EKG
16 you are in the EMS in two minutes attack.

17 Q. We are trying to focus on 12/17/2014
18 through 12/19/2014.

19 A. Okay.

20 Q. In reviewing these messages between you
21 and your sister, it appears that you went to the
22 doctor, a police officer was called for a welfare
23 check, and you and your sister seemed to get into a
24 dispute over giving care to your mother and your
25 brother. It seems like a whole lot's going on

1 right there. What was happening in this time
2 period?

3 A. Okay. 12/18, Muriel is being a smart
4 butt, saying that she was going to come for a
5 welfare check. And that's because I literally did
6 do a welfare check on Mama and Michael at the Isle
7 of Palms a few weeks prior, and the police found
8 Mama and Michael alone without a cell phone,
9 without a landline in the house.

10 Q. Okay.

11 A. So that's where the term welfare
12 check -- she is being a smart aleck.

13 Q. So your mother is at your house at this
14 time?

15 A. She's at my house -- she has to be at
16 my house if Muriel is saying that she is going to
17 come. They didn't come. That was just Muriel.

18 Q. All right. So it sounds like you were
19 under a lot of stress from going to the doctor, and
20 everything else?

21 A. No. You've got to understand. I was
22 under a lot of stress because Muriel was up to
23 something that made no sense. And I didn't know
24 what it was, and Charlie didn't know what it was,
25 poor little Michael couldn't comprehend what it

1 was. Mama was always in a tizzy. That's number 1.

2 There were three points. Number 1 is
3 the conflict with an unknown reason was a huge
4 source of stress. Muriel, what is going on? Why
5 are you being so ugly? The second point was I was
6 on medical leave. So I was sick. There was a
7 reason you are out of work five and a half months.
8 You are not well.

9 Q. So you weren't well at this time?

10 A. No, of course not. I was on medical
11 leave.

12 Q. Okay.

13 A. Okay. Number 3, you have your sister
14 not cooperating with you, who is guarantor of the
15 loan and pretending now she is not. You have your
16 niece not cooperating with you in settling the
17 debt. You can pull up the RNC records, which I did
18 at that time, and see that there was plenty of
19 property to go around, plenty of equity. They
20 could have easily settled that debt so I could get
21 the lien off the house and get a loan while I had a
22 salary. You don't have a salary once you run out
23 of the sick leave. I needed to get that home
24 improvement loan, and I was out of work for two to
25 three months or more. It turned into five and a

1 half.

2 Q. Okay.

3 A. And so it was a lot of stress.

4 Q. What was the home improvement loan for?

5 A. 1952 bungalow in complete need of
6 everything major.

7 Q. Okay. But you had by that time
8 replaced the roof?

9 A. No. The roof was replaced spring 2015.
10 This is Christmas. I had made arrangements.

11 Q. You received \$15,000 for that?

12 A. And I had done a lot of the plumbing
13 and I had done some electrical upgrades. Like I
14 turned the electrical box because it was facing in
15 the kitchen. It was out of code. About -- I have
16 got a spreadsheet for you, a printout, and all the
17 invoices.

18 Q. So if you look at 12/19/14 on page 48,
19 you talk about your mother coming to stay with you
20 and take care of you while you are on sick leave.

21 A. I've got to see. Where did I say take
22 care of me? I'm on page 48. Are you on the first
23 one or the second one? The print is really small.

24 Q. Mama is going to stay here and take
25 care of me. It's the second one.

1 A. Second one. Muriel, Mama is going to
2 stay here and take care of me or I'll come live
3 with you, as Muriel told Billy I could just come
4 stay at Shemwood.

5 I don't like strife. I don't like
6 arguing with Muriel. You have all the texts.
7 2012, lovey-dovey. 2013, lovey-dovey, sisters.
8 Half of -- and it starts up March 31st, 2014, boom,
9 Muriel and Mama have a big blowout. Muriel is
10 moving out and getting her own apartment, acting
11 like she doesn't have a place to go because she is
12 renting her house to her son, acting like she
13 couldn't go back to that big house.

14 Q. All right. So December 12, 2019 --
15 December 19, 2014, you thought it would be
16 appropriate for your mother to take care of you
17 while you were out on sick leave?

18 A. Mama?

19 Q. Yes.

20 A. To stay with me? Well, I wasn't
21 incapacitated. I wasn't unable to walk, talk, or
22 breathe. Yeah. For Mama to stay at my house
23 instead of me being alone? Absolutely. Go to
24 Shemwood and be with Mom and Muriel? Even better.
25 Muriel is a nurse.

1 Q. Okay. This was a stressful time,
2 though, and you didn't know why, and you just
3 thought your sister was up to something?

4 A. No. I knew why.

5 Q. Okay.

6 A. Muriel was up to something. There is
7 no secret.

8 Q. What did you know?

9 A. I went to Muriel confidentially, and I
10 said sister to sister -- this is a few months
11 prior. I said sister to sister, I said: Muriel?
12 I said: Mama and Daddy had a way of structuring
13 their money and structuring their investments. I
14 said: Now, I do believe we both know you have
15 changed those investments. You have restructured
16 some of the funds. You have moved money around.
17 You are using investment firms they have never ever
18 used. Your 2013, Muriel, doesn't look a thing like
19 Mama and Daddy's decades prior. Move it back. I
20 won't tell anyone. Move it back. And if you've
21 got your hand in the till, take it out. Sister to
22 sister: If you've got your hand in the till, take
23 it out.

24 And Muriel did move it all back. Look
25 at the filings when she went to the emergency

1 hearing. If she put it all -- she didn't use that
2 big international firm that was headquartered in
3 Germany. She didn't report that to Judge Curry.
4 She moved it out of there and moved it back to
5 wherever it was supposed to be, I suppose.

6 Q. Did you do anything at this time to try
7 and alleviate your concerns about what your sister
8 was doing?

9 A. Yeah. Muriel called me, and she said:
10 Patricia -- I can't tell you when. It was around
11 the time that I started looking around, and Muriel
12 left a piece of mail out, and that's how I found
13 out about the investment firm. Plus, Mama came
14 over with some numbers, you know, that she had
15 found, talking to -- I don't know. Mama had
16 numbers. They were different -- different firms
17 than Mama and Daddy had used in the past. And so
18 one of them, Muriel -- and repeat that question
19 again.

20 Q. What actions did you undertake in
21 November of 2014 as a result of being concerned
22 with your sister's actions?

23 A. Muriel called -- whatever it was,
24 Muriel called and said: You know Mama's memory is
25 getting bad. And I said: Yeah. Well, she's in

1 her 80s. Muriel said: I want you to come -- I'm
2 paraphrasing. I'm definitely paraphrasing. Muriel
3 called me wanting me to sign paperwork.

4 Q. For what?

5 A. Saying that Mama could not take care of
6 herself.

7 Q. When was this?

8 A. It was -- it was October, November.
9 Because that's when my warning lights went off.
10 And I said: No, hell no. And hung up. That is
11 not Mama and Daddy's plan that we promised to abide
12 by, and I hung up.

13 Well, now I know that it probably was
14 the long-term -- John Hancock long-term care plan,
15 except that -- Mama got assessed September 11th for
16 that. Muriel called me way after September 11th.
17 But the payments started -- October 25th I think is
18 when they got their first payment. But they
19 back-paid it to September 11th, the way I
20 understand it.

21 Q. What payments are you talking about?

22 A. The long-term care. I've got to talk
23 to Kelley about that because I never got paid.
24 It's \$75 a day, and I never got my 1099. And Mama
25 was with me September 11th to December 23rd, until

1 December 24th, several nights, several 24-hour
2 periods, at \$75 a day. Then Mama was with me the
3 first few weeks of January at \$75 a day. And she
4 was definitely with me two to three months in the
5 springtime at \$75 a day. So I've got to settle up
6 with Family Services and get my 1099 and redo my
7 taxes. That's what my accountant said.

8 Q. Okay.

9 A. I didn't know about long-term care. I
10 found out by accident. They called me.

11 Q. Let's go to Plaintiff's Exhibit 1,
12 which is the complaint.

13 A. The complaint.

14 MR. TOPOREK: Back this way. The first
15 thing.

16 THE WITNESS: Okay.

17 MR. TOPOREK: Can we take a little
18 break?

19 (A recess transpired.)

20 (PLF. EXH. 1, COMPLAINT, was marked for
21 identification.)

22 BY MR. KEYS:

23 Q. So we're in Plaintiff's Exhibit 1,
24 which is the complaint. Let's talk about your
25 relationship with your mother. Your mother trusts

1 you very much?

2 A. Yes.

3 Q. She imparts great confidence in you?

4 A. Yes.

5 Q. She would take your advice and do what
6 you tell her should be done?

7 A. No.

8 Q. No?

9 A. My mother thinks for herself.

10 Q. If you ask for something, she would
11 always give it to you?

12 A. No.

13 Q. Okay.

14 A. Not at all. I've been flipping
15 tomatoes since I was 14. So you earn it, unless
16 it's a special occasion. She provided well, now.
17 We had a wonderful life. But if you wanted that
18 special jean skirt, you go flip tomatoes at the
19 Pack and Ship. Earn it.

20 Q. Let's go to page 2, paragraph 7. It
21 says in or around the second half of 2012 and
22 further during 2013, your mother with assistance of
23 attorney Mac Gibson undertook some estate planning,
24 including drafting wills, codicils, powers of
25 attorneys, and deeds.

Paragraph 8. On or about August 15, 2012, your mother deeded the Goat Island property to your sister.

Is that correct?

MR. TOPOREK: Just yes or no.

THE WITNESS: Yes, that's correct.

MR. TOPOREK: Okay. Thanks.

BY MR. KEYS:

Q. Mac Gibson was the attorney who did that work?

A. Yes.

Q. Okay. March 27, 2013, Mac Gibson drafted a power of attorney for your mother, correct?

MR. TOPOREK: What paragraph are you on?

MR. KEYS: 9.

MR. TOPOREK: That's the next page.

THE WITNESS: Yes. That kept Muriel first and made me second.

BY MR. KEYS:

Q. Okay. So what is your understanding of the power of attorney powers under that?

A. Well, that one was extremely comprehensive.

1 Q. Okay. Tell me about that. Who were
2 the -- who was given power of attorney?

3 A. Muriel is power of attorney and I am
4 successor power of attorney, in the event she is
5 unable to fulfill her duties and obligations as
6 POA.

7 Q. Okay. And that was what your mother
8 wanted?

9 A. That day.

10 Q. Okay.

11 A. That was what she wanted, and that's
12 what she wanted back in 2007 or '08.

13 Q. August 7, 2013, Attorney Gibson deeds
14 the 602 Atlantic to you and your mother as joint
15 tenants with right of survivorship, correct?

16 A. That was an uncomfortable day. That
17 was one year after -- that was one year to the
18 month after Muriel -- so yes, correct. But it was
19 supposed to be 100 percent. But once again, the
20 lien wasn't satisfied.

21 Q. Okay. So tell me more about that.

22 A. Okay. Muriel and Bridget, the first
23 time around in 2012 had just begged for more time.
24 The market was soft, upsidedown. They had paid a
25 hundred thirty-five for the house. It wasn't worth

1 a hundred and thirty-five. Only around a hundred,
2 or so, give or take.

3 And then it was -- the story was, okay,
4 the tenants are going to buy it. Because the clock
5 is ticking. I'm getting more and more anxious.
6 Teacher contracts come out March 15th. I didn't
7 want to sign one. I'm getting more and more
8 anxious come March 2013. I wanted my loan with
9 Wells Fargo done. And the tenants were going to
10 buy it. Okay. So I had to sign my teacher
11 contract. And now here comes summer, and --

12 Q. By the tenants are going to buy, you
13 mean buy Bridget's house?

14 A. Bridget only lived there a couple of
15 years, and then she turned it into an
16 income-producing rental and did not -- and only
17 made interest-only payments, except for maybe a
18 couple of thousand at the most.

19 Q. Okay. Let's get back to the deed. It
20 was supposed to be a hundred?

21 A. It was supposed to be 100 percent. But
22 once again, the tenants did not buy the house, and
23 Bridget couldn't sell it, she was too upsidedown,
24 and now it's really starting to hit the fan. So I
25 only took 50 percent so that we could get --

1 remember, I had my own house, the Smith family
2 home, and I sold it to John July 2012 when I did
3 the legal separation, thinking it was a clear lien,
4 the lien was gone, without checking. Just
5 assuming --

6 Q. The lien on 602 Atlantic?

7 A. Right.

8 And so I don't take it. Mac prepared
9 two deeds. You can ask him. Or he was told to.
10 That's how we found out there was a lien.

11 Q. Okay. Why did you not do the 100
12 percent?

13 A. Because, once again, it would have
14 triggered -- as we understood it, it would have
15 triggered Wells Fargo saying, okay, there is a new
16 owner of this property. Pay up in 30 days.

17 Q. Okay.

18 A. Okay. As we understood it.

19 So this is August 2013. I'm already in
20 for the contract.

21 Q. What contract?

22 A. Teaching contract. I mean, I signed it
23 March 15. So I'm stuck for the year. And so
24 Bridget is begging for more time, saying -- and so
25 I took 50 percent so that we could get the primary

1 resident four-percent tax assessment. So 2013 got
2 corrected to four percent. Muriel's numbers are
3 wrong in one of her texts. And it's been four
4 percent since then. 2013.

5 Q. Did you pay the taxes on the property
6 in 2013?

7 A. 2013? Muriel paid -- I'm guessing -- I
8 don't know who wrote the check, but I would assume
9 Muriel wrote the check. Because there is a text
10 where Muriel asked me if I'm going to be making
11 deposits. She needs to pay the taxes. And she was
12 referring, I believe, to 2013. It could have been
13 '14. I'm going off the top of my head. It's in
14 that stack of texts.

15 Q. Did you provide the money that led to
16 being paid the taxes --

17 A. That's what -- every month giving Mama
18 something, I always made sure that what I gave her
19 added up to taxes plus insurance --

20 Q. Okay.

21 A. -- once August 2012 hit. Prior to
22 that, I can't say that I gave Mama much money. It
23 was more the other way. I had a child. No child
24 support. I had a child that wore braces, things
25 like that.

1 Q. How much are the taxes and insurance
2 annually on the property?

3 A. Now? Oh, this is a wonderful year.
4 Now State Farm took me back because of the wind
5 pool insurance --

6 MR. TOPOREK: Just answer the question.
7 The question was how much. It isn't an
8 explanation.

9 THE WITNESS: Okay. Thanks.
10 Somewhere around twenty-five to 2,800 a
11 year, between the two.

12 BY MR. KEYS:

13 Q. Okay.

14 A. It's great.

15 Q. Was it about that in 2013?

16 A. I don't know what 2013 -- I would have
17 to go back and look. The property tax, we had it
18 to four percent, but then it was, like, around nine
19 hundred, a thousand, a thousand and ten, something
20 like that. What hurt was when State Farm let us
21 go. When I became 100-percent owner November 2014,
22 that's what hurt. We had to go through a
23 third-party insurance, through C.T. Lowndes,
24 Occidental, and the yearly amount was horrible. It
25 was over twenty-four or \$2,700 a year. It was

1 almost 40 percent more than State Farm.

2 Q. And that's 2015?

3 A. 2014, 2015, 2016, 2017. And I got back
4 with State Farm this year --

5 Q. Okay.

6 A. -- 2018. So it was long years.

7 Q. Do you understand what joint tenants in
8 common with right of survivorship means?

9 A. Yes.

10 Q. What does it mean?

11 A. If I die it goes -- all of it goes to
12 Mama. If Mama dies all of it goes to me.

13 Q. So paragraph 11. On or about August
14 21st, 2013, you obtained \$1,500 from your mother.

15 A. No.

16 Q. No, you did not?

17 A. No. From Muriel. I called. Muriel
18 answered the phone. And I had a bunch of
19 electrical work done. I've got the receipt. I
20 paid \$2,500 interior electrical work, the box
21 turned around and stuff, making it -- bringing it
22 up to code. And when Affordable Electric was
23 walking -- just walking by the property, he came
24 back in. He said: Tricia, your ground wire, you
25 don't have one. And so we all walked out there,

1 neighbors, you know. From the attic, there it is,
2 and you can see it was just disintegrated. So I
3 said how much, and then he said 1,500. I didn't
4 have it. I had just given him the last of what I
5 had. I called, and Muriel answered. And I said:
6 Muriel -- I don't know if Muriel talked to him or
7 not, but I know -- I don't know who signed the
8 check, but it was -- I don't know how -- if I paid
9 him that day or later, but I've got the thing
10 saying paid in full.

11 Q. But did the money, that \$1,500, come
12 from your mother?

13 A. Absolutely. Yeah. I just paid him
14 2,500, plus the plumber, plus the carpenter, plus
15 the materials.

16 Q. So you received \$1,500 in August of
17 2013 from your mother?

18 A. I received it from my mother's account.
19 Did I get it from Mama or Muriel's hand? I don't
20 remember.

21 Q. Was that a loan for the electrical that
22 you were supposed to pay back to your mother?

23 A. After all I put in the bathroom? No.
24 Mama considered that a gift. We can call it a
25 wash. Because you can just look at the Visa.

1 Since then, I made two payments on the Visa not
2 knowing about this temporary guardianship, how it
3 worked and what it meant. Until Family Services --
4 they called and said we are appointed; we have got
5 court orders. Mama had bills coming here. Here
6 she is a temporary ward of the state, but that Visa
7 that I had taken that money out of, I paid it.

8 Q. What are the two payments that you are
9 talking about you made on the Visa?

10 A. I made -- off the top of my head --
11 I've got the receipts.
12 -- like, January, \$836, and then
13 February, \$800. Now, I later learned that Mama was
14 set up on auto pay. So, say, in January -- I think
15 it was, like, January or February, there was an
16 auto pay of 818. But not wanting to take a chance
17 with her credit or messing up with Wells Fargo --

18 Q. You are saying you paid --

19 A. -- I made payments.

20 Q. -- interest in January and February --

21 A. No. It was more than interest.

22 Q. Okay.

23 A. I paid -- I've got the figures written
24 down.

25 Q. So in January and February of 2015, you

1 paid --

2 A. I called Wells Fargo and made a payment
3 from my Heritage Trust Federal Credit Union. If
4 you look at the statement on Heritage Trust Federal
5 Credit Union, it says transferred to Wells Fargo,
6 blah, blah, blah.

7 Q. This is on the \$10,000 cash advance
8 from the credit card you took on December 23rd?

9 A. Right. Because we had the hearing
10 January 9th --

11 Q. Okay.

12 A. -- and where she said she was going to
13 appoint a temporary conservator. And she said this
14 attorney is who she has in mind, and if she is not
15 available, it will be Family Services. Well, in
16 the meantime, I knew you pay your credit card every
17 month.

18 Q. So you wanted to make sure to pay the
19 interest on that \$10,000?

20 A. Well, it was way more than interest.

21 Q. But you wanted to make sure to pay it?

22 A. I wanted to make sure that Mama's good
23 standing with Wells Fargo wasn't messed up.

24 Q. So August 23rd, 2013, that money came
25 out. When did you do the work on the bathroom, you

1 said?

2 A. I'd have to look at that spreadsheet.
3 I mean, we demolished it pretty quickly, but
4 rebuilding it was over time. I mean, I was doing
5 it out of pocket.

6 Q. Just, like, 2014?

7 A. No. Way before then. I've got to look
8 at the State Farm --

9 Q. 2012?

10 A. No. It happened on Christmas Eve. So
11 it happened on Christmas Eve 2010. The adjuster
12 didn't come for two weeks. And then it was bad
13 news. Then we gutted it. We gutted it -- it took
14 two and a half years. Two years. Two years before
15 it was a bathroom.

16 Q. Okay. But you admit that you owed your
17 mother the 1,500 from the electrical?

18 A. Mama didn't think so.

19 Q. Well, what did you think?

20 A. I think that I had the money to give it
21 back to her. And at the time I didn't have the
22 money, but now we're down the road, what, three
23 years? Two years?

24 And so now, I've spent several -- tens
25 of thousands of dollars on Mama. Now, if we were

1 to sit down and compute this, which is why I wish I
2 had been interviewed to start with to save all this
3 trouble, I think we are upsidedown. I think it's
4 more Mama would owe me.

5 Q. What have you spent on your mother?

6 A. Oh, my gosh. I've got to use my five
7 dots.

8 What have I spent on my mother. I
9 spent the two Visa payments.

10 Q. On the 10,000 you took out to retain
11 Mr. Toporek?

12 A. On the 10,000 I took out as a member of
13 the Clarkin family from the Clarkin family
14 emergency fund entrusted to me to help a member of
15 the family.

16 Q. Okay.

17 A. Okay? There is a big difference in
18 that word.

19 Q. What else?

20 A. Okay. So that's not my debt. That's
21 my Mama's debt.

22 Okay. So the two payments. And then
23 Mama became a ward of the state. We had Christmas
24 2015. Whether or not she did get an allowance from
25 Family Services for Christmas, if she did, it was

1 within a week of Christmas. But Christmas season
2 starts with Black Friday. So I gave my mom a
3 Walmart card and Belk card and \$500 for the
4 Christmas season. And so I went shopping with
5 them, with the caregivers. We were all at Black
6 Friday. And then let's see. The judge told Mama
7 that she would get a seasonal --

8 Q. Your mom should pay you back for that?

9 A. No.

10 Q. Okay.

11 A. I'm joking when I say we are
12 upsidedown. I don't want a thing from my Mama.
13 No. I'd give her more if I had it. No. I'm
14 saying this whole thing is silly.

15 So then the judge told us in the March
16 19th hearing that Mama would get a clothing
17 allowance, a seasonal clothing allowance, of
18 approximately \$800, give or take. To my knowledge,
19 I would love to see the accounting on what type of
20 seasonal clothing allowance she has been given. I
21 bought everything. I have bought 90 percent of
22 everything. When I say everything, we're talking
23 linens, towels, the bed, all the clothes, the
24 shoes.

25 Q. Did Family Services ever tell you that

1 you should not make those purchases, and they are
2 responsible --

3 A. Family Services? I quit even bringing
4 it up. I've got it here --

5 MR. TOPOREK: The question was, did
6 Family Services ask you not to do that. It's a yes
7 or no.

8 THE WITNESS: Well, it's a trick
9 question. Because the only time I ever got a
10 don't-do-that was a reprimand after my mother
11 fell -- and I've got it here. And my mother fell,
12 and I got a nasty letter about don't -- that she
13 and the guardian had made arrangements, and then I
14 go buying stuff for Mama on the day she falls,
15 safety railings and safety slippers, and turn in
16 receipts, and I've got it. I never turned in those
17 receipts. I never cashed that check. I've got the
18 check. I didn't know --

19 Q. What check are you talking about?

20 A. The one and only check I have gotten
21 from Family Services for reimbursement.

22 Q. What was it reimbursing?

23 A. I'm not even sure because I don't have
24 the receipts, and I didn't make a copy.

25 But I bought -- my mom fell out the

1 bed, and I got safety railings, safety slippers.
2 And if my mom falls today, she needs items today.
3 And when Cathy Mason told me that she had gotten --
4 she was getting or had gotten money from Kelley to
5 get those items, I'm, like, well, that's real nice,
6 but you got them five days later, and I've already
7 got them. Then Cathy asked me for the receipts,
8 and put them in her parents' door knob, mail slot.
9 So I never knew I was getting reimbursed. When I
10 did get reimbursed, I didn't cash it. That was for
11 my mom. That was, like, a medical thing.

12 Now, I have asked for the Family
13 Services form to get reimbursed on big stuff. The
14 legal fees, \$825, the Naturalizers --

15 Q. The \$825 for the power of attorney
16 drafted December 2014?

17 A. No. No. No. Well, it's not just the
18 power of attorney. That's not \$825.

19 Q. And the time Ms. Bolin spent with your
20 mother on December 23rd, 2014.

21 A. Yeah. That was the big one. That was
22 the big expense. And she was solely representing
23 Mama.

24 Q. Also the power of attorney?

25 A. That's a small part of it. I can break

-- I can get her to break it down for me if you need me to.

Q. All right. Let's talk about the November 18th, 2014 deed, the second deed. Why did you do that?

A. I thought we already covered that. We didn't cover that?

Q. We talked about the first deed.

A. Well, the first 50 percent, when we lowered from six percent to four percent in August, 2013?

Q. Right.

A. We are finished with that. Okay.

The second one -- now we have reached what would be, if you were an airline pilot, a critical point.

Q. What was the critical point?

A. I was teaching. My salary was seventy-two five. I had a dilapidated house that I had been here and there fixing up out of my pocket, except for that \$15,000, which I have been paying back. I was at a critical point.

And so I'm out on medical leave. I know it could be two to three months. Maybe more. It's over five. In the Charleston County School

1 District, no sick leave equals no pay. We didn't
2 have the sick leave bank then. And no pay means
3 you don't get a salary verification form to give to
4 the Wells Fargo loan officer with your home
5 mortgage application. They are only going to get
6 your retirement check salary verification. There
7 is a big difference between bringing in 100,000 and
8 bringing in thirty-four and a half. No. It was
9 time to get that loan.

10 Q. Okay. Why could you not get the loan
11 if you already owned a half interest --

12 A. Because the lien was still on. The
13 lien was still on it. So at this point it's just
14 like saying to hell with it.

15 Q. The lien was still on it anyway?

16 A. Exactly. So at this point, I just said
17 to hell with it, Mama. I've got to take that lien
18 and -- because I've got to. Because you have got
19 Mama's handwritten notes from the meeting with the
20 banker. I wouldn't qualify for 137,000 on a 34,000
21 salary. I wouldn't.

22 Q. So you knew the lien wasn't going to go
23 away.

24 A. No. I was going to deal with Bridget
25 in a separate manner. Right now, I was sick. I

1 had a house that needed a lot of repairs. And I
2 had a salary. I needed to get that loan. And so
3 Mama --

4 Q. Why couldn't you get a lien with the
5 half interest?

6 A. You can't get a loan with a lien on it.
7 You have to pay off the loan. You have to pay off
8 the lien. That's why I was so mad that Family
9 Services never sent the payoff statement to
10 Heritage Trust. Because you have to pay off the
11 HELOC. There is a banker right there. But you
12 have to pay off your lien before you can get your
13 secondary money.

14 Q. Did you try and do a loan before? Did
15 you apply for a loan before doing the second deed?

16 A. Yeah. Before doing the second deed?
17 Yeah. They told me I had to pay off the HELOC.
18 That's how I learned it.

19 Q. So you told your mother to deed the
20 property to you?

21 A. No. I didn't tell her to deed the
22 property to me. That was a given. I mean, we are
23 sitting there. She goes with me to the doctor, and
24 it's, like -- Mama is, like: Call Mac. We call
25 Mac. Mac is working for Michael. So then Mama

1 says: Call the judge. And so we called -- I
2 called Mr. O'Neil. We are all sitting together.
3 Time was of the essence. The day that --

4 Q. Why was time of the essence?

5 A. I just told you. Because you need your
6 salary verification form. I wasn't going to
7 qualify for a home improvement loan on a 1952 raggy
8 house with some upgrades.

9 Q. When you said --

10 A. Plus, plus, Bridget's HELOC. So I
11 first put it in the very day that we -- that Mama
12 -- Judge O'Neil told me how to do it, file it
13 through -- go to the courthouse and file it. I did
14 it.

15 Q. Did you draft it or did he?

16 A. No. This is just going to the
17 courthouse, paying the \$10, and filing it. And so
18 I did that.

19 And then I went to the bank and started
20 the loan application process. I've got that with
21 me. I got pre-qualified for \$160,000. So that
22 would have given -- paid Bridget's HELOC off --
23 Bridget and Muriel, because Muriel is guarantor,
24 and then given me some more for doing home repairs.
25 We're talking major structural stuff. We're not

1 talking blowing out the kitchen and remodeling.

2 So instead -- that's what I'm looking
3 at doing. I got the prequalification letter here
4 with me. And then the next thing you know, Mama is
5 a temporary ward of the state. Next thing you
6 know, it's January. We're in court. And so when I
7 heard that judge say this is a source of sisterly
8 strife and this is blah, blah, blah, keeping us
9 from having Mama --

10 Q. This is Judge Curry, January 15th --

11 A. Right.

12 -- and she is saying she is going to
13 keep Mama a temporary ward of the state, and it
14 boils down to problems between the daughters?
15 Well, make that problem go away. So I run back to
16 Heritage Trust, and they upped the amount to
17 \$200,000. So now I'm able to pay Bridget's debt,
18 anything anybody considered my debt, plus get my
19 house fixed, and problem solved. No more sisterly
20 strife. But the problem wasn't solved because I
21 couldn't get a payoff statement for two and a half
22 months.

23 Q. So the same day that you recorded the
24 second deed, November 18, 2014, you also got \$6,000
25 from your mother for medical --

1 A. We went over that. That's all in the
2 same day. It's leaving Dr. DeHaven, coming on down
3 the bridge, stopping at the bank. It's all on the
4 same day. 6,000, because we don't know how long I
5 was going to be out. I didn't have sick leave to
6 cover me. That was for sure.

7 Q. You went to the doctor for chest pains
8 the same day?

9 A. That night? I don't know. I have to
10 go back and look at the dates. I mean, we already
11 talked about -- the 17th?

12 Q. 17th.

13 A. I thought that was December. Michael's
14 birthday.

15 Q. No. This was November.

16 A. I didn't go -- I don't have an ER visit
17 November 17, Michael's birthday, December 17, 18.
18 No.

19 Q. You are correct.

20 A. Yeah. Because I went and did
21 everything -- I did all that legwork with the loan.

22 Q. Okay. I want to play a couple of
23 voicemails for you. There are two voicemails that
24 you left with Family Services.

25 A. They probably aren't nice because I'm

1 pretty mad that I didn't get a payoff statement.

2 I'm pretty mad that I can't get --

3 MR. TOPOREK: There is no question on
4 the table, ma'am. He said he is going to play some
5 voicemails for you.

6 THE WITNESS: Okay.

7 MR. TOPOREK: He didn't ask you a
8 question.

9 THE WITNESS: I'm sorry. Thank you.

10 BY MR. KEYS:

11 Q. Their records indicate that they are
12 dated February 25th, 2015.

13 A. February 25th? I would have just been
14 finding out I was getting the 200,000 increase.
15 I'm putting it in perspective.

16 Q. All right. I apologize if this is
17 loud. I just wanted to make it clear.

18 Hi, Ms. Evans. It's Patricia
19 Clarkin Smith. I'm the daughter of Muriel W.
20 Clarkin. And I need to speak to you about -- I am
21 refinancing the house so that I can pay off Mama's
22 equity line loan. That will take care of my
23 15,000, plus interest. I need to please work with
24 you to get Bridget to sign some type of agreement
25 that she owes Mama that -- she borrowed 135,000

1 July 8, 2008, still owes a hundred thirty-four
2 something, made interest-only payments. I need
3 something legal so that I can close on this loan.

4 I will also be able to pay, it looks
5 like -- my bank meeting is today at 4:30, and in
6 addition to the 12,000 that I owe Mama, 6,000 on
7 November 1st, 2012 for my TERI program buyout to
8 retire as a teacher and 6,000 from November 2014
9 when we found out I was sick and not going to be
10 able to get a paycheck after December 5th. So
11 that's 12,000 cash that I can get back, and I can
12 pay off my portion of the equity line loan, which
13 didn't go -- Mama has the equity line loan.

14 But I'm working hard to clear my debt.
15 Clear it. I also -- so if Bridget will sign that
16 agreement, I have told Ellen Babb (phonetic) and
17 Carol Seltzer that I will use my money to return me
18 through Bridget or Mama, however it works out.

19 Bottom line is, I will use that money and gift it
20 to Mama so that they can have around-the-clock help
21 to supplement Mama's insurance policy at 27,000 a
22 year, and that way Mama can stay out of the
23 facility. A facility would just kill her. So
24 that's it in a nutshell. My number is
25 843-345-0158. 843-345-0158. Thank you.

1 A. That's true.

2 MR. TOPOREK: No.

3 THE WITNESS: I'm sorry. Wait for the
4 question.

5 BY MR. KEYS:

6 Q. That's your voice on there. That's you
7 speaking, correct?

8 A. Yes.

9 Q. Okay. So you said you owe your mom
10 6,000 from 2012 and you have got the TERI program
11 loan from her?

12 A. Well, I consider it a loan. She
13 doesn't. She considers it a gift. Daddy
14 definitely considered it a gift. He did the
15 planning. But I've been in the position -- I would
16 tell them I was going to pay them back once I get
17 my TERI money at age 59 and a half. So as long as
18 I was getting this big old loan, 200,000, and knock
19 it all out.

20 Q. And you said that --

21 A. And I wrote that to Ms. Evans, too, in
22 an e-mail prior. This is late. She has known
23 about it.

24 Q. And you said you owed the 6,000 you
25 received in November of 2014 for medical leave,

1 that you owed that to your mother?

2 A. This is February?

3 Q. We were just talking about the \$6,000
4 you received on November 18th, 2014 for your
5 medical leave. In that message you said you owed
6 it to your mother.

7 A. Well, Mama and I settled it. But Mama
8 is now a ward of the state, and Kelley rejected it.
9 You got to go back and see her reason for not
10 taking it before the court. Her reason was it was
11 too far back. But yet here we are in civil suit
12 going back just as far. So if we are able to go
13 back this far in a civil suit, then we are able to
14 go back that far for settling my debt, which was
15 Mama's house in her name and I paid to have it
16 rebuilt.

17 Q. So --

18 A. But the reason I was looking at it that
19 way on the phone is because Mama -- it doesn't
20 matter what me and Mama decided. Now Mama is a
21 temporary ward of the state. And as I understand
22 it, I've got to deal with a conservator. Mama
23 doesn't have any decisionmaking authority. Well,
24 she has limited decisionmaking authority. The only
25 way I -- listening to that, where I misspoke is

1 Bridget -- getting that paperwork from Bridget was
2 important, but it was not contingent upon the loan
3 closing. It had nothing to do with the loan. It
4 had to do with me being able to get back my money
5 in a separate lawsuit against Bridget if necessary.
6 Because you have to go back again, now. Ms. Evans
7 -- they contacted both of us wanting us to sign
8 repayment agreements.

9 Q. Hold on one second. What money did you
10 lose from Bridget?

11 A. Did I what?

12 Q. What money did you lose from Bridget?

13 A. I didn't lose anything because I didn't
14 get the payoff statement. I didn't get to close on
15 the \$200,000 loan so I couldn't pay off the HELOC.

16 Q. Do you believe that Bridget owes you
17 the HELOC money?

18 A. She would have had I closed the loan.

19 Q. Okay.

20 A. Because Mama's HELOC would have gotten
21 paid first. And if I'm wrong, there is Wells Fargo
22 right here. Mama's HELOC would have gotten paid
23 first.

24 Q. Okay.

25 A. Then Family Services would have gotten

1 paid, and the leftover would have fixed my house,
2 because we upped it from one sixty to two hundred.

3 Q. In this voice message on February 25th,
4 2015, you said you owed \$12,000 to your mother,
5 correct?

6 A. I'm telling Kelley based on the fact
7 that she is conservator and rejected -- rejected.
8 I don't believe so, but she is saying I do.

9 Q. Okay.

10 A. Okay. I've got all those letters, and
11 I've got my e-mails to her. So if I misspoke, I
12 misspoke. So let me clarify it now.

13 The first 6,000 -- Daddy set my
14 retirement when they changed the state law and
15 capped it at 10 percent, state income for state
16 employees could make only 10,000, Daddy set it all
17 up. It was a gift. Mama intended it to be a gift.
18 He was alive when they did it. And I told him when
19 I turn 65 --

20 Q. When did your father pass away?

21 A. December 21st, 2011.

22 Q. Okay.

23 A. And I told him when I turn 59 and a
24 half, I would give you back that 6,000. If I got
25 it, I'm going to give it back, gift or not. I

1 mean, that's just -- okay? That's that 6,000. And
2 I wrote Kelley that in an e-mail straight up when I
3 first met her.

4 And then don't forget. On April 1st --
5 half these records we are going over today or more?
6 I gave Kelley a stack of records, a stack of
7 documents, on the porch in front of Michael's front
8 door. She took them from me. I started to ask her
9 when we could have a meeting, told her I'm willing
10 to meet, and she said: We're done. We're done.
11 And walked in.

12 And I have never been interviewed. Due
13 diligence. Never been interviewed, three and a
14 half years. All these questions you are asking me,
15 I have been dying to get asked.

16 Q. You said in there you acknowledged that
17 if you paid back the equity line, that money would
18 not go to your mother, right? It would go to the
19 bank.

20 A. Well, that doesn't make sense. Now,
21 what?

22 Q. Do you want me --

23 A. If you get a home loan -- if I
24 misspoke, I misspoke. Let's get that clear. I'm
25 not a very eloquent speaker.

1 Q. Would you like me to play it for you
2 again?

3 A. I can just tell you, if you get
4 \$200,000 from the bank, the first thing that gets
5 paid is the Wells Fargo lien.

6 Q. I'm speaking of the \$15,000 you took
7 out of the HELOC. You were discussing paying that
8 back with loan funds.

9 A. With my 200,000 loan funds. I told
10 Kelley all debt would get settled. I wanted that
11 judge to give me my Mama back, and I wanted no more
12 sisterly strife. If that was the reason, erase the
13 reason. Get a loan. Money is -- Mama is
14 priceless. Get a loan.

15 Q. I'm just saying in there you said you
16 acknowledge that if you paid back that money, it
17 wouldn't go to your mother; it would go to the
18 bank, correct?

19 A. The 15,000 was part of the HELOC. It
20 had to go to the bank. You understand?

21 Q. Okay. That's all I'm asking.

22 A. Okay. Are we on the same page? It's a
23 \$150,000 HELOC, and it was, like, a hundred and
24 forty-seven balance. Of that, less than 15 was
25 mine, but close to 15.

1 Q. Okay.

2 A. I mean, we had only been paying on it a
3 little bit.

4 Q. All right. Here is the second message,
5 which sounds like it was probably shortly after the
6 first.

7 Hi. Patricia again. The credit
8 card, seventeen five. On the 23rd when Muriel sent
9 the police here and Mama found out, Mama knew that
10 I was going to get a \$10,000 cash advance. I had
11 not told her about 7,500 because obviously 10,000
12 was an upsetting amount of money. And if she only
13 knew what it really was going to cost, it's just
14 not worth telling her. I'll take care of it. I
15 have made I think it's, like, an 841 payment in
16 January, a \$800 payment in February, and I will
17 continue to do so. I had them amortize seventeen
18 five at the percentage rate, and I've just been
19 getting it bigger. But, again, that's my
20 responsibility. I'm paying the legal fees to
21 Mr. Toperek to get my mother her legal rights back.
22 My name is on the card. I have a card. I'll make
23 you a copy of it. I'm an authorized user. Well,
24 thank you very much. Bye.

25 A. Yes. That's true.

1 MR. TOPOREK: Wait.

2 THE WITNESS: Sorry.

3 BY MR. KEYS:

4 Q. Okay.

5 A. That's what I said is true. But that
6 is not -- I mean, there is more to it. I'll wait
7 for a question.

8 Q. The 7,500, are we referring to a
9 payment made to Mr. Toporek on or about January 27,
10 2015?

11 A. Which according to Wells Fargo user
12 agreement policy was perfectly legal at the time,
13 whether Mama was a temporary ward of the state or
14 not. Wells Fargo states in their agreement that if
15 the account owner, i.e., Family Services,
16 overseeing Mama's account, if they wanted the
17 authorized user to no longer have access, they have
18 two options: A, close the account; B, get the
19 physical card back. At that date, they had done
20 neither.

21 Q. So you think your mother should be
22 responsible for paying attorney's fee for you to
23 retain an attorney?

24 A. I didn't know at the time I was
25 retaining the attorney. Go back to that, now. I

1 thought it was Mama's attorney.

2 Q. When you retained on 12/23?

3 A. Not 12/23.

4 MR. TOPOREK: That money was returned,
5 wasn't it?

6 THE WITNESS: That money was returned.

7 BY MR. KEYS:

8 Q. Well, let's listen to this one more
9 time, again.

10 A. It was returned.

11 MR. TOPOREK: That 7,500 was returned.

12 THE WITNESS: I didn't know that when I
13 made this tape, probably, but it was returned.

14 MR. TOPOREK: You need to just answer
15 the question. You didn't even answer the question.

16 THE WITNESS: Okay. I'm sorry.

17 Go ahead and repeat the question.

18 BY MR. KEYS:

19 Q. There are two separate amounts.

20 A. Okay.

21 Q. There is 10,000 on 12/23.

22 A. Right. The family emergency fund card.
23 Okay.

24 Q. There is 7,500 on or about 1/27/15.

25 A. Which was returned a few weeks later.

1 Q. Okay.

2 A. It hadn't been returned the date of
3 that call.

4 Q. When was the probate hearing on the
5 temporary order appointment of conservator and
6 guardian?

7 A. All that stuff confuses me. There was
8 a hearing January 9th and there was a hearing March
9 19th.

10 Q. Okay.

11 A. And I didn't hear from Kelley until the
12 third week of March.

13 Q. Okay.

14 A. And she can -- I'm not sure. I've got
15 to go back and see if I heard from her January or
16 February, but I know I talked to her because we
17 were talking about the first big meeting. And I
18 got an e-mail from her saying that they were going
19 to reschedule it because she and the guardian were
20 waiting on their court orders to come through, and
21 they hadn't come through. Apparently -- this was
22 all Greek news to me. But apparently you have to
23 have a court order before you can have that
24 meeting. So the meeting was April 1st.

25 Q. Okay. Well, you were at the hearing

1 where they said that your mother was incapacitated
2 on January 9th, correct?

3 A. That's all a blur to me. I was there.

4 Q. And then you used the authorized credit
5 card -- or the credit card which you were an
6 authorized user to pay Mr. Toporek?

7 A. I've got the minutes right here, now.

8 MR. TOPOREK: Just answer the question.

9 BY MR. KEYS:

10 Q. \$7,500 on or about January 27, 2015,
11 correct?

12 A. Yeah. But that was legal.

13 Q. And then Mr. Toporek returned the funds
14 to Family Services --

15 A. Yes.

16 Q. -- correct?

17 Okay. In this you said that the
18 \$17,500 was your debt; you were responsible for it,
19 correct, in this voice message?

20 A. Yeah. I think -- I don't agree with
21 what I said. I think I was misspeaking there. I
22 was just making sure that -- my goal was get me the
23 payoff because I want to settle it all. I want to
24 get back to court. I wanted everything fine. We
25 had a March 19th hearing, and I had a loan that

1 they said if Family Services got the payoff date,
2 payoff statement, they might close as early as
3 March 25th. But then it got moved to April 8th,
4 and then from April 8th it got moved, and then it
5 got moved, and then it got moved. And it got moved
6 four times.

7 Q. In this voice message, you said your
8 mother was upset when she learned that you took
9 \$10,000 out of the bank.

10 A. No. She is upset to hear an attorney
11 cost \$10,000. She's in her 80s.

12 Q. Okay.

13 A. Okay? I don't tell Mama nothing -- if
14 Mama knew that she was paying Family Services five
15 to \$700 a month to write checks and manage her
16 accounts, she would roll over. That's an
17 accountant. That's not an attorney. Can you
18 imagine if she knew what she was paying Ellen Babb
19 and this attorney and that attorney? Whew. She
20 would die if she knew. That's why we are not
21 allowed to tell her. We are on a gag order.

22 Q. And you did not tell her that you were
23 going to do the second credit card withdrawal for
24 \$7,500.

25 A. God, no. First of all, we are on a gag

1 order.

2 Q. Let's go to --

3 MR. TOPOREK: I need to interrupt you
4 real quick. I got an e-mail earlier asking if I
5 can participate in a conference call I'm going to
6 get from Judge Cate in a matter of an emergency
7 hearing that's scheduled for tomorrow. So I'm
8 going to get a call sometime between one and 1:45.
9 I'll just have to excuse myself.

10 MR. KEYS: Do you want to take a quick
11 lunch break at that time?

12 MR. TOPOREK: No. I mean, I don't
13 think it's going to take very long. If you want to
14 take a break, whenever you want to, that's fine
15 with me. I just wanted to let you know.

16 MR. KEYS: Whatever you want to do.

17 MR. TOPOREK: I'm giving you the
18 heads-up that when I get this call I need to take
19 it.

20 MR. KEYS: Okay.

21 THE WITNESS: Okay. I maintain that
22 the funds are -- came out of the family fund. And
23 whether I maintain it or not, it's not my debt,
24 according to the user agreement. I'm not paying
25 back that \$10,000. If I was rattling off all

1 excited that I got my 200,000 up from the one
2 sixty, then I said it. I withdraw it. I misspoke.

3 BY MR. KEYS:

4 Q. So your mother should be responsible
5 for your actions?

6 A. No. My mother should -- no. Muriel
7 should be responsible for all this nonsense, not
8 following our parents' plan. It's terrible.

9 Q. Let's go to --

10 A. And I'll go ahead and tell you. I've
11 got enough receipts right here that we are looking
12 at more like twenty, \$30,000. So nobody is going
13 -- Mama won't be being responsible. Because when
14 you take what you say I owe her and you subtract
15 from all this crap I've bought and paid for --

16 Q. So your mother owes you twenty or
17 \$30,000?

18 A. She doesn't owe me a thing. I told you
19 that earlier. I would never take it from her. But
20 we are now flip-flopping. I've spent so much on
21 Mama --

22 Q. Okay.

23 A. -- since Muriel did this. I don't want
24 it back. She is my Mama. But you are telling me I
25 owe Mama money, and I'm telling you I've got three

1 inches of receipts.

2 Q. Okay. So just to clarify, August 2013,
3 there was \$1,500 for electrical you received from
4 your mother.

5 A. Yes. Paid those two Visa bills, yes.

6 Q. August 2012, you received \$6,000 for
7 the TERI program?

8 A. No.

9 Q. From your mother.

10 A. No.

11 Q. That's what you just said on the
12 previous voicemail.

13 A. You said August?

14 Q. In 2012.

15 A. Okay. November 1st, 2012.

16 Q. Okay. November 2012 you received
17 \$6,000 from your mother?

18 A. No. From Daddy.

19 Q. Your dad.

20 A. God, no. From Mama. But from Mama and
21 Daddy. It was planned by Daddy a long -- when they
22 first made that change in the law.

23 Q. But your father has passed away?

24 A. He passed away --

25 Q. Before that.

1 A. -- about eight months prior. Ten
2 months prior, yeah.

3 Q. In November 2013, you received \$6,000
4 from your mother?

5 A. That's the day I went out on medical
6 leave, yes. And I showed Mama my spreadsheet, and
7 all my other invoices that's over \$12,000, and we
8 called it a wash.

9 Q. On November 18th, 2014, you received a
10 second half-interest so that you entirely owned 602
11 Atlantic, correct?

12 A. So that I could immediately, and I did
13 that day, apply for a home loan and got
14 pre-approved for \$160,000 real soon. And I got
15 that letter. Which I upped to 200,000 so I can
16 just wash this whole thing away.

17 Q. On December 23rd, 2014, you took
18 \$10,000 from your mother's account, correct?

19 A. I didn't take it. Well, I took it --
20 no. I was an authorized user. I'm on that
21 account.

22 Q. You signed the slip that caused the
23 \$10,000 to leave your mother's credit card?

24 A. I have all those transaction papers if
25 you need them. Yes, I did. I signed the slip.

1 Q. On January 27th, 2015, you again used
2 that credit card to pay Mr. Toporek \$7,500 more?

3 A. Yes. Family emergency. Mama is a
4 temporary ward of the state.

5 Q. Okay.

6 A. I think it's nice that the firm gave it
7 back. But it wasn't illegal. The judge didn't
8 address it. And they didn't take the credit card
9 and they didn't close the account. Had the judge
10 addressed it, now, in her order, that would have
11 been different.

12 Q. Okay. Let's look at Plaintiff's
13 Exhibit 9.

14 (PLF. EXH. 9, COPY OF CHECK, was marked
15 for identification.)

16 THE WITNESS: That's a \$500 check.
17 There is only one that I could find.

18 BY MR. KEYS:

19 Q. What is this?

20 A. That's a \$1,500 check. I don't know.
21 What's it say?

22 Q. I read that it is Muriel W. Clarkin and
23 Muriel C. Kenney's account, and it is made to
24 Patricia Smith for \$1,500.

25 A. You are talking about the check?

1 MR. TOPOREK: Just let him finish the
2 question.

3 THE WITNESS: I'm sorry.

4 BY MR. KEYS:

5 Q. On 8/21/2013. It says for electrical
6 and something. It appears to be signed by your
7 sister. You received this money, right?

8 A. We have already covered that. I told
9 you I called --

10 MR. TOPOREK: Just answer the question.
11 Did you receive the money?

12 THE WITNESS: Yes, I received the
13 money.

14 MR. TOPOREK: Okay. That's the answer
15 to the question.

16 THE WITNESS: And I have the invoices.

17 BY MR. KEYS:

18 Q. And you deposited it into your Heritage
19 Trust bank account?

20 A. I don't know if it was Wells Fargo or
21 Heritage Trust. I honestly don't. I'd have to
22 look at the statements.

23 Q. The back of it where you signed it, can
24 you read that? Does that say Heritage Trust?

25 MR. TOPOREK: Right here is the back.

1 THE WITNESS: I can tell you that's
2 Heritage Trust. 25112 is my member number.

3 (PLF. EXH. 10, WELLS FARGO BANK
4 STATEMENT, ENDING IN 0642, was marked for
5 identification.)

6 BY MR. KEYS:

7 Q. Let's go to Plaintiff's Exhibit 10.
8 It's a Wells Fargo bank statement, last four digits
9 of the account are 0642. The account is in the
10 name of Muriel W. Clarkin.

11 And if we flip to the next page of this
12 statement, page 2 of 3 of this statement, it says
13 on 11/18 a withdrawal was made in a branch store
14 for \$6,000. This is the \$6,000 you received on
15 11/18/2014, correct?

16 A. Yes.

17 And then watch my statement. It went
18 into my Wells Fargo account, I think.

19 Q. It went into your Wells Fargo account?

20 A. I think. I've got to look at the
21 statement. But I'm pretty sure right then and
22 there at the bank we did it.

23 Q. The account that you had with your
24 mother as well?

25 A. No. This is November.

1 Q. Which account are you referring to?

2 A. April 25th. You've got the statements.
3 April 25th, 2014, I opened -- when I got the 15,000
4 to do the roof, I opened an account with Wells
5 Fargo. And at first they told me -- I've got two
6 pieces of paper where they told me -- when I just
7 -- John was the only one who has ever been on the
8 account. But when they sent the statements to me,
9 they were real super nice. April 25th, May, June,
10 July, August, September, October, Mama's name is on
11 it.

12 Q. Right.

13 A. John, Jr.'s name goes on it in November
14 and stays on it.

15 Q. Why was that?

16 A. Until -- because he was out of high
17 school, and Mama didn't -- turned out Mama didn't
18 need to be on it.

19 Q. Why did you start with your mother and
20 then switch to John?

21 A. I started with my mother because if you
22 check on that very same day, we set up an automatic
23 payment from my personal checking to her HELOC,
24 207, and two payments were made. And then another
25 a little bit later. We started with an automatic

1 draft, and then didn't need it. My son, he was --
2 didn't need it. He was 19, out of high school. He
3 was getting ready to go to boot camp.

4 (PLF. EXH. 11, E-MAIL FROM PATRICIA
5 CLARKIN SMITH TO KELLEY EVANS, DATED 4/10/15, was
6 marked for identification.)

7 BY MR. KEYS:

8 Q. Let's go to Plaintiff's Exhibit 11.
9 This is an e-mail from you to Kelley Evans, dated
10 April 10th, 2015. The last sentence at the bottom
11 of the page before you say thank you, can you
12 please read that, starting with Wells Fargo.

13 A. 6,000 -- I wrote October. It's
14 November 1st, 2012. So October is wrong.

15 Q. Okay.

16 A. Okay. I retired November 1st. Mama
17 went with me to Columbia. Maybe she gave me the
18 check a couple days earlier. I don't know. So
19 maybe the check is in October. To help me retire
20 from the state and join the TERI program, that's
21 true. I talked about that. Daddy and Mama made
22 the plan before he died. The other 6,000 in
23 November, was to help, we talked about that. Those
24 two are true.

25 Q. Those are debts you owe?

1 A. No.

2 Q. Okay. Because?

3 A. Because I already paid them. I didn't
4 owe to start with. They were gifts. But now we
5 are so upsidedown on money, I don't owe a thing.

6 And then the pontoon she has never answered
7 the question.

8 Q. Did you pay your mother \$12,000 in
9 funds?

10 A. No. Because Ellen Babb crossed it off
11 in the mediation. Muriel didn't have to pay her
12 20,000 and I didn't have to pay nothing. It's all
13 in the mediation record.

14 Q. Okay.

15 A. Ask Ellen Babb. And if not -- if
16 that's not true, if that wasn't what came out of
17 mediation, then Muriel sat right there and said:
18 My pontoon -- I paid the storage fees on the
19 pontoon. That canceled out the loan for my new
20 pontoon. And so I have several e-mails asking
21 Kelley: Hey, did you apply Muriel's pontoon
22 payments to her \$20,000 loan? You are sitting here
23 squabbling about seventeen five with me. What
24 about her 20,000, plus her electric on Goat Island,
25 plus her State Farm insurance -- boat insurance

1 coming out of Mama's funds? I can't get an answer.

2 Because if you applied Muriel's pontoon -- family
3 pontoon rental to Muriel's 20,000 --

4 Hooray, I got that with me, too.

5 -- I was renting -- I was paying it,
6 too. Apply it to my debt --

7 Q. Just for clarification --

8 A. -- if you say I got it.

9 Q. You are saying the 6,000 from November
10 of 2012 and the 6,000 from November of 2014, you
11 owed it until it was written off in mediation?

12 A. No. I'm saying my parents said it was
13 a gift. I'm saying I said I wanted to pay it back.
14 I said I want -- I said my Daddy -- and especially
15 my Daddy, when he set up my retirement plan, when
16 they changed state law, it was a gift from my
17 parents, but I said when my TERI money comes in
18 when I turn 59 and a half, I'm giving it back.

19 Q. Okay.

20 A. Okay. The 6,000 emergency fund money,
21 my mom would say that was a gift, but Patricia will
22 pay it back, which I already explained that story
23 to you. I told her about the State Farm thing. I
24 sent a letter to Kelley asking for a copy of the
25 State Farm denial letter. Because that day on the

1 1st, on the porch --

2 Q. Okay.

3 A. -- I gave her that stack of papers, I
4 gave her the only copy I had. I didn't make a
5 copy. And she never did give it to me. But,
6 anyway, State Farm gave me a copy recently. So
7 I've got that with me, too, in case you need proof
8 that I had to rebuild the bathroom out of my own
9 pocket while Mama was 100-percent owner years ago.

10 Q. Okay. Did you ever give your mother
11 any money for that home?

12 A. Which home?

13 Q. 602 Atlantic.

14 A. Did I give her money for that home?
15 No. I gave my mother -- I gave money to my mother
16 for my mother and to pay the tax -- property taxes
17 and homeowners insurance on that home, but not
18 until I sold my own home.

19 Q. So once you lived in the home, you gave
20 your mother insurance and property taxes to pay for
21 the house?

22 A. No. That's a broad statement. I'm not
23 getting into John -- Big John and our relationship,
24 unless you make me. I own 707 Vision Road. It was
25 the Smith family home.

1 Q. We're just talking about 602 Atlantic.

2 A. Okay. But the way -- you are going to
3 have to rephrase that because I'm not going to
4 agree to something that broad.

5 Q. I'm just talking about 602 Atlantic.

6 A. Okay. I'm listening.

7 (PLF. EXH. 12, E-MAIL BETWEEN PATRICIA
8 CLARKIN SMITH AND KELLEY EVANS, DATED 8/4/15, was
9 marked for identification.)

10 BY MR. KEYS:

11 Q. Let's go to Plaintiff's Exhibit 12,
12 talking about -- this is an e-mail between you and
13 Kelley Evans, dated August 4, 2015. You were
14 asking to be reimbursed for things. You talk about
15 the \$6,000 as being a debt.

16 A. Because she said it was a debt. I just
17 wanted the whole damn thing cleared. The money is
18 what the judge is using as the reason for the
19 strife. I wanted the money cleared up. I think I
20 have proven that by getting a \$160,000 home loan
21 the very day I got the 100-percent deed. I think I
22 have proven that by getting it raised to 200,000
23 and leaving that message for Kelley. Whether I
24 misspoke and said it clearly or not, it doesn't
25 matter to me. I wanted all debt, perceived debt,

1 real debt, I didn't care, I wanted it gone. I
2 wanted my mother free. If it costs 200,000, so be
3 it. Get my mother free.

4 (PLF. EXH. 13, WELLS FARGO STATEMENT,
5 ACCOUNT ENDING 5793, was marked for
6 identification.)

7 BY MR. KEYS:

8 Q. Okay. Let's go to Plaintiff's Exhibit
9 13. It says this is a Wells Fargo statement for
10 account ending in 5793. This is Muriel Clarkin's
11 account. It says on 12/23, a Heritage Trust
12 Federal, Charleston, \$10,000 charge, cash advance.

13 A. Yes. I have the statement to it.

14 Q. Okay. That is the \$10,000 you received
15 on 12/23?

16 A. This is one of your exhibits, uh-huh.

17 Q. And if you flip the page, we have a
18 credit union receipt.

19 A. Right. And I told you earlier I have
20 all the originals.

21 Q. And you signed that receipt, correct?

22 A. Correct.

23 Q. Giving \$10,000 and putting it in your
24 Heritage Trust Federal Credit Union account,
25 correct?

1 A. I'm not sure if I put it in there or
2 not. I don't remember. I doubt I ran out with
3 cash, but I don't remember if I ran out with cash
4 or if I transferred it to 251 -- 1121, account
5 ending in 1121. I honestly don't remember. That
6 day is a blur.

7 Q. Okay.

8 A. It was horrible.

9 (PLF. EXH. 14, WELLS FARGO STATEMENT,
10 ACCOUNT ENDING 5793, BILLING PERIOD 1/17/15 TO
11 2/13/2015, was marked for identification.)

12 BY MR. KEYS:

13 Q. Let's go to Plaintiff's Exhibit 14.
14 This is a Wells Fargo statement for Muriel Clarkin.
15 The last four on the account number 5793. It is
16 for the billing period of 1/17/2015 to 2/13/2015.

17 On 1/27, it has a charge for \$7,500 to
18 Uricchio, Howe, and Krell. That is when you used
19 the credit card and paid Mr. Toporek \$7,500,
20 correct?

21 A. Correct. This is the first time I see
22 a statement. Yes. We already talked about that.
23 And that was within the guidelines.

24 Q. Okay.

25 A. But they returned it, so...

1 And I made a payment on the statement,
2 too. This is the 836 statement I made a payment
3 on.

4 (PLF. EXH. 15, WELLS FARGO ACCOUNT,
5 ACCOUNT ENDING IS 8506, was marked for
6 identification.)

7 BY MR. KEYS:

8 Q. Can you go to Plaintiff's Exhibit 15.

9 A. 15?

10 Q. Yes.

11 This is another Wells Fargo account by
12 Muriel Clarkin. Last four of the account number is
13 8506.

14 You go to the second page on 2/11, it
15 has a withdrawal of -- 2/11/15, a withdrawal of
16 \$10,729.55. Can you tell me about that?

17 A. Auto pay?

18 Q. It says Wells Fargo consumer auto pay.

19 A. Oh, yeah. Because Mama -- the banker's
20 here to correct me if I'm wrong, but Mama --

21 MR. TOPOREK: She is a lawyer. She is
22 not with the bank.

23 THE WITNESS: I apologize, Attorney. I
24 apologize, Ms. Wells Fargo.

25 All right. So Mama is on automatic

1 draft. So go back to your first statement you just
2 showed me. It was auto drafted --

3 BY MR. KEYS:

4 Q. What was auto drafted?

5 A. The first -- Mama had a payment auto
6 drafted out of the statement you just went over.

7 Q. The payment for the \$10,000, is that
8 what you are saying?

9 A. No. No. No. No. You've got to look
10 at -- this is my first time to see the statement.
11 I just called on the phone --

12 Q. Okay.

13 A. -- and made an 836 payment, not knowing
14 whether Mama had auto draft or not. Muriel is not
15 talking to me, and I wasn't about to let Mama's
16 Visa be 30 days late. So I --

17 Q. You are saying --

18 A. -- made a payment in January and I made
19 a payment in February, 836 and 800.

20 Q. You are saying on 2/11 auto draft was
21 set up?

22 A. No. No. No. No. Auto draft had been
23 set up. It turns out it had been set up for years.
24 It pays off that Visa. Boom.

25 Q. So the credit card upon which you were

137

1 an authorized user had an account balance, you were
2 saying, of 10,792.55.

3 A. Well, I didn't say that. I just read
4 it.

5 Q. And you believe this was an auto draft
6 of that because auto draft was previously set up?

7 A. I assume. Because I sure didn't have
8 \$10,000 to pay it. Because it got put back.

9 Q. It did?

10 A. It got put back by Family Services.
11 And worse yet, Family Services has made
12 interest-only payments on that thing. \$10,000, it
13 cost my Mama, gosh, what, over 5,000 now, three and
14 a half years. It's crazy.

15 Q. The \$10,000 you took out on 10/23/14 --

16 A. Yes. I took out -- yes.

17 Q. -- cost \$5,000 in interest?

18 A. I don't know how much the total
19 interest is. But who makes interest-only payments
20 on it? It's crazy. Especially when the Wells
21 Fargo user agreement says the responsibility of the
22 accountholder.

23 Q. So your mother is responsible for that
24 \$10,000?

25 A. According to the user agreement that

1 she had with Wells Fargo. According to me,
2 according to the family fund reason, this is an
3 emergency. It was to get her freedom. Yeah.

4 Q. But you acknowledge that it is
5 calculating a lot of interest on that \$10,000?

6 A. I acknowledge that Family Services is
7 not being prudent with her money by making
8 interest-only payments. That's what I acknowledge.

9 Q. Okay.

10 A. That's a crazy amount of interest on
11 \$10,000 over three and a half years. You know it
12 could have been paid off? If you look at their
13 little box, and they tell you if you pay this much
14 in three years the amount will be? It would be
15 paid off by now.

16 Q. You signed the form to do that \$10,000
17 cash advance.

18 A. As an authorized user, and Mama signed
19 the user agreement, which means the accountholder,
20 i.e., Family Services, is responsible.

21 Q. All right.

22 A. He told me to flip those words. It's
23 pretty simple. It's on their website. It's in the
24 agreement. Section 4, number 5 or Section 5,
25 number 4.

(PLF. EXH. 16, LETTER FROM WELLS FARGO
TO FAMILY SERVICES, DATED 6/17/15, was marked for
identification.)

BY MR. KEYS:

Q. Let's go to Plaintiff 16. This is a
Wells Fargo letter, dated June 17th, 2015, to
Family Services, specifically, Kelley Evans,
regarding Muriel Clarkin's HELOC loan. Can you
read me what it says under status of account.

A. As we discussed, the account is showing
current at this time. Since the customer did deed
the property to her daughter, her account is
considered in default. This does give us the right
to accelerate the terms of the account. This issue
can be reviewed at any time for a determination to
be made on how we will proceed.

Shoot. I'm the one --

MR. TOPOREK: He just asked you to read
it. He didn't ask you to comment. He asked you to
read it.

THE WITNESS: Okay, yes. I read it.

BY MR. KEYS:

Q. You knew that provision of the loan
existed before you drafted the deed on November 18,
2014?

1 A. I not only knew it, I wrote a letter to
2 Wells Fargo myself before Mama went to the bank
3 acknowledging that I was now the owner and asking
4 them to do a property-sold case.

5 Q. Okay.

6 A. So I was proactive.

7 Q. So you knew this would risk defaulting
8 the loan, but you still deeded the property over?

9 A. I went and applied for a home loan that
10 same day and got pre-approved for one sixty and
11 then upped it to two hundred. You are missing the
12 point. I've been trying to settle all this debt
13 from day one.

14 Q. Okay.

15 A. The only reason we're sitting here and
16 this debt is not settled across the board and my
17 Mama is not free is I didn't get a payoff
18 statement.

19 Q. Okay.

20 A. Okay? And we have got lots of
21 communication between Pam Morris and Amy Cates,
22 Heritage Trust, and Kelley. We have got telephone
23 communication. We have got e-mail communication.
24 What we don't have is a closed loan so that
25 everything was settled and Judge Curry would no

1 longer needed to say sisterly strife. That's what
2 we don't have, a solution to the sisterly strife.
3 Pay the debt. Mama is priceless.

4 (PLF. EXH. 17, DEED TO 602 ATLANTIC
5 STREET, was marked for identification.)

6 BY MR. KEYS:

7 Q. Okay. Let's go to Plaintiff's Exhibit
8 17.

9 That's it. It's the first deed.

10 MR. TOPOREK: It's the deed.

11 BY MR. KEYS:

12 Q. The deed to 602 Atlantic, drafted by
13 Mac Gibson, recorded on August 7, 2013. It gives
14 you joint tenancy with right of survivorship and
15 not as tenancy in common. So if your mother passed
16 away, you would take complete title to the home,
17 correct?

18 A. We talked about that. I thought I was
19 supposed to bring it today. I have a copy for you
20 today.

21 Q. So you understand that?

22 A. Yes.

23 Q. That you would have been a sole owner
24 of the property without the second deed once your
25 mother passed away?

1 A. Yes.

2 Q. Okay.

3 A. But I wouldn't have been able to get a
4 loan in my name without my mother's signature. She
5 can't do that when she is a ward of the state.

6 Q. Was your mother a ward of the state on
7 November 18, 2014?

8 A. No. But Muriel had called me and asked
9 me to sign papers about Mama's not being able to
10 take care of herself. I didn't know in regards to
11 what. It didn't sound good. Because that was not
12 Mama and Daddy's plan.

13 Q. That was part of your reasoning for
14 doing the second deed on November 18, 2014?

15 A. No. I explained that about 10 times.
16 The reason for doing the deed on November 17th,
17 okay, had three parts. One, I was on medical
18 leave, and my leave was going to run out; two, when
19 your leave runs out, you now have no salary
20 verification form to give to the bank to get your
21 -- to have a higher salary to get a bigger loan;
22 and, three, I wanted -- the house needs repair.

23 Q. Okay. You just said that your mother
24 could not sign a loan because she was a ward of the
25 state, but she was not a ward of the state --

1 A. Mama didn't become a ward of the state
2 until the -- well, technically the 22nd. We didn't
3 find out until the 23rd. So I misspoke. I
4 apologize. November and December, I interchanged
5 them.

6 No. The loan has strictly, strictly,
7 strictly, strictly let's get this HELOC paid while
8 we can. Because we have in Mama's notes I would
9 not qualify on my retirement salary alone. I
10 needed that seventy-two five.

11 Q. Okay. Let's go to Plaintiff's Exhibit
12 19, which are text messages. Let's go to page 6.
13 These are excerpts. Not all 50 pages are included
14 in here.

15 A. You took them out of sequence?

16 Q. No. They are in sequence.

17 MR. TOPOREK: Go to the sixth page.

18 THE WITNESS: Well, they are numbered
19 at the bottom. What number do you want?

20 BY MR. KEYS:

21 Q. Six.

22 A. That's 12. This is 6. We are out of
23 sequence.

24 MR. TOPOREK: You said 6?

25 MR. KEYS: Yes.

1 BY MR. KEYS:

2 Q. I know it's difficult to read. Can you
3 read what is the sentence said by you on 5/27/13 at
4 5:32?

5 A. Right here?

6 Q. The second green one.

7 A. This is the first --

8 MR. TOPOREK: He asked you if you can
9 read it.

10 THE WITNESS: Yes. I can read it, yes.

11 BY MR. KEYS:

12 Q. What does it say?

13 A. Mama has 450 rent in her wallet. Good
14 luck in getting a deposit slip. I tried.

15 That's when Muriel wanted everything
16 put in -- she tried to get Mama to switch banks.
17 That didn't work.

18 Q. Okay.

19 A. Yeah. That was the first time that I
20 have ever texted about money, rent, anything, out
21 of that period of time that you blocked out.
22 That's the first one.

23 Q. Did you do it before that?

24 A. Text before that? I don't know. I
25 mean, that's before 2012. I don't have those

1 texts. I don't know. That's when the hold was
2 out. I don't know.

3 Q. Can you flip to number 12. That top
4 blurb is your sister speaking. Can you read that?

5 A. Muriel said: Okay, I'll look. I need
6 to deposit Mama's money. When will --

7 You are out of sequence.

8 MR. TOPOREK: He asked you to read
9 that.

10 THE WITNESS: Yeah. I mean -- okay.

11 MR. TOPOREK: Read it. Just read it.

12 THE WITNESS: Okay. I'll look. I need
13 to deposit Mama money. When will you have January.
14 I have to pay taxes. Don't forget Ben's birthday
15 is Saturday, 5 to 8. I'll have Chinnet. Take Mama
16 and Michael and you, and all go together.

17 We already discussed this. Yes, I gave
18 Muriel money, and she wrote -- and she paid the
19 taxes, and then -- no. This is the 14th.

20 Q. I'm guessing in or around 1/4/2014.

21 A. I'm not so sure Muriel -- I would have
22 to go back and look at our records. I think I paid
23 those taxes, but I could be wrong. I know I paid
24 '15, '16, '17, and '18. Well, I will pay '18. But
25 if Mama wrote '14, it's because I give her enough

1 money to cover it during 2013. Plenty enough
2 money. I know Mama wrote the check for the
3 insurance up until I was able to get it insured by
4 C.T. Lowndes. Up until then, Mama wrote -- well,
5 Mama and Muriel. Mama's checking account. I don't
6 know who wrote it.

7 Q. So page 11 of the text message
8 transcript --

9 MR. TOPOREK: 11 is not in this.

10 MR. KEYS: There you go. Top of it
11 says that that is dated 1/2/14.

12 MR. TOPOREK: Here. It's not in your
13 book. This is 11. E-mail at the top?

14 MR. KEYS: I'm just showing the date of
15 the subsequent message, dated 1/2/14.

16 MR. TOPOREK: 1/2/14.

17 MR. KEYS: It appears on 12. They just
18 cut off.

19 THE WITNESS: Thank you. I was looking
20 at that, and it didn't look like a regular text.

21 BY MR. KEYS:

22 Q. Okay. So your sister says when will
23 you have January in the text message you just read.
24 What does that mean?

25 A. Wait a minute. I think you are wrong.

1 That is green and that's gray.

2 Q. Yes. She is speaking. On the bottom,
3 it says --

4 MR. TOPOREK: What does it say? I
5 can't read that.

6 THE WITNESS: I'm green.

7 BY MR. KEYS:

8 Q. This is your sister saying what we just
9 read on number 12. It's kind of cut off. The date
10 of it is cut off, so it's showing you the date from
11 page 11.

12 A. Oh, the date. Okay, I agree with you.
13 The date is on page 11.

14 Q. Okay.

15 A. It's 1/2/2004 -- 2014, January 2nd.
16 Okay.

17 Q. Okay. So, flipping to page 12.

18 A. Okay. So, I'm telling you off the top
19 of my head without having the bank stuff and
20 without having y'all's bank stuff, I honestly don't
21 know if Muriel -- Mama -- cut it out of Mama's
22 account for two fourteen or if I did.

23 Q. You are talking about the taxes?

24 A. The taxes. They definitely did the
25 insurance up until we switched to C.T. Lowndes.

1 There was a lapse there. That's when Mama was at
2 the bank. Because in her notes she wrote not
3 presently insured.

4 Q. What does your sister mean when she
5 said: I need to deposit Mama money. When will you
6 have January?

7 A. She means she had to pay the taxes.
8 The tax bill was out, and she wanted to do it.

9 Q. What does: When will you have January
10 mean?

11 MR. TOPOREK: Object to the form of the
12 question.

13 You can answer if you know the answer.

14 THE WITNESS: What, now? Say it again.

15 MR. TOPOREK: What does she mean when
16 she says when will you have January.

17 THE WITNESS: January 2nd. So she is
18 asking me for money for January.

19 BY MR. KEYS:

20 Q. Okay. What's money for January?

21 A. This is the 14th.

22 Wait a minute. Are we on 2014?

23 MR. TOPOREK: Yes.

24 THE WITNESS: Okay. I don't pay then.
25 I'm already 100-percent owner. I took over with

1 C.T. Lowndes. So that's what I was telling you.

2 BY MR. KEYS:

3 Q. That's before you were 100-percent
4 owner. This is January 2nd, 2014.

5 A. No. I became -- okay. I gotcha. It's
6 10 months before.

7 Q. She's asking you when will you have
8 January.

9 A. Did I answer?

10 Q. I'm asking what does that mean?

11 A. I probably called her. I hate texting.
12 That just means that she told me she wanted to pay
13 taxes.

14 Q. Okay.

15 A. And so she told me January 2nd, when
16 are you going to be putting it -- giving it to me
17 or going in and depositing it. That's all that
18 means, January money that I gave every month. I
19 don't know how much it would have been because
20 that's right after Christmas. Mama probably paid
21 all her own fees, but I usually do the dinner and
22 stuff. So subtract out of that a little bit. I
23 doubt it was 450 or 500. It was probably less.

24 Q. Okay. Let's flip to the next page,
25 which is 16 of 50.

1 A. I take that back. I don't know where
2 dinner was that year. But if it was at my house, I
3 would have subtracted out the cost.

4 MR. TOPOREK: You are looking at 16 at
5 the bottom.

6 MR. KEYS: Which would just be the next
7 page.

8 MR. TOPOREK: Do you have 16?

9 THE WITNESS: Uh-huh.

10 BY MR. KEYS:

11 Q. Bottom bubble, dated 3/31/2014, at
12 10:05, you say to your sister.

13 A. Yeah. I paid Mama the balance of
14 February, 300 cash, and it is in her drawer.

15 Muriel knew what I meant by in her
16 drawer. Okay?

17 200 is in her drawer that she doesn't
18 want you to know about.

19 So 300 Muriel can put her hands on.
20 200 is hidden away from Muriel.

21 Q. Okay.

22 A. Okay. I owe for March and April and
23 will pay during April. I'm using March and April
24 money -- rent money for the employment lawyer. I
25 always pay Mama every cent I borrow. Shoot. I pay

1 Mama every cent I borrow, plus some.

2 And I use that word rent because it
3 just satisfies Muriel. It makes it easy on
4 everybody. I didn't care.

5 Q. So what did you mean when you said paid
6 Mama the balance of February?

7 A. It meant that if I paid her 300 -- by
8 now, remember, I told you we started -- it was
9 around 450 I would shoot for? And I was very clear
10 with you that doesn't mean 100 percent cash. It
11 might be in the form of social, it might be in the
12 form of a tangible object, and it might be cash,
13 but it was predominantly cash, unless of course you
14 went on a Bahama and Key Largo vacation. Now we
15 have wiped out a couple of months with vacations.

16 Q. What did you mean when you say owe for
17 March and April. Will pay it during April?

18 A. It meant I was letting Muriel know for
19 her budget that she wasn't going to be seeing any
20 presents from me, any vacations or social from me,
21 and no cash from me during March. Every penny I
22 had went to my employment lawyer. Because you got
23 to remember, I'm just getting back to work. I got
24 put back to work on the 30th. I reported back to
25 work after five -- over five months out on the

1 31st. I had an employment lawyer because it was
2 contract time. I already told you about that.

3 Q. Okay. Did you sue Charleston County?

4 A. No.

5 Q. Okay. Why did you hire an employment
6 lawyer?

7 A. Because it's contract time. You don't
8 want to be reactive with Charleston County when you
9 are in the TERI program. The TERI program is
10 subject year to year, so you lose some of those due
11 process rights.

12 Q. So you hired an employment lawyer to
13 review your TERI contract with Charleston County?

14 A. No. You hire an employment lawyer so
15 that nobody does anything behind a back door in
16 Charleston County. You make sure -- you want a
17 contract and you have exceeded FMLA's 12-week
18 requirement and you didn't even have FMLA because
19 you had already used it up and it's a 12-month
20 roll-back program? Shoot, you get an employment
21 lawyer.

22 Q. What was the result of you hiring the
23 employment lawyer? Did you receive any funds?

24 A. No. I just got a contract. That was
25 the end goal. I got my -- I accomplished my goal.

1 Q. Okay. Let's go to page 21, which is
2 maybe two pages over.

3 A. Okay.

4 Q. Okay. Bottom green blurb from you on
5 4/1/2014.

6 A. That's out of context you start there,
7 now. You've got to go up to where Muriel is all
8 upset and she is moving out, and then she goes on
9 about how she doesn't have anything and how unhappy
10 she is. And I tell her: I can help out now. I'm
11 not working. Go on. Go to Goat Island and play
12 with your friends and take a rest. Go get your
13 Mule --

14 A Mule is a cool kind of golf cart-type
15 tractor thing.

16 -- and go get your stuff and just go.
17 Go. You are completely stressed out. You are
18 blowing up. Go. I'm not working. I will be with
19 Mama. Go.

20 Q. Okay.

21 A. All right.

22 Q. So then what do you say on 4/1/2014 at
23 9:07?

24 A. Well, first, Muriel said it would be a
25 cold day it hell before she would take one penny

1 from her, but now she has already taken the 20,000
2 a couple months prior for the pontoon. So that
3 ain't quite true. But, like I said, Muriel is
4 blowing up.

5 Q. When you say her, who do you mean her?

6 A. Muriel. She is the one writing this.
7 This is April 1st, 2014.

8 Q. She is speaking about your mother when
9 she says it would be a cold day in hell before she
10 would take a penny from her? Is that what we're
11 talking about?

12 A. Her? She is referencing -- her? Her
13 is referencing our mother.

14 Q. Okay.

15 A. Muriel and Mama are having a major
16 meltdown all March 31st. If you read the text, all
17 April 1st, Muriel is moving out. Period. Muriel
18 is moving out. Patricia is moving in. Period.

19 Q. Okay. What do you say on --

20 A. Before Mama was moving in with me. We
21 didn't get that far.

22 Q. What do you say on 4/01/2014 at 9:07?

23 A. The green? Okay. I have an easier
24 plan. Plan relating to her going to Goat Island
25 and getting her toys and being with her friends and

1 resting.

2 Q. Okay.

3 A. Okay. I have an easier plan. My
4 short-term disability is about -- is 9,000 over the
5 next three months. I owe mom 6,000 for retirement.

6 Remember, I told you --

7 Q. That's the medical and --

8 A. No. No. Retirement is November 1st,
9 2012. Daddy arranged it. It was a gift in my
10 parents' eyes, but I told them I would pay it back
11 when my TERI money -- when I turned 59 and a half
12 and I could touch -- I could withdraw from where
13 you roll your TERI money into a 401 or 403, or
14 something, okay, age 59 and a half. But I was
15 getting all this money from my short-term
16 disability, right? Mama had given me --

17 Q. How much did you get from your
18 short-term disability?

19 A. I ended up not getting it because they
20 put me out for PTSD, and I don't know if I got --
21 something about they didn't cover psychiatric.

22 Q. Okay. What was the psychiatric reason
23 that it fell through?

24 A. PTSD.

25 Q. Okay.

1 A. That was the diagnosis.

2 Q. What was that from?

3 A. You are going to make me answer that,
4 really?

5 Q. No. We don't need to answer that.

6 A. I will answer that if you need me to
7 answer that.

8 MR. TOPOREK: He said you didn't need
9 to answer it.

10 THE WITNESS: All right. Thank you.

11 BY MR. KEYS:

12 Q. Go on. What does it say after that?

13 A. All right. 6,000. And 1,500 for
14 electrical.

15 Now we have fast forwarded three years.
16 It's way more than was done.

17 Q. So that's the 8/12/2013? Is that what
18 we are talking about?

19 A. No.

20 Q. Or 8/21?

21 A. We are talking about when the
22 electrician was there doing the wiring, turning the
23 box from the kitchen. I paid him 2,500. And as he
24 walked outside, he saw the ground wire
25 disintegrated. I called Muriel. She answered the

1 phone. Got a \$1,500 check that you got, and then I
2 paid --

3 Q. Is that Exhibit 9? Is that the check
4 we're talking about?

5 A. If it says 1,500, yes. And then I've
6 got the invoice saying paid here.

7 Q. Okay.

8 A. You know, from Affordable Electric.
9 Okay?

10 I will give it to you for Goat Island.
11 Please don't say no. Just think about it for a
12 while.

13 Because Muriel has got me thinking she
14 doesn't have any money to buy a Mule and all these
15 things, all her toys with her friends on Goat
16 Island. She has got me thinking she is extremely
17 stressed out, and it's bad for her, and doctors are
18 telling her this and that. I mean, you know, I
19 love her. You read 2012, 2013. You read January,
20 February, middle of March 2014. Now things have
21 taken a big fat turn. She and Mama are blowing up
22 at each other like there is no tomorrow. They
23 don't enjoy living together. It doesn't mean they
24 don't love each other. They just can't live
25 together.

1 Q. Okay. Let's go to the next page, 22.
2 Can you read your first blurb there, sent 4/1/2014
3 at 9:31.

4 A. Yeah. That's everything I've been
5 saying to you about 20 times. Please remember --
6 are you talking about that one, the big long one?

7 Q. Yes.

8 A. Please remember that I did not sign the
9 paper for Atlantic Street to be in my name 100
10 percent because it would have triggered a recall of
11 Bridget's loan. I qualified for an FHA loan
12 recently.

13 Q. You don't have to read it all. That's
14 what I was getting at.

15 A. Okay. Yes. They wanted me to roll in
16 Bridget's loan, yes.

17 Q. So in April 1st, 2014, you knew that
18 that could trigger Bridget's loan, if you deeded
19 the whole property over?

20 A. That's why I didn't do it. I told you
21 that.

22 Q. But you did it on November 18th --

23 A. Because I was willing to take all the
24 risk because I was losing possibly the ability to
25 even get a loan. I'm on medical leave. You need

1 the salary verification form. I only made
2 thirty-four five back then. I wouldn't have
3 qualified to pay off the HELOC. I needed
4 seventy-two five plus thirty-four five to get my
5 big loan.

6 Q. All right. Go down to your sister's
7 second blurb on 4/1/2014 at 9:39. What is she
8 talking about, the 35,000 that John owes your
9 mother?

10 A. Oh, I don't have a clue. I'll tell you
11 what pissed me off. This is when I took a turn.
12 Right here. Today. Reading that on this day, at
13 that very moment, when I read this, I said, oh my.
14 My son is supposed to be going to Clemson. None of
15 that means shit. My plan is going into effect now.
16 Bridget has to pay taxes and insurance, termite
17 bond. Should you. I've been doing that, Muriel.
18 So that's real misleading. I've been doing that
19 all along since I got rid of my townhouse.

20 Q. You were doing that in April of 2014?

21 A. I was doing that since August 2012.

22 Q. Okay.

23 A. Okay. Bridget doesn't owe Mama a
24 penny. Bridget doesn't owe Mama a penny. I got so
25 scared. Oh, my God. They are going to stick me

1 with this big loan and not pay me back. I'm going
2 to end up having to take her to court. I've got
3 Little John accepted to Clemson. Yes, that was not
4 a good day. At all.

5 Q. Okay.

6 A. My son is getting ready to graduate
7 from high school. But that whole stuff about other
8 people that she's running her mouth on, I don't
9 know anything about that.

10 Q. What is she talking about, though?

11 A. I don't know.

12 Q. 35,000?

13 A. That's crazy money. What's she talking
14 about? I was married to him then. We had -- he is
15 living at 707 Vision. What is she talking about?
16 Something she made up.

17 Q. She is talking about your ex-husband?

18 A. I don't know.

19 Q. Okay.

20 A. Are you asking me to clarify the name?

21 Q. Who is she talking about in this?

22 A. What did she call him?

23 Q. It says: On the other hand, John owes
24 her 35,000, starting now.

25 A. I'm not going to speculate on that.

1 Q. Okay.

2 A. Okay? He is -- my husband's name is
3 John. Everyone calls him Big John.

4 Q. Big John. Okay.

5 A. My son's name is John. Everyone used
6 to call him John, Jr., but now he is John, and Big
7 John is Big John, unless we are out formally. They
8 are both John.

9 Q. Let's flip to the next page, 25.

10 A. I can tell you on the record Big John
11 doesn't owe Muriel no \$35,000. And Big John
12 doesn't owe Mama no \$35,000. We were married, for
13 God's sake, up until -- we are still married, but
14 we are legally separated.

15 Q. 25. They are all pretty short. Will
16 you just read through them and say who it's
17 speaking about.

18 A. Okay. It's a green bubble, so that's
19 me. I agree. Let's just have fun. You are going
20 -- you are taking it out of context. Earlier I
21 think Muriel was talking about lunch, going out to
22 lunch. Okay. And then she writes: Do you know
23 Big John -- that's my legal husband. Do you know
24 if Big John is working today?

25 All right. Let's see. This is 2014.

1 So he is working 10-hour days. Please
2 don't talk to him until after John graduates and
3 has his birthday party or let me talk to him. I
4 promise you now is not the right time in terms of
5 John, Jr.'s health. Yes. Hell, yeah. I was
6 telling her shut up. We are not even discussing
7 this. It's not on the table.

8 Q. What are you talking about?

9 A. I'm talking about her little
10 allegation. Now she is calling him Big John.

11 Q. What is the allegation?

12 A. I'm going back -- I'm not lying. I'm
13 going back to what you just told me. John --

14 Q. I'm asking you what is the allegation.
15 You haven't told me.

16 MR. TOPOREK: I've gotten the call from
17 the court.

18 THE WITNESS: Well, now you are
19 confusing me. Because here is John, and I won't
20 say who that John is because we call him Big John.
21 You turn the page, and it's Big John, and it's
22 still on the same day. So one and one adds up to
23 two. The very first time she was talking about Big
24 John, I would assume -- it's an assumption. It's
25 not fact --

1 BY MR. KEYS:

2 Q. She's talking about somebody owing your
3 mother \$35,000.

4 A. Yes. He don't owe her crap. But I
5 wasn't going to have Muriel starting this crap with
6 my son graduating high school and having a birthday
7 party. No. I wasn't going to get Big John all
8 upset with his health issues. No. She wasn't
9 going to talk to him. And if anybody was going to
10 talk to him about her allegation -- how the hell do
11 I know that Big John didn't borrow \$35,000 from
12 Daddy in Timbuktu in 1995 when we first got
13 married? I don't know.

14 Q. Okay.

15 A. Daddy treated all of us --

16 Q. Is that what we're talking about?

17 A. Yes. Daddy treated all of us as
18 individuals. I don't know what Muriel got from Mom
19 and Daddy, and I don't care, until she makes Mama a
20 ward of the state, and I want an answer to the
21 question: Is my sister accountable for the
22 \$20,000-plus pontoon boat? Is my sister's debt
23 forgiven by her dry stack story, or is all of it
24 wiped out by Ellen Babb's action during mediation?
25 All I get is a blank stare and a we're done and a

1 we're finished. I have never gotten an answer in
2 three and a half years, and I've never been
3 interviewed. And look at how much of my Mama's
4 money we are wasting over you asking me questions
5 that I've been begging Kelley to ask me for three
6 and a half years.

7 Q. Okay. I will look into the Ellen Babb
8 thing.

9 A. It's during mediation, so it should be
10 in the mediation record. So she restated it after
11 Ellen Babb.

12 Q. Okay. Let's go to the next page, 38.
13 Last blurb by you on 4/23/14.

14 A. All right. Are we clear? I wasn't
15 saying that Big John something about that he owed
16 35,000. I was talking Big John and the fact that
17 Muriel was making allegations. Because Muriel was
18 on a roll, and it was a nasty roll. And she was
19 doing it at a time when it was Big John's birthday,
20 my son going to prom, my son having a birthday
21 party, and my son graduating high school and going
22 off to Clemson. So her timing sucked. Her two
23 children were out of high school, and it was my
24 only child's turn.

25 Q. I understand what you are saying.

1 A. Okay. All right. So where are we?

2 Q. Page 38, bottom green blurb, 4/23/14.

3 What are you guys talking about there?

4 A. Well, you have to go one up: Per
5 Mama's advice. Okay. No. I don't need to go up.

6 Okay. Oh. 4/23/14, I took Mama to the bank, just
7 like Muriel did. Well, Muriel wanted her to --

8 Muriel opened her an account. I don't remember

9 when. First Federal. That didn't work out at all.

10 That's that first rent text that I referred to, the

11 good luck. I tried to do the deposit. Good luck.

12 Okay. Mama would have nothing to do with that

13 bank. She banked at Wells Fargo. She had been a

14 teller there before she got married. And I never

15 understood why Muriel expected Mama to switch to

16 her bank. That was Muriel's bank. Good for you.

17 Wells Fargo is Mama's bank.

18 Q. This is your statement on 4/23. Please
19 read it.

20 A. Okay. Mama only has 18,000 in the
21 bank. I have -- Oh. Yeah. This is a good one.

22 Q. Okay.

23 A. Okay. You have to -- you missed -- you
24 are out of context here. So you look at the date,
25 okay? I'm back at work.

1 All right. No. I'm out of work
2 because I was out for 12 weeks. I was out the last
3 12 weeks of school. I did not go back for the last
4 day of school. So I'm out of work 12 weeks, okay?
5 So I'm on FMLA. So I'm protected. So, again, it's
6 contract time. But contracts probably were out --
7 if it's the 23rd, they probably came out on the
8 15th. Now they've moved it up to March sometime.

9 Okay. Mama only has 18,000 in the
10 bank, and I've already paid the closing costs. The
11 Heritage Trust loan is at 4 percent. We only need
12 to sign the title document. Mama signs all the
13 loan papers. I cannot touch the money.

14 Right. Okay. What it means is, I'm
15 50-percent owner of the Atlantic Street. Mama is
16 50-first owner of Atlantic Street. And I'm madder
17 than hell that I'm still 50-percent owner of
18 Atlantic Street and not a 100-percent. Muriel and
19 her daughter promised to pay off the HELOC summer
20 of 2012.

21 Now, I had substantial work that had to
22 get done on Atlantic Street, including roof
23 repairs, to keep the insurance going or they
24 weren't going to renew it. Jackie told me. State
25 Farm, you know?

1 Q. Subsequently thereafter you took the
2 \$15,000 out on the HELOC, right?

3 A. And so before doing that, we got -- so
4 that we could just give it -- you think that's all
5 that needs to be done on a 1952 house? I got it
6 right here, the estimate just for getting the
7 electrical upgraded to where you would want it,
8 okay, is seven more thousand dollars. That's in
9 addition to me getting it up to code, the obvious
10 so far.

11 Q. Okay.

12 A. Okay? So Mama went -- the only reason
13 it was -- and that was nothing more than --
14 actually, Heritage Trust was running a better deal
15 than Wells Fargo or First Federal. And so she got
16 \$40,000, and it was to fix up Atlantic Street.
17 Muriel and Bridget weren't here -- I mean, they can
18 come over and see. I mean, 1952 is 1952. When you
19 are using original 1952 windows, you are flushing
20 SCE&G payments down the toilet every month. And so
21 enough was enough.

22 And now I've got Jackie telling me:
23 Hey, Trish, you've got to do some more improvements
24 to that house if we are going to keep this
25 homeowners going. And then I've got Wells Fargo

1 telling me -- well, when Mom goes to the bank, I'm
2 hearing them telling us this loan requires hazard
3 insurance. If you fail to have hazard insurance,
4 we will take it out for you. It's more costly,
5 blah, blah, blah. So Muriel knew -- Mama just
6 didn't willy-nilly go do this. We talked about it.

7 Q. What was the agreement?

8 A. Muriel never said she wasn't going to
9 sign. Would you have gone and spent -- I paid for
10 the closing, you know. Would you have spent
11 closing if you knew that the other owner wasn't
12 going to sign? You are not going to sign? Okay.
13 Discussion over.

14 Q. So your mother agreed to sign this
15 April loan?

16 A. Yeah. I mean, you've got to hear me.

17 Q. So why didn't it go through?

18 A. Because Muriel didn't sign.

19 Q. When Muriel -- when you say Muriel, do
20 you mean your sister?

21 A. My sister. Muriel, my sister, did not
22 sign as one-third owner after --

23 Q. Okay. So you are talking about a loan
24 on not 602. You are talking about on the Shem
25 Creek --

1 A. I can't get a loan. That's my whole
2 problem. I can't -- I'm still not able to get a
3 loan on 602 Atlantic Street.

4 Q. You are talking about writing a loan
5 on --

6 A. Shemwood, where three of us were
7 owners.

8 Q. Okay.

9 A. Bridget still hasn't paid. Muriel is
10 still saying I'm not paying. Y'all are just going
11 to have to wait until the market gets better.

12 Q. So you wanted to write this loan to pay
13 off Bridget's loan?

14 A. No.

15 Q. What was this loan for?

16 A. 1952 house on 602 Atlantic Street.

17 Q. So you wanted to get a loan on Shemwood
18 to fix up 602 Atlantic Street?

19 A. 602 Atlantic Street is in a dilapidated
20 state. It's 1952. And Jackie Tankersley is
21 saying: I'm definitely going to be wanting a new
22 roof before I renew.

23 Q. Okay.

24 A. Okay. We know this upfront.

25 Q. Okay.

1 A. Okay? So now when Muriel -- now,
2 Muriel -- you don't get an equity line loan
3 overnight. So Muriel doesn't say, no, she is not
4 going to sign. She sits there and lets us go
5 through -- lets Mama go through the process, lets
6 me flush the money down the toilet, and the day of
7 closing sends a text: I'm not signing.

8 Q. Okay.

9 A. She didn't lose a penny, but Mama went
10 through emotional hell. And all Muriel had to do
11 was say upfront: I don't agree as one-third owner
12 of taking a \$40,000 HELOC on this property to fix
13 up Patricia's house. Which, we are almost two
14 years behind in paying, by the way. But so what?
15 So what?

16 Q. What do you mean by that?

17 A. I mean Muriel and Bridget are sitting
18 there knowing that they are almost two years behind
19 in their agreement to pay the loan.

20 Q. To pay your mother the HELOC loan?

21 A. The HELOC money. The 137,000. It's
22 probably down to, like, a hundred and thirty-four
23 right here.

24 Q. What was their original agreement?

25 A. Summer 2012 giving me at least three

1 months to get my own loan in my own name before I
2 retired.

3 Q. I'm asking what was the agreement
4 between your mother and Bridget regarding the
5 HELOC?

6 A. Pay it back by summer 2012. You want
7 to know whose idea it was to use Atlantic Street?

8 Q. Whose?

9 A. Mine.

10 Q. Okay.

11 A. Mine. When Mama came to me, and
12 Bridget had already -- either Bridget -- they
13 talked on the phone or Bridget had been over, I
14 don't know. We are always in and out of Mama's
15 house. So for Muriel to be there, for Mama to be
16 there, for Bridget to be in and out, grandchildren
17 in and out, no big deal.

18 But I come in -- I can't remember -- I
19 know I talked to Bridget on the phone before she
20 closed the house because I asked her what it looked
21 like.

22 And when Mama -- they were going to do
23 it off of Shemwood. But Daddy is in bed dying, and
24 I said: You know, Mama, you got that loan --
25 you've got that HELOC that you got from Wells

1 Fargo. It's a small one, I said, but that way --
2 it's in your name only, and that way we don't have
3 to bother Daddy, and Bridget can have her little
4 house, the newly married couple. But by God they
5 have got to pay it back in time for my son to go to
6 Clemson and in time for this house to get fixed up.
7 It's already -- enough is enough. Four years.
8 That's a long time, four years. You can build your
9 credit and refinance in four years.

10 Q. Okay.

11 A. Plus, when you've got a mother who is
12 going -- telling my mother and her mother, our
13 mother, Muriel Clarkin, Muriel Walsh Clarkin:
14 Mama, thank you for helping Bridget. Right now is
15 just not a good time for me to be changing my money
16 around. I appreciate you helping Bridget. What do
17 you mean you are not going to give it to her
18 because you don't have a guarantee? She's my
19 daughter. I'm the guarantee. If something happens
20 to Bridget, Mama, I will pay the loan back to you.
21 And yes, I understand it has to be by summer 2012.

22 Q. Okay. Your sister didn't actually sign
23 a guarantee?

24 A. None of us sign anything. Our whole
25 lives, your word is your bond. You hear me? In

1 our family, our word is our bond. So when we
2 promise Mama and Daddy that I will retire November
3 1st, and I will --

4 Because he's dying. He knows he is
5 dying.

6 -- and I can retire, I will retire. I
7 will predominantly be home with Mama. Muriel can
8 be in as she can, but she is already helping
9 Michael out, our disabled brother. I mean, she's
10 already got a plateful. And then we have long-term
11 care to supplement as necessary when the time
12 comes, which is not when you're playing cards four
13 days a week. When the time comes is when you need
14 24-hour assisted care and your daughters need a
15 break. That's all that meant.

16 And next thing I know, I found out
17 through a phone call that Mama's been getting \$75 a
18 day -- Muriel activated it. It's easy to do, John
19 Hancock. I mean, you can't do two life skill
20 things. And I find out the caregivers, when they
21 activated that policy -- you are going to die --
22 the caregivers are Muriel's daughter-in-law --

23 Q. Okay.

24 A. -- married to Dean. Christian, she is
25 real sweet, she is a certified nursing assistant.

1 But I've never seen her with Mama. Another
2 caregiver certified by John Hancock, approved, the
3 word is approved, approved by John Hancock is
4 Chinet Cattle, who took care of my father. That's
5 how we got to know her, got close to her, and then
6 went to help with Michael, and then -- so she is
7 drawing \$75 a day. Well, Mama gets paid \$75 a day.
8 And then use that money to pay your whoever. So
9 it's approved. But there is really little
10 oversight from John Hancock.

11 And then I find out Theodore Howard,
12 Michael's primary live-in caregiver, who is not a
13 licensed caregiver, is also approved. They didn't
14 approve them at first, but there was an appeal, and
15 they did, based on his training and experience,
16 agree to approve him.

17 What got me is the only way I know
18 about all this is I got a phone call, telling me
19 that it was time for them to redo Mama's
20 assessment. It had been a few years. And I said,
21 what are you talking about? Kelley Evans never
22 told me Mama had long-term care \$75 a day going
23 back to September 11, 2014 when my mother was with
24 me, over, what, 60, 70, 80 days from that period
25 before you came on. I didn't get a 1099 payment.

1 I didn't get a payment. You want to talk about I
2 owe money? There, now, I'll take that long-term
3 care money and you can apply it to anything you
4 want.

5 Q. Let's dial this back. In looking at
6 page 39, May 8th, 2014.

7 A. You clear? I'll take that long-term
8 care money that's due me. But I don't want it
9 personally. You can apply it to anything you are
10 running your mouth about in this lawsuit, which is
11 so silly.

12 That we should have had a sit-down like
13 I asked for, and you should have been asking me
14 these questions, and I should have been handing you
15 these papers and explaining my side. If you can
16 interview one sibling, you can interview two. And
17 your boss is a national certified guardian, and I
18 bet she doesn't know that you haven't interviewed
19 many of us. Due diligence.

20 Q. Patricia, let's focus on let's get this
21 done.

22 A. Well, let's get this done. Because if
23 you are saying I owe money, then let's just mark
24 the number of days and come to an agreement times
25 75 and problem solved.

1 Q. Can you look at page 40 for me of the
2 text messages. The message starts on 39, so it's
3 5/8/2014, and then it goes to --

4 A. Bridget, it's none of your damn
5 business. That's an arrangement between Bridget
6 and Mama? I'm sorry. I was in that kitchen when
7 Muriel said: Mama, Bridget is my daughter. Of
8 course I guarantee the loan. If anything happens
9 to my daughter, I'll pay it back.

10 Q. Read the blurb above that, please.

11 A. Okay. Another rent word. I know you
12 get me to read all these rent words. I don't have
13 a problem with it. I don't care what you call it.
14 I told you. I give my Mama money every month, and
15 it's not always cash. It's in the form of social,
16 tangible items, or money.

17 Q. Usually 400 to 500, correct?

18 A. Shoot. When she first got made a ward
19 of the state, it about broke the bank. I do
20 without. Not my mother. You read the Visa
21 statement from just December. Now, you just factor
22 out the restaurants and the movies, Tuesdays and
23 Sundays and movies. Just add that up, okay?

24 Q. Okay.

25 A. And you are at over \$500. Because my

1 mother is paying for caregivers. Still is paying
2 for caregivers to eat and go to the movies. Do you
3 know what her allowance was when she first started?
4 Something piddly. And she went out four times a
5 week, between her clubs and her cards and her
6 social engagements. She got a lousy 275, 300. I
7 think one day they got it up to 350.

8 I kept \$100 hidden in the drawer, the
9 drawer that Mama referred to that Muriel is not
10 supposed to know about. And Terry Clarkin can
11 vouch for it. Kathy Mason can vouch for it. I
12 kept cash in my mother's wallet. She used a Wells
13 Fargo Visa her entire life. All they had to do was
14 lower the amount. She didn't know what a debit
15 card was. And then they gave her this white,
16 green, and black thing, cash-back card, where you
17 have to enter a number. And then when I finally
18 get her to try it at Petco -- then when I tried to
19 get her to try it at Petco, it gets rejected. She
20 was so humiliated.

21 Q. Read me the rent words.

22 A. Okay. Already -- all right. We're on
23 May.

24 Q. Yes.

25 A. Okay. Already paid the rent. You have

1 got to go back before. This is Muriel getting all
2 nasty. The one before --

3 Q. Read that.

4 A. Okay. Muriel is saying: I handle
5 Mama's finances for the millionth time. Pay me. I
6 don't do bookkeeping half-ass like you.

7 Well, now you have got to see where
8 we're at. We are at May 2014. When did I lose it?
9 A couple weeks earlier when Bridget -- when Muriel
10 said Bridget doesn't owe Mama a dime.

11 Q. Right.

12 A. So at that point, it's war. My son is
13 going to Clemson.

14 Q. Okay. So then you say?

15 A. So I say -- there is no way I'm giving
16 Muriel anything. Now, I've been playing along this
17 whole time. I didn't care what she called it. I
18 didn't care what account she wanted it in. I
19 didn't care. But now it's different because she
20 said Bridget doesn't owe Mama a dime.

21 I already paid my rent. My cars are
22 none of your business. My ability to get a loan on
23 my house is your business. Bridget needs to move
24 her loan now. Her parents have plenty of equity.
25 She can owe her parents instead of her grandmother.

1 This is very upsetting for Mama. Per Dr. Hope,
2 psychiatrist, working when my psychiatrist was in
3 the hospital. Per Dr. Hope my financial
4 arrangement with Mama is none of your business. I
5 always pay my rent.

6 I didn't care about that word. That's
7 Muriel's favorite word, and it shuts her up.

8 I will pay it in June to Mama. Deal
9 with it.

10 Okay. So no. That's how it goes. And
11 then it just goes on, lands itself in making your
12 mother a temporary ward of the state behind
13 everybody's back.

14 Q. Okay. Let's go to page 44.

15 A. I'm glad we're using mine instead of
16 yours. Yours we would have been finished. You
17 didn't have that many.

18 MR. TOPOREK: What's that mean?

19 THE WITNESS: The texts, we are going
20 through all the texts.

21 MR. TOPOREK: I hear you.

22 THE WITNESS: I mean, it's a lot of
23 texts.

24 MR. TOPOREK: It sure is.

25 THE WITNESS: It's a lot of them, but

1 he only had a few.

2 Okay. I'm ready.

3 BY MR. KEYS:

4 Q. You are saying because I didn't include
5 them all?

6 A. No. In your evidence, those are the
7 only ones I paid attention to when I was reviewing
8 for today.

9 Q. Okay. You are talking about the
10 requests.

11 MR. TOPOREK: Right.

12 THE WITNESS: Yeah. But mine, are,
13 like, 50 pages.

14 BY MR. KEYS:

15 Q. Read your 5/21/14.

16 A. Okay. Correction. It is time for
17 Bridget to owe her parents \$134,000 and not her
18 grandmother. You know that Mama intended to give
19 us both properties.

20 I've already explained that to you.

21 You accepted ownership of Goat Island.
22 I was not able to accept ownership of 602 Atlantic
23 Street because of Bridget's loan.

24 And the fact I was being a loving aunt
25 at the time.

1 Fact. Mac Gibson has original
2 paperwork.

3 I told you that already. Mac Gibson
4 can verify the two loans that he was asked to
5 prepare paperwork on. Two deeds, I mean.

6 Okay. Mac Gibson has original
7 paperwork. Mama is mostly upset about Bridget
8 potentially being Michael's guardian.

9 Everybody about flipped out when we
10 found that.

11 She does not approve of Bridget being
12 his guardian and fears Bridget will put him in a
13 home and forget about him. This is a reasonable
14 fear, given Bridget does not invite him to holiday
15 dinners, call him, or visit him. Fact. I had a
16 PTSD crisis due to being threatened by Julie --

17 I don't want to say the name out loud.
18 -- on February 15th, 2014. I did not
19 have a bipolar crisis. No. PTSD. My FMLA says
20 PTSD.

21 My bipolar treatment has been
22 successfully treated since 2008 and is presently
23 successful. It will not prevent me from seeking
24 guardianship of Michael legally instead of Bridget,
25 if necessary. Meaning, if you are unable to

1 fulfill your duties as guardian.

2 Bridget doesn't call Michael, see
3 Michael, and Michael has been -- she has been in
4 his company -- doesn't even give him a Christmas
5 present. Gosh, and to think about her being
6 guardian? Put her own Daddy in a home. And she
7 was living with him, and he gave her 50 percent of
8 the house in return for taking care of him. And
9 when he got a little too much, she took her 50
10 percent of the house, all right, and stuck her
11 daddy right away. Uh-huh. You bet I would
12 challenge Bridget if something happened to Muriel
13 today.

14 (PLF. EXH. 20, WELLS FARGO ACCOUNT
15 LIST, was marked for identification.)

16 BY MR. KEYS:

17 Q. All right. Let's go to Plaintiff's
18 Exhibit 20.

19 A. I don't know what that one has to do
20 with anything, but...

21 MR. TOPOREK: Look at 20.

22 THE WITNESS: 20. Okay. Good. We're
23 finished with the texts.

24 BY MR. KEYS:

25 Q. All right. So is one of these Wells

1 Fargo accounts you have listed here on this first
2 page the one that you deposited the \$15,000 of the
3 HELOC in?

4 A. I don't know.

5 Q. Okay.

6 A. I don't. I don't have the statements
7 in front of me. I don't have Heritage Trust
8 statements in front of me.

9 MR. TOPOREK: I don't know is a
10 sufficient answer.

11 THE WITNESS: Okay. I don't know.

12 BY MR. KEYS:

13 Q. Let's go to -- so these have Bates
14 numbers on the bottom of them. I'm looking at
15 Smith02-15, about three pages over. It's a check.

16 A. Yeah.

17 Q. What is this?

18 A. It's a check that looks a whole lot
19 like -- it is my signature, I would say. That's
20 the way I sign my name.

21 Q. Is it on your Heritage Trust account?

22 A. It is.

23 Do you know what concerned me about
24 this?

25 Q. What?

1 A. Look at that capital M. Doesn't it
2 look like somebody started to make another capital
3 letter and then they had, like, a P, had a rounded
4 top? And then, look, there is nothing filled in
5 the box.

6 Q. What's the date on it?

7 A. August 2nd, 2013.

8 Q. Okay.

9 A. This is the only check, right?

10 No. There is another check for 500
11 somewhere.

12 Q. I have not received that check. If you
13 have it, please provide it to me.

14 A. No. I'm thinking there is. I'm not
15 sure, but I'm thinking -- maybe this is one -- no.
16 This is the one, 500. Right here.

17 Q. Okay.

18 A. 500, August 2, 2013. This is the only
19 check that I found between the two bank accounts.

20 Q. Okay.

21 A. I hardly write checks. I'm a
22 cash-and-carry person.

23 Q. What does it say on the note for this
24 check?

25 A. August rent.

1 Q. Okay. So this is you paying your
2 mother rent?

3 A. No. I say that's my signature. I'm
4 not 100 percent.

5 Q. Coming from your bank account, correct?

6 A. Correct. It's coming from my bank
7 account, but look at who signed the back of that
8 check.

9 Q. Well --

10 A. Okay. And then it went into the First
11 Federal account. So you want to tell me after that
12 joke I texted Muriel about Mama's got 450 in her
13 wallet, good luck getting her to sign a deposit
14 slip -- good luck getting her to sign a deposit
15 slip, you want to tell me that Mama turned around
16 and signed a deposit slip?

17 Q. That's the back of the check.

18 A. Okay. The back of the check. Okay.
19 Then she didn't know it was going in there. That's
20 funny. But anyway. Okay.

21 Q. But the intent of this check is for you
22 to pay your mother August rent in 2013?

23 A. Now, I'm not going to say the intent
24 was to pay August rent. The intent -- Muriel liked
25 that word. That word is a word that has no meaning

1 to me. The intent was to provide my mother money,
2 as I did every month. Whether it was a little bit
3 or a lot, whether it was vacation, social, or
4 tangible items, the intent was to provide my mother
5 money. The word rent shut Muriel up, and, trust
6 me, it's worth using the word rent to shut Muriel
7 up sometimes.

8 Q. In this instance, it was \$500, correct?

9 A. Yep. And I think in the earlier text I
10 said 450. I put 450 in Mama's wallet. And I think
11 I told you earlier that I started with, like, 450
12 and then moved it up when I got my TERI money. Not
13 TERI. I misspoke. When I got my national board
14 certified teacher second stipend. And then I was,
15 like, Mama can have all of it. 500 was a
16 combination of ways.

17 Q. Okay. So these bank statements that
18 you produced, beginning with the next page, we have
19 your Heritage Trust bank statement, dated 1/1/2012.
20 How did you get these to produce them? Did you go
21 to the bank or you had them, or...

22 A. No. No. No. I went -- all these
23 statements that y'all wanted, I went to Wells
24 Fargo and -- or maybe I went to Wells Fargo and
25 called. I don't know. I was real worried about it

1 and processing how to do it. I know Heritage Trust
2 I went in person and met with whoever. It's not a
3 teller. It's somebody at a desk. And it's not the
4 branch manager. I may have talked to the branch
5 manager, but I ended up working with somebody at a
6 desk.

7 Q. Okay. I have not received any
8 statements for the 2013 year for the Heritage
9 Trust.

10 A. Well, I told you they were all e-mailed
11 by year, Heritage Trust, 2012, 2013, 2014. I think
12 the two months in 2015 might have been put on '14.
13 That isn't a biggy. I can go home and e-mail it to
14 you.

15 Q. You can provide those to me?

16 A. Yeah.

17 Q. Okay.

18 THE WITNESS: You might have them. If
19 I didn't give them to him, then you might not have
20 2013 either.

21 BY MR. KEYS:

22 Q. All right. 117 on this first page, you
23 marked a little notation beside Chase Finance for
24 \$805.09. What is that?

25 A. That's my mortgage.

1 Q. Your mortgage on what?

2 A. 707 Vision Road. The Smith family
3 home.

4 Q. Okay.

5 A. But it went up. I should go through
6 this statement.

7 Q. Bates number 18, two pages over, on the
8 top you've written: No, 600; yes, 805.09.

9 A. Yeah. Because I'm looking for anything
10 -- I'm not looking for anything above 600. I'm not
11 looking for anything below 400. But I'm going
12 through each of these things. And I'm a
13 cash-and-carry person. This was very frustrating
14 to do these checks and all this stuff and to go
15 look at withdrawals. So I set a perimeter for
16 myself.

17 But what would have made sense was --
18 what does make sense is to have my bank account
19 statements, savings and checking and everything,
20 and to have Mama's at least the deposits so that
21 you can go, okay, I took out \$300. Because,
22 remember, that one text where I said I put \$300 in
23 the drawer where you can find, Muriel, and I put
24 \$200 in the secret drawer that you are not supposed
25 to know about?

1 Q. Yes.

2 A. Okay. So then if I had Mama's, then --
3 Muriel is pretty good about getting to the bank in
4 a timely manner. I could say, okay, I withdrew it
5 out on --

6 What's that, 6/13?

7 -- 6/13, and then I could go to Mama's,
8 if I knew -- and say Mama's got a \$300 deposit.
9 So that cash I took out --

10 Q. Which one are you on?

11 A. Okay. So that cash I took out -- that
12 same amount got deposited in a timely manner into
13 one of Mama's accounts.

14 Q. Okay.

15 A. But doing it without Mama's account?
16 It's a shot in the dark.

17 Q. So I understand you, you are saying
18 your belief is that on 6/21 you pulled \$300 from
19 your account and gave it to your mother?

20 A. No. I'm saying if I had had Mama's
21 account statements, I could have verified it in her
22 deposits. Maybe not that particular day. Maybe
23 Muriel would have gone to the bank the next day or
24 the next day. But Muriel is pretty timely.

25 Q. Why did you check this one?

1 A. Because I told you. I went through
2 looking for even numbers and going up 300, no more
3 than six. 450, five was my goal. But sometimes
4 less.

5 Q. So this could have been money you gave
6 to your mother? That's why you marked it?

7 A. I marked it because it was in the
8 range.

9 Q. Okay.

10 A. Yeah. If I had known -- had a way to
11 see if Mama got a deposit with that same figure,
12 then I would have known it was something I gave
13 Mama. But that 300, that don't mean squat. You
14 know? When was this?

15 Q. 6/21/2012.

16 A. Okay. Oh. 6/21/2012? That isn't
17 Mama's. That's just a waste of time on paper. I'm
18 still paying mortgage. I'm not giving Mama big
19 money then.

20 Q. Okay.

21 A. That's just a waste of paper.

22 Q. You started August of 2012, you said?

23 A. I would have started, yeah, August. We
24 closed the loan somewhere in July. I've got the
25 paper for you dated.

1 Q. Look at Bates number 46, dated 1/3/14.
2 You marked a withdrawal of \$1,200. What's that
3 about?

4 A. I don't know. I'm going to be honest
5 with you. My neighbor was helping me -- I mean, we
6 are talking that many inches of paper. And so she
7 -- we sat at her kitchen table, and we went through
8 and just tried to figure out. First we went
9 through looking for checks.

10 MR. TOPOREK: Do you know the answer to
11 the question? Do you even know what page he is
12 talking about?

13 THE WITNESS: Yes. He is talking this
14 page, \$1,200 right there.

15 MR. TOPOREK: Okay.

16 THE WITNESS: I took out \$1,200 from
17 Heritage Trust.

18 Well, wait a minute. Now you are
19 talking 1/14.

20 BY MR. KEYS:

21 Q. Yes.

22 A. I mean, that could have been a ton of
23 things. \$1,200, that's about when John had to pay
24 his \$800 class ring. That's about when we had to
25 make -- he was taking two college courses in the

1 spring. You know? I mean, that could have been a
2 ton of things, to take out \$1,200, with John taking
3 college courses as a senior and the senior ring. I
4 don't know.

5 Q. So if you move to Bates number 55,
6 3/14/14, you've marked \$400.

7 A. Where am I at?

8 Q. Bates 55, statement 3/1 to 3/31/14, you
9 marked a \$400 on March 14th. Is that because that
10 could be money that you gave to your mother?

11 MR. TOPOREK: 47. 55.

12 THE WITNESS: If it's a cash
13 withdrawal, the answer is I don't know.

14 BY MR. KEYS:

15 Q. Okay.

16 A. If it's a check I can tell you, if it's
17 an auto draft I can tell you, and if it's mortgage
18 I can tell you.

19 Q. So all of these withdrawals that you've
20 marked are just in that range and that's why you
21 marked them?

22 A. Yeah. Because I was kind of thinking
23 that if you got my bank statement, then I was going
24 to get Mama's, and I would be able to
25 cross-reference and figure it out.

1 Q. Okay. Moving to Bates number 60,
2 4/25/14.

3 A. There is the 15,000 we were talking
4 about earlier.

5 Q. So that was deposited into your
6 Heritage Trust account?

7 A. Yeah. Remember I told you I couldn't
8 tell you without looking at the statement? Here it
9 is right here. It's Heritage Trust.

10 Q. Okay.

11 A. It says for the HELOC -- I mean, for
12 the required hazard insurance and the roof.
13 Because now this is what I'm paying. So if this
14 required hazard insurance where Muriel wrote that
15 text earlier about insurance for 2014 when she was
16 telling me this is my plan, you are going to pay?
17 Well, I did pay 2014 myself. I didn't hand her X
18 number of dollars a month.

19 Q. Okay.

20 A. You can see that. There is the note.
21 Okay.

22 Q. Let's go to Bates number 89.

23 A. Okay.

24 Q. Okay. So on November 18, 2014, you
25 withdrew \$6,000 in cash from your mother's account,

1 correct?

2 A. We have already talked about this.
3 Yes. Correct.

4 Q. So on November 18th, you have deposited
5 \$5,000 into your Heritage Trust account. Is that
6 that money?

7 A. Is this the same day?

8 Q. Yes, it is.

9 A. Then that's that money. I probably
10 left a thousand in the Wells Fargo, if I had that
11 statement to cross-reference, I'm guessing. I'm
12 assuming. That would make sense.

13 Q. Let's go to Bates 93. On 12/3 you
14 withdraw \$6,000.

15 A. From where?

16 Q. From your Heritage Trust.

17 A. I don't have it. I've got a 92. Okay.
18 All right.

19 Q. What was that about?

20 A. Where does it say?

21 Q. On 12/3 at the top of the page.

22 A. It's a transfer to somewhere.

23 Q. It says check.

24 A. Oh, it's a check?

25 Q. Yes.

1 A. I'll have to pull that one out, then.

2 Q. Okay. Well, please provide me any
3 checks you have regarding that.

4 A. No. Wait a minute. It's a check?
5 Withdrawal by check.

6 Q. Yes.

7 A. Withdrawal by check. I wrote a check
8 for \$6,000.

9 No. That's a cash withdrawal.

10 Q. Okay. What was that for?

11 A. No. You scared me. I thought I was
12 going to be able to tell you where 6,000 went,
13 like --

14 Q. So you don't know where it went?

15 A. Off the top of my head do I know where
16 I moved \$6,000 on 12/1/14 when I'm sick? That's
17 that \$6,000 of Mama's that she gave me just about
18 12 days earlier.

19 Q. Uh-huh.

20 A. Okay.

21 Q. And you deposited most of it, and now
22 you are pulling it out. Where did it go?

23 A. I have no idea. Because I don't have
24 my -- do you have the --

25 Q. The Wells Fargo?

1 A. Wells Fargo. See if I put some money
2 in there around that time.

3 Q. We will get there quickly.

4 A. Okay. I mean, I don't know. I don't
5 have anything to cross-reference it to.

6 Q. Okay. On 12/15 you are withdrawing
7 another \$1,000. Do you know what that was about?

8 A. Wait a minute. Are you sure that 6,000
9 didn't go to pay the personal line of credit at
10 Heritage Trust Federal Credit Union? Because look
11 at the date. It's the first.

12 Q. No. It says --

13 A. Okay. Just throwing it out there.

14 Q. It says -- 12/3, it says a withdrawal
15 by check, for \$6,000.

16 A. I don't know. No. It's Christmas
17 season. I don't know. I mean, for that big
18 amount.

19 Q. You don't know the thousand for 12/15?

20 A. I mean, it could be -- I don't know. I
21 mean, it could be anything. It could be the car.
22 I told you I was getting Mama's car redone during
23 that period. It was gone for eight months.

24 Q. You were doing this the same period
25 when you are deeding the property over and --

1 A. No. Before I got sick. I told you the
2 car was -- we got the car back right before
3 Mother's Day weekend. The week before Mother's Day
4 weekend.

5 Q. Okay.

6 A. And the car had been gone eight months.
7 The car was way gone before I got sick.

8 Q. Well, this is December of '14 we're
9 talking about.

10 A. Okay. The car has been gone.

11 Q. Okay.

12 A. It doesn't mean I didn't make a
13 payment. Okay.

14 Q. Go to Bates number 95, 12/23. Is that
15 the \$10,000 coming into your account?

16 A. 12/23? No. You asked me earlier what
17 I did with that \$10,000. I told you I didn't know
18 without the statement. Here it is. It went into
19 here.

20 Q. It looks like you withdrew it
21 immediately in the form of \$5,000 in cash and maybe
22 \$5,000 in a check?

23 A. No. I have two -- I got them at home.
24 I don't know if I've got them with me. But I told
25 you earlier that I paid the firm in 5,000 segments.

1 Q. And all of that money went to the firm?

2 A. Well, I can't say that because I don't
3 see it. I mean, I told you I've got it -- I don't
4 think I brought it with me, but I have that -- all
5 -- that transaction because it was a certified
6 check.

7 Q. Please provide me with those because
8 that's the stuff I've been asking for in discovery.

9 A. Well, I only found it last night. But
10 okay.

11 THE WITNESS: Will you write me that?

12 I got that -- what was the other thing?
13 You wanted me to provide you with something else.

14 BY MR. KEYS:

15 Q. 2013 bank statements for Heritage
16 Trust.

17 A. 2013 bank statements. I'll just e-mail
18 you that. I can attach it.

19 Wait a minute. Yeah. I had that stuff
20 with Mr. Toporek. Let me correct that. I think I
21 have the original from when Mama -- when I first
22 met Mr. Toporek for the dismissal hearing. I know
23 I have the \$10,000 original transaction receipts.

24 Q. Okay. Let's go to Bates number 99.

25 The date is January 26, 2015.

1 A. Okay.

2 Q. It says withdrawal of \$836.90.

3 A. That's my mortgage, isn't it? Chase?

4 Q. In 2015? When did you finish your
5 Chase mortgage?

6 A. Where are you at?

7 Q. Bottom, the left-hand side, January 26,
8 \$836.90 withdrawal. My question is, is this the
9 interest amount you paid on the \$10,000 cash --

10 A. Thank you. Yes. That makes sense.
11 Thank you. Thank you. Thank you. Then the next
12 month is \$800 even.

13 Q. Next page --

14 A. I didn't say I paid interest. I said I
15 made a payment.

16 Q. Okay. Page 102, Bates 102, dated 2/17,
17 Wells Fargo, card withdrawal, \$800.

18 A. That's when I made the payment.

19 Q. Okay. You felt obligated to pay those
20 amounts?

21 A. Remember I told you, the judge on
22 January 9th, and Mama was getting a temporary
23 conservator, but I hadn't heard from nobody, and so
24 I didn't want my Mama's Wells Fargo Visa to be 30
25 days late. And Muriel wouldn't tell me anything

1 about anything, so to be safe, I paid it, but it
2 turned out Mama had auto draft for the whole thing.

3 That's when you are talking about
4 \$1,500. We'll just call that a wash. I've got so
5 much receipts, I don't care how you do it.

6 Q. So your mother should owe you the
7 \$1,600 you paid in January and February of 2015?

8 A. What now?

9 Q. You are saying your mother should owe
10 you --

11 A. No. No. I paid those two payments.
12 Remember you were saying about the \$1,500 for the
13 electrical? I paid \$2,500, and he found the
14 outdoor wire. I called Muriel. She answered the
15 phone. We have gone over that check.

16 Q. Let's move on to Bates 106. This is
17 your Wells Fargo preferred checking.

18 A. Okay.

19 Q. April 25th, 2014. This is when you
20 opened the account, right?

21 A. Right. Well, that's the day I got the
22 \$15,000, so...

23 Q. You didn't put it into this account.
24 You put that into the Heritage Trust account. We
25 just saw that.

1 A. Right. This account, if you look at
2 it, it's minimal activity.

3 Q. So what's the purpose of this account?

4 A. This account -- the purpose of this
5 account was to pay -- two purposes. Main purpose,
6 primary purpose, was pay Mama back on the HELOC.

7 Small little purpose was to have enough
8 money in there that --

9 My son has a Wells Fargo checking
10 account.

11 -- that if he was off at boot camp or
12 off at reserve training or something, same bank.

13 Q. Okay. So right now, on April 25th,
14 2014, your mother's name is on the account, not
15 your son's, correct?

16 A. Correct. Up until October her name is
17 on the account. November it switches to my son.

18 Q. And the initial deposit on 4/25 was
19 \$450. Is that just the monthly amount you pay your
20 mother every month?

21 A. No. That's just -- I don't know why I
22 did that amount, to be honest.

23 Q. Okay.

24 A. I don't even know what the rules were
25 to open an account. Like, maybe it had to have so

1 much in it for you not to get a fee. I don't know.

2 Q. Okay. And why did you take your mother
3 off this account?

4 A. I really don't know why she was on it,
5 I'm assuming that because I did an auto payment
6 from this account to the HELOC. I'm assuming.

7 You don't see my hand.

8 I'm assuming since I moved money from
9 my personal checking to my mother's HELOC that
10 whoever set it up recommended it be on the account
11 or we asked if it was okay. I can't remember. I'm
12 flat out guessing. But I know for a fact that the
13 reason I put my son on in November is he was out of
14 high school and heading off to boot camp, and I
15 wanted him on my account because he also had a
16 Wells Fargo account.

17 Q. Okay.

18 A. And that was just safety.

19 Q. Sure.

20 Bates 126, on 11/14/14, you withdraw
21 \$900.

22 A. Bates 126?

23 Q. Yes.

24 A. This is coming out of Wells Fargo.
25 We're finished with Heritage Trust. Okay. Except

1 for 2013. I gotcha.

2 Okay. Where am I?

3 Q. It says that on 11/14/14, so this is
4 kind of when everything was going on, you withdrew
5 \$900. Do you know what that's about?

6 A. Well, I was getting sick. I was going
7 -- but I hadn't been put out of work yet.

8 Q. How much did you pay Judge O'Neil for
9 drafting the deeds?

10 A. I didn't pay Judge O'Neil.

11 Q. Who paid Judge O'Neil?

12 A. I don't know if Mama did or if he just
13 did it out of friendship. I called Judge O'Neil
14 and spoke with his office, and they have no record
15 of any invoice. And it's very possible Judge
16 O'Neil --

17 Q. Did your mother ever go to his office?

18 A. She had to. That's how I got 50
19 percent -- the second 50 percent of the deed.
20 November. Remember? Mom was the one who said call
21 Judge O'Neil. Well, she called him Dennis. Call
22 Dennis. I call him Judge O'Neil.

23 Q. Did you drive her to the office?

24 A. Oh, sure. I was getting the deed.
25 Then from there I went to the bank and took out a

1 home mortgage loan application.

2 Q. Let's look at Bates number 129. Okay.
3 On 12/3 you asked earlier -- I asked you, you were
4 withdrawing \$6,000 from your Heritage Trust
5 account. Here we see 6,000 going into your Wells
6 Fargo account.

7 A. There you go.

8 Q. Okay. Do you know why you transferred
9 it here?

10 A. Back in 2014, now I'm already sick?
11 No.

12 Q. So on 12/8 --

13 A. I know that now I had moved everything
14 to Wells Fargo. I love Wells Fargo. Not that I
15 don't like the people at Heritage Trust. I just
16 like Wells Fargo better. 24-hour banking.

17 All right. What's next?

18 Q. So on 12/8 you remove \$5,900. Do you
19 know where that went?

20 A. Whoa. No. Did it go to a savings
21 account?

22 Q. I'm asking you.

23 A. Right here. Online transfer to
24 Way2Save, right?

25 Q. That's zero dollars. It's not the

1 \$5,900. It says withdrawal made in branch store,
2 12/8.

3 A. That doesn't make any sense. Are you
4 sure that didn't get moved to savings?

5 Q. It does not -- I do not see it on this
6 statement being moved to savings. I see a
7 withdrawal.

8 A. Wait a minute. It's an electronic
9 deposit.

10 Q. It says the ending balance on 12/31 was
11 \$54 in this account.

12 A. Yeah, but the 6,000 -- you said I
13 deposited it. It's an e-deposit.

14 Q. Okay.

15 A. Maybe the bank --

16 Q. Do you know why you took 5,900 out on
17 12/8?

18 A. No. I mean, 2014, without my records?
19 No, I don't know nothing about that kind of stuff.
20 Moving cash? Uh-huh.

21 Q. What records are you talking about that
22 you don't have?

23 A. The ones that are -- that were up in
24 the attic that wasn't properly vented through the
25 shower. And so when they did the roof in 2015,

1 they discovered that my -- when I demolished the
2 bathroom, gutted it completely and rebuilt it, they
3 discovered that the person hadn't vented the shower
4 through the roof. So all of that was just going
5 into the attic that whole time. A couple of years.

6 Q. Okay.

7 A. And it was just nothing but guck. So I
8 had to get one of those big containers, and the
9 contractor team -- crew just tossed everything
10 away. So a whole -- I don't have records of --
11 that's why this is so hard.

12 Q. Okay.

13 A. So much is gone. Not just in this
14 stuff. My life, the paper.

15 Q. Let's look at Bates number 150.

16 A. Okay.

17 Q. Then the e-mail from you to Kelley
18 Evans, dated August 14, 2015, you said: Please
19 apply these expenses to my \$6,000 debt.

20 A. Right. Because she is telling me I
21 have debt, and I am telling you -- how many times
22 have I got to tell you? I want all this stuff
23 washed away. I want my mother's freedom. She is
24 still a temporary ward. None of this is worth it.
25 None of it. I want her freedom. I got a loan. I

1 got a \$200,000 loan. Then -- I mean, I've tried,
2 I've tried, I've tried. We wouldn't even be
3 sitting here today if I had gotten a payoff
4 statement. We wouldn't even be sitting here. She
5 would be free, and everybody's debt would be gone.
6 Whether it was their debt, my debt, God's debt, her
7 debt, I don't care. I wanted my mother's freedom.

8 Q. So you call it a debt, correct? Your
9 debt.

10 A. If I -- yes. Because she's already
11 turned down -- and this is before this lawsuit,
12 now. She's already turned down my home repair
13 expenses, okay, which are way over \$12,000.

14 Q. Okay. 10/2012 --

15 A. No. I've got them right here. We are
16 right in the range. They can go from 2010, but
17 most of them are sitting at '12, '13, '14, and they
18 are over \$12,000.

19 And, see, I'm getting a check. I get a
20 check with an amount. No explanation. No
21 accompanying letter. Nothing. A check with an
22 amount. And I'm supposed to know that some of that
23 is the agency that I hired when Mama fell and broke
24 her tailbone, and I'm supposed to know that some of
25 that is something else. And I'm supposed to know

1 that none of it is legal. You get a check. You
2 don't get any accompanying information from Family
3 Services, Kelley Evans.

4 Q. That is a reimbursement check from
5 Family Services that you said you did not cash?

6 A. No. I didn't know -- I didn't cash the
7 little one for some slippers and -- it was a little
8 one, under \$100.

9 Q. Okay.

10 A. That's the one where she wrote me that
11 biting e-mail about how -- you know, blah, blah,
12 blah, you submit receipts. I didn't submit the
13 receipts.

14 Q. Here you are asking for reimbursement
15 for \$825 for --

16 A. I've been asking for it.

17 Q. -- legal expenses?

18 A. I've been asking for it since I found
19 out who the conservator was. That is not my debt.
20 Now, that legitimately is my mother's debt. She
21 did two -- she did a power of attorney, and she had
22 representation when my sister made her a temporary
23 ward of the state, and she was being served.

24 Q. This was the December 8th, 2014 power
25 of attorney?

1 A. No. That's a small piece of it. That
2 is mostly --

3 Q. But that is the power of attorney you
4 are speaking of?

5 A. I can't go off the top of my head. But
6 I know since it's 8/25, it -- I don't think --
7 three times 275. Wait a minute. Three times 275
8 would be 825. I don't know.

9 Q. It's the power of attorney that gave
10 you joint power of attorney with your sister?

11 A. Yeah. But you are asking me to break
12 down the 825 --

13 Q. I'm not asking you to break it down.
14 I'm asking you to tell me what the expenses went
15 to.

16 A. The 825?

17 Q. Was part of it the power of attorney?

18 A. I don't know without looking at -- now,
19 Jocelyn Bolin, she breaks down her invoices, you
20 know, and it says how much for how many hours and
21 for what service.

22 Q. But that power of attorney is the one
23 that Judge Curry declared null and void by the --

24 A. She declared everything null and void,
25 including Muriel's guardianship.

1 Q. Okay.

2 A. See, here is the invoice right here.
3 Y'all got it. Why are you asking me? Look right
4 here. I attached it.

5 Q. We'll get there. We're almost done.

6 A. 825, which I've yet to be reimbursed
7 for, and that was my mother's attorney on the day
8 she got served.

9 Q. Let's go to Bates 162 so you can look
10 at the invoice.

11 A. Okay. 162? I've yet to get a
12 reimbursement form. Let's get that on the record.
13 Yet to get a reimbursement form.

14 It says send and receive.

15 MR. TOPOREK: Look at 162.

16 THE WITNESS: I can't find 162. Hold
17 on.

18 Okay. Ready. Well, there it is.

19 BY MR. KEYS:

20 Q. Okay. So these are the services you
21 believe your mother is responsible for?

22 A. Well, I've got to read it. I know she
23 is responsible for the three hours, meet with
24 Ms. Clarkin by herself.

25 Q. This the power of attorney that gave

1 you power of attorney?

2 A. They are all saying meet with
3 Ms. Clarkin. They are not saying meet with
4 Patricia and Ms. Clarkin.

5 Q. Did you drive her to this?

6 A. I don't remember if she came to the
7 house or if I drove her to her, or whatever. But
8 this is in Mama's name. This is an invoice
9 directed to Mama. My mother, Muriel.

10 Q. Did you drive your mother to
11 Ms. Bolin's law office --

12 A. I don't know if Ms. Bolin came to our
13 home. I know she came to our home -- my home on
14 the 23rd.

15 Q. Okay.

16 A. On the 20th and the 8th, I do not know
17 if it was at my home or if it was at Ms. Bolin. I
18 was sick. Remember, I'm out on medical leave? So
19 to tell you factually that I left my home that day
20 and she didn't come to me instead? She is only a
21 few miles apart. She's super nice. But this is my
22 mother's debt. And I want to know why I'm not
23 getting reimbursed for it. This is \$825.

24 Q. Is that the POA the judge declared null
25 and void?

1 A. When --

2 MR. TOPOREK: When you answer, yes.

3 THE WITNESS: Yes. Because --

4 BY MR. KEYS:

5 Q. On 12/23 did Ms. Bolin show up after
6 your mother had been informed she was a ward of the
7 state?

8 A. I don't think so, because she was there
9 in under 18 minutes.

10 Q. Okay.

11 A. And Steve Roberts next door called and
12 said the police are getting ready to swarm your
13 house. They were set up in a checkpoint.

14 Q. Okay.

15 A. And I didn't know what was going on.
16 Mama is sitting on the sofa. It was so sweet. We
17 -- John, Jr. just left. We spent all morning
18 together doing the tree and wrapping presents.
19 Mama's got her list, checking off her little piles
20 of presents. Christmas music is playing. It was
21 just a lovely day. And Steve Roberts, the
22 neighbor, called and said the police are getting
23 ready to swarm your house. And so I punched
24 Bolin's number, because I knew she was an attorney,
25 and I knew she was within a mile or two from the

1 house. She answers, thank goodness.

2 Q. You called her?

3 A. Sure, I called her.

4 And I said I don't know what's going
5 on. I don't know why they are swarming the house.
6 Just -- you are an attorney. Just get here. And
7 she -- I don't care what you charge to anybody
8 about this. I just don't care. I don't know
9 what's going on. I need help. And she said:
10 Tricia, I'm just an estate attorney. I said:
11 Jocelyn, I don't know what's going on. I'm scared.
12 The neighbor said the police are swarming the
13 house. And she was there in way under 18 minutes.
14 So whether she -- now, she -- the policemen didn't
15 come in right away, now. They swarmed the house
16 first and set up.

17 Q. You have explained that.

18 A. Yeah. So whether she heard the
19 policemen tell Mama, I don't know.

20 MR. TOPOREK: You answered 18 times.

21 THE WITNESS: Well, I keep getting
22 asked the same thing 20 times.

23 MR. TOPOREK: Well, you answered 18
24 times every time.

25 THE WITNESS: Well, okay. This is very

1 confusing. I don't know why I can't answer it
2 once.

3 BY MR. KEYS:

4 Q. Exhibit 21. We are almost wrapped up.

5 MR. TOPOREK: 21.

6 (PLF. EXH. 21, E-MAIL FROM PATRICIA
7 CLARKIN SMITH TO KELLEY EVANS, DATED 12/11/17, was
8 marked for identification.)

9 BY MR. KEYS:

10 Q. It's an e-mail from you to Kelley
11 Evans, dated December 11th, 2017. You are asking
12 for the HELOC payment.

13 A. God, don't get me started on the HELOC
14 payment. Are you serious? I have got paperwork
15 right here.

16 MR. TOPOREK: Back up. Hold on. He is
17 asking you about this e-mail.

18 THE WITNESS: Yes.

19 MR. TOPOREK: December 11, 2017.

20 THE WITNESS: Yes. The day I got in
21 trouble at work over this. Please, God, tell me
22 does it need to be paid. I don't want it paid
23 late. It's due on the 10th. I didn't get anything
24 in the mail.

25 MR. TOPOREK: You are not talking to

1 me. He is asking you about an e-mail, Patricia.

2 That's it.

3 THE WITNESS: Okay. An e-mail on a day
4 that caused me a lot of hot water at work, Alan.

5 MR. TOPOREK: Okay. All right.

6 THE WITNESS: On a simple communicate.

7 BY MR. KEYS:

8 Q. You are asking for statements so that
9 you understand what the status of the HELOC payment
10 is, right?

11 A. It's the 10th. It's the due date. I'm
12 asking if it's been paid, yes or no.

13 Q. Okay.

14 A. I say the bank closes at five.

15 Q. Okay.

16 A. And I say I don't get to leave work
17 until four. And then look at what time I made the
18 call. I did it from work. I wasn't on break, and
19 I got caught. You don't make a personal call on
20 the job sometimes when you are told not to. But I
21 was so worried that this payment would be late --

22 She'd ignore me, ignored me, ignored
23 me.

24 -- that I took the risk. I got caught.

25 I got suspended from work, and I still didn't find

1 out until, like, two days later. Do you have her
2 response and what that date is?

3 Q. The next e-mail I have in this group is
4 September 28th, 2017.

5 A. Oh, well, that's cushy. You see what
6 I'm asking Kelley, but you don't see how many days
7 she took to tell me the answers, which meant I paid
8 it. I went down there and paid it --

9 Q. Okay.

10 A. -- and didn't get the \$13 charge. Lost
11 time from work. Got in trouble. Got a write-up.
12 I mean, communication.

13 Do you know how many months it took me
14 to settle the delinquency that she never even told
15 me about, she didn't tell the court about in June?
16 It was two months delinquent in June.

17 Q. Has Family Services ever -- after you
18 paid the \$15,000 that you borrowed from the HELOC,
19 you paid it back with interest, correct?

20 A. Extra interest, yes, correct.

21 Q. Did Family Services ever ask you to
22 make a payment on the HELOC?

23 A. Absolutely. It is recommended, August
24 8th letter. I've got it. I read that thing, and
25 I'm for real. I said: Oh, my gosh. Judge Curry

1 has agreed that Mama doesn't have the funds to make
2 this payment. What is going on? And I was boiling
3 inside.

4 Q. They told you to make the payment?

5 A. You read it yourself: Recommended.
6 Kelley's letters are very broadly worded:
7 Recommended. Just read the first sentence:

8 Patricia and Bridget have both received funds.
9 Both received funds. This girl paid it off eight
10 months ago, so don't go calling it both received
11 funds. Say Patricia has paid off her \$15,000, and
12 Bridget has outstanding.

13 And, oh, by the way, when I took the
14 stand in June 2017, I failed to tell the court that
15 Bridget was two months delinquent, and I failed to
16 tell Patricia, and I didn't tell either in July and
17 I didn't tell either in August. The only way I got
18 caught not telling anybody that Patricia's house
19 was getting foreclosed on is the lady came to take
20 pictures on Saturday evening at 6 p.m. She was my
21 age, and I let her walk around and take them, and
22 she told me she was a subcontractor for Wells
23 Fargo. And she's listening to me and my neighbor
24 Terry talk. Terry Palmer, my friend, we were
25 planting flowers. 7:00. I said: My affairs are

1 in order. It's not my finances. It's got to be
2 the HELOC. This house is collateral.

3 Q. When you took deed to the --

4 A. And this is a Saturday evening. No.
5 No. I mean, come on. How do you not tell somebody
6 for five months? That house was being foreclosed
7 on. They were taking -- Wells Fargo was taking
8 pictures. And she hadn't told the court and she
9 hadn't told me. I hope she told her boss.

10 Q. Is your name on the account?

11 A. On the HELOC?

12 Q. Yes.

13 A. No.

14 Q. When you --

15 A. But the judge deserved to know.

16 Q. When you accepted the deed in 2013,
17 were you aware that the HELOC was sitting as a
18 mortgage upon the property?

19 A. That's why I took 50 percent.

20 Q. When you did the second deed
21 transferring the other 50 percent, were you aware
22 that the mortgage was on the property?

23 A. That was the whole point.

24 MR. TOPOREK: Yes or no? Yes or no?
25 Just answer the question.

1 THE WITNESS: Yes. I was aware.

2 MR. TOPOREK: That's it. That's the
3 answer to the question.

4 THE WITNESS: Yes, I was aware.

5 Well, I'm a little heated about this,
6 Alan. This is a big mess in my life, finding my
7 house getting foreclosed on and I stop it with an
8 online banker. Thank God they have 24-hour
9 service. And I randomly paid \$1,220 on a Sunday,
10 just a shot in the dark that it would keep it from
11 being foreclosed on, and it did.

12 BY MR. KEYS:

13 Q. Did you request Family Services to fill
14 out an authorization form for Wells Fargo to allow
15 you information about the account?

16 A. No. I requested information from
17 Family Services and got nothing. So then Wells
18 Fargo, I asked them what the procedure was, and
19 they told me -- the first person told me to just
20 have a letter written from Family Services. And
21 Ms. Iris Albright (phonetic), bless her soul, she
22 did it within five minutes. Boom. It was in my
23 e-mail, and it was off to Wells Fargo.

24 Down the road --

25 Q. So Family Services provided you with an

1 authorization so Wells Fargo could speak to you
2 upon your request, correct?

3 A. Only that one day it worked. And then
4 after that, Wells Fargo wanted their own form
5 filled out. And it took Kelley, I kid you not,
6 seven weeks. Four tries to fill out that form
7 correctly so I can sign it. She sent me a blank
8 form. Would you sign a blank form? I won't.

9 Q. Did they provide you the form that
10 required the authorization?

11 A. Who?

12 Q. Did Family Services provide you --

13 A. No. Well, Wells Fargo provided the
14 form, and then Family Services filled out their
15 part. And then they sent it to me, only their part
16 was blank, and so I sent it back. And then they
17 sent it to me, and it was partially blank, and I
18 sent it back. Then they sent it back again, but it
19 was filled out, but it had the wrong date. I
20 wasn't letting Wells Fargo think I had gone seven
21 weeks filling out a form. So then on the fourth
22 time, she filled it out correctly. They got it.

23 Now, here is my question to you. She
24 has got all the --

25 MR. TOPOREK: No. You don't ask him

1 questions.

2 THE WITNESS: That's right. I don't
3 ask questions. Never mind. I won't know.

4 BY MR. KEYS:

5 Q. You have access to the Wells Fargo
6 account because Family Services provided you the
7 authorization you needed, correct?

8 A. Correct.

9 Q. Okay. When did Family Services ever
10 ask you to make a payment on the HELOC?

11 A. They -- I didn't say they ever asked me
12 to make a payment on the HELOC. What they did,
13 what Kelley did, is wrote a very broad letter. If
14 you read this letter -- go ahead and read it. I
15 mean, you read this letter --

16 MR. TOPOREK: Do you have the letter
17 with you?

18 THE WITNESS: Yeah. I mean, I know
19 I've got it. But if you read this letter, it is
20 the one that said --

21 Kelley, you can tell them what it said.
22 You can't talk.

23 But shoot. If you read this letter, it
24 says -- it doesn't even mention that it's five
25 months delinquent.

1 MR. TOPOREK: Do you either have the
2 letter or not have the letter?

3 THE WITNESS: Here you go. You want to
4 read it or you want me to read it?

5 BY MR. KEYS:

6 Q. I would love to read it.

7 MR. TOPOREK: Let me look at it first.

8 THE WITNESS: I brought you evidence on
9 -- well, I have to wait to be asked questions.

10 MR. TOPOREK: Why do you have to do
11 that?

12 THE WITNESS: Because, Alan, I'm the
13 one who almost lost their house.

14 MR. TOPOREK: What's the date of that
15 letter?

16 MR. KEYS: Dated August 8, 2017.

17 THE WITNESS: And that's after I called
18 her phone and leave a message: What's going on.

19 And then I have to go three months to settle up
20 with Wells Fargo because she won't tell me a

21 balance. Instead I have to wait until Wells Fargo
22 gives me a balance. It's ridiculous.

23 BY MR. KEYS:

24 Q. Family Services never instructed you to
25 make those payments, correct?

1 A. She recommended. No. The way I read
2 that, I thought that the judge had approved the
3 recommendation that I be given the responsibility.
4 Until I sat here today just now, I have from day
5 one, August 8, thought -- because it made no sense
6 to me. And she can tell you. I have written her:
7 Answer this simple question. Did you ever tell
8 Judge Curry Muriel is the guarantor of the loan?
9 Yes or no? Does Judge Curry know there is a
10 guarantor of the loan?

11 Q. Is there any signed document that shows
12 that?

13 A. Not on your lawsuit. You don't even
14 mention Muriel in your lawsuit. You haven't
15 interviewed me either, and I've got tons of
16 evidence for you.

17 MR. TOPOREK: Answer the questions. Is
18 there anything --

19 BY MR. KEYS:

20 Q. Is there a written guarantee showing
21 Muriel as guarantor of the HELOC?

22 A. You've already asked me that, and I've
23 told you in our family your word is your bond, and
24 that is your signature, and we don't have anything
25 in writing. That's why Mama is in this fix.

MR. TOPOREK: Okay. The answer is no, there is nothing in writing.

THE WITNESS: No.

(PLF. EXH. 22, STATE FARM STATEMENT, DATED 11/5/14, was marked for identification.)

BY MR. KEYS:

Q. All right. Let's go to Exhibit 22. Last one.

A. Okay.

Q. Flip one more. Flip the pink.

A. The pink? Okay. Gotcha. Okay.

Q. Okay. This is a State Farm's statement, dated November 5, 2014. Flip to the next one. It is addressed to Charles and Muriel Clarkin.

A. Daddy's name is still on it? That's funny.

Q. 2014.

A. Okay.

MR. TOPOREK: You say go to the next page?

MR. KEYS: Yes.

BY MR. KEYS:

Q. The bottom of the little box there, it says: Rental dwelling, 602 Atlantic Street.

1 A. Yeah. I took out that policy with
2 Jackie way back when.

3 MR. TOPOREK: Just answer the question.

4 THE WITNESS: Okay. Sorry.

5 BY MR. KEYS:

6 Q. So in 2014, 602 Atlantic was insured as
7 a rental property?

8 A. In 1995 602 Atlantic was insured as a
9 rental property.

10 MR. TOPOREK: Look at the date on that.

11 THE WITNESS: Yes. That's correct.

12 BY MR. KEYS:

13 Q. Okay.

14 A. Cheaper that way.

15 Q. Is there anything you would like to
16 correct?

17 A. Anything I would like to correct? I'm
18 not sure if you've got where I misspoke. A couple
19 of times I misspoke on that recording when I
20 flipped something around in what I said on the
21 recording. I can't remember what it was now, but I
22 remember saying on the recording saying I misspoke.
23 Another time, sometime during the day, I said I
24 misspoke. And I can think of at least twice where
25 I misspoke. That's about it.

1 Q. Okay.

2 A. Anything I would like to correct?

3 Q. Yes.

4 A. I would like to correct the fact that
5 we are even sitting here wasting my mother's money
6 when Wells Fargo's user agreement states that the
7 user agreement -- the account owner is responsible
8 for the debt. I would like to correct the fact
9 that three and a half years of interest-only is
10 nonsense. It's not prudent behavior at all. I
11 would like to correct the fact that the 1,500 was
12 for an outside wire on the same day. I can show
13 invoices where I spent thousands, okay, and then
14 came up short when he saw something as he was
15 leaving. I would like to correct the fact that the
16 \$6,000 in our family retirement to take care of
17 your mother because I am dying obviously from
18 Parkinson's, that is a gift. I would like --
19 you're sick. You are going to be out of work two
20 to three months, maybe longer. Here is money from
21 the emergency funds, \$6,000. That is a gift in my
22 mother's eyes, in my father's eyes. In my eyes,
23 the minute I can pay them back, I'm going to pay
24 them back because they gave me a really wonderful,
25 lovely life. So in their eyes, it's a gift. In my

1 eyes, yeah, it's a gift because I'm their daughter
2 and I'm going to respect them. But in my heart,
3 I'm going to pay them back. And right here sits
4 twenty to \$30,000. We are done.

5 MR. KEYS: Okay. I don't have any more
6 questions.

7 MR. TOPOREK: I don't have any
8 questions. And I don't care for a copy.

9 (The witness, after having been advised
10 of her right to read and sign this transcript, does
11 not waive that right.)

12 (The deposition was concluded at 3:00
13 p.m.)
14
15
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25

SIGNATURE OF DEPONENT

DEPONENT: PATRICIA CLARKIN SMITH
 DEPOSITION DATE: JULY 24, 2018
 REPORTER: KAREN NELLIUS
 CASE CAPTION: FAMILY SERVICES, INC., AS
 CONSERVATOR FOR MURIEL W. CLARKIN vs. PATRICIA
 CLARKIN SMITH

(Please return both Signature of Deponent pages)

I, the undersigned, PATRICIA CLARKIN SMITH,
 do hereby certify that I have read the foregoing
 deposition and find it to be a true and accurate
 transcription of my testimony, with the following
 corrections, if any:

PAGE	LINE	CHANGE	REASON

SIGNATURE OF DEPONENT (CONTINUED)

DEPOSITION DATE: JULY 24, 2018

REPORTER: KAREN NELLIUS

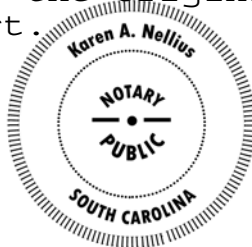
CASE CAPTION: FAMILY SERVICES, INC., AS

CONSERVATOR FOR MURIEL W. CLARKIN vs. PATRICIA
CLARKIN SMITH

PAGE	LINE	CHANGE	~~REASON~~

PATRICIA CLARKIN SMITH Date

I, Karen Nellius, Notary Public for the State of South Carolina at Large, do hereby certify that the deponent was advised of his or her right to read and sign said deposition both verbally and in writing. If the deponent fails to execute and return foregoing Signature of Deponent pages within the thirty (30) days allowed pursuant to the Rules of Civil Procedure, the original transcript may be filed with the court.



Karen Willis

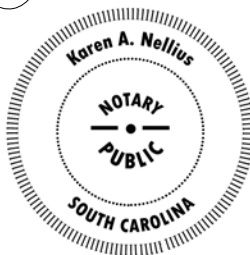
Karen Nellius, RPR
My Commission expires
November 14, 2024

CERTIFICATE OF REPORTER

I, Karen Nellius, Court Reporter and
Notary Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate, and complete
record.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal this 1st day of August,
2018 at Charleston, Berkeley County, South
Carolina.



Karen Nellius

Karen Nellius, RPR
My Commission Expires
November 14, 2024

I N D E X

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REQUESTED INFORMATION INDEX

(No requested information.)

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EXHIBIT A MTN SJ

Family Services, Inc vs.
Patricia Clarkin SmithPatricia Clarkin Smith
July 24, 2018

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6	TO 2/13/15		
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9	8506		
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23	PLF. EXH. 23, NOTICE OF	3	18
24	DEPOSITION		

The following exhibits were
marked but not referred to:

Exhibit 2 - Answer of
Defendant Patricia Clarkin
Smith

Exhibit 3 - Amended Complaint

Exhibit 4 - Letter from D.
Conor Keys to Alan D. Toporek,
dated January 25, 2018



1 Exhibit 5 - Letter from Alan
2 D. Toporek to David Conor
Keys, dated 6/19/18

3 Exhibit 6 - Letter from Alan
4 D. Toporek to David Conor
Keys, dated 7/18/18

5 Exhibit 7 - Defendant's
6 Responses to Plaintiff's
Requests for Admissions

7 Exhibit 18 - Title to Real
8 Estate

Read and Sign Only

SAMSUNG SGH-T999 Messaging

 Phone: Murielcell(843 [REDACTED])

Received at Date: 09-16-2012 13:37:20

[REDACTED]

Received at Date: 09-17-2012 16:25:58

[REDACTED]

Received at Date: 09-18-2012 13:36:39

[REDACTED]

Sent at Date: 09-18-2012 19:49:32

[REDACTED]

Received at Date: 09-19-2012 12:17:35

[REDACTED]

Received at Date: 12-03-2012 10:08:05

[REDACTED]

Received at Date: 12-17-2012 09:39:43

[REDACTED]

Sent at Date: 12-17-2012 09:40:19

EXHIBIT B MTN SJ

Received at Date: 05-17-2013 11:57:24

[REDACTED]

Sent at Date: 05-17-2013 11:58:36

[REDACTED]

Sent at Date: 05-27-2013 12:32:39

M has 450 rent in her wallet good luck in getting a deposit slip I tried

Received at Date: 06-14-2013 13:15:59

[REDACTED]

Sent at Date: 06-14-2013 14:51:42

[REDACTED]

Received at Date: 06-14-2013 14:59:56

[REDACTED]

Sent at Date: 07-03-2013 12:30:28

[REDACTED]

Sent at Date: 07-06-2013 16:03:41

[REDACTED]

Received at Date: 07-06-2013 16:27:26

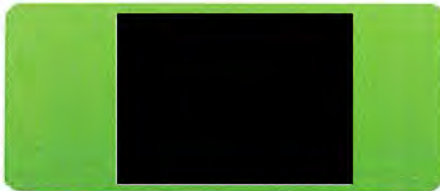
EXHIBIT B MTN SJ

Ok I'll look. I need to deposit momm
a money. When will u have jan. I hav
e to pay taxes. Don't forget James bd
ay party is sat 5 to 8. I'll have Chin
et take mom n Michael u could all go to
gether

Sent at Date: 01-04-2014 08:32:37



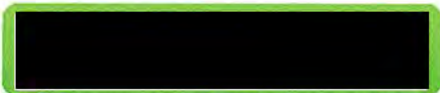
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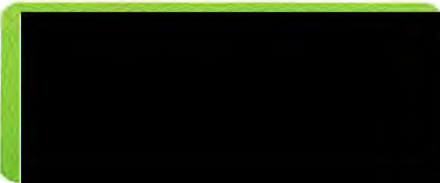
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Sent at Date: 01-07-2014 20:37:22



Received at Date: 01-07-2014 20:42:18



Sent at Date: 03-27-2014 21:08:44

Received at Date: 03-31-2014 08:19:35

Sent at Date: 03-31-2014 08:49:43

Sent at Date: 03-31-2014 08:50:45

Sent at Date: 03-31-2014 08:58:07

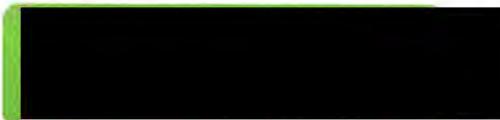
Sent at Date: 03-31-2014 10:05:06

Paid mama the balance of February \$300 cash it is in her drawer \$200 is in her drawer that she doesn't want you to know about. Owe for March in April will pay it during April. Used my March in April rent money for the employment lawyer. I always pay mama every cent I borrow

Received at Date: 04-01-2014 08:33:28



Sent at Date: 04-01-2014 08:35:35



Sent at Date: 04-01-2014 08:41:22

Please get your boat and mule like we discussed for goat island. Then go have fun with the residents. I will be with Mama

Received at Date: 04-01-2014 08:57:03

It will be a cold day in hell before I take a penny from her after the way she talked to me and I will never tolerate her downing Bridget that put me over the edge. Keep her there until I can get out I'm done

Sent at Date: 04-01-2014 09:07:28

Okay I have an easier plan. My short term disability is 9000 over the next 3 months. I owe mom a 6000 for retirement and 1500 for electrical. I will give it to you for goat island. Please don't say no just think about it for a while

Received at Date: 04-01-2014 09:16:05

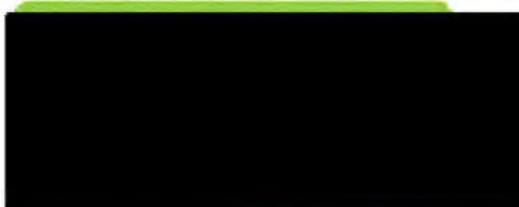
Give it to momma. I am calling big john he MUST start paying her back. She has 15000 in Ac, 1800 for tree and now will need paid help daily. Billy is to pay her 500/mo or u and Billy 550 ea. you will pay the taxes and insurance from here on out. Go change At

Received at Date: 04-11-2014 10:26:46
EXHIBIT B MTN.SJ

Received at Date: 04-11-2014 10:27:01



Sent at Date: 04-11-2014 10:43:52



Sent at Date: 04-12-2014 16:36:09

, Mama's cell. EMS at house. On my way there. Going to East Cooper hospital. Which hospital should I take her to for her hip.

Sent at Date: 04-12-2014 16:40:50

What medications is mama on

Sent at Date: 04-12-2014 16:41:59

Regardless of what mama says Michael and I both want her to be checked out at the hospital she may have had a dizzy spell

Sent at Date: 04-12-2014 16:42:55

Already left message for Dr Mercola . Said we are going to East Cooper hospital

Sent at Date: 04-12-2014 17:15:15

Call Dr Mercola and changed it to Mount Pleasant Grove St Francis Hospital

Sent at Date: 04-12-2014 17:15:30

, I already called

Sent at Date: 04-14-2014 20:20:07

[REDACTED]

Received at Date: 04-14-2014 20:21:51

[REDACTED]

Sent at Date: 04-14-2014 20:22:30

[REDACTED]

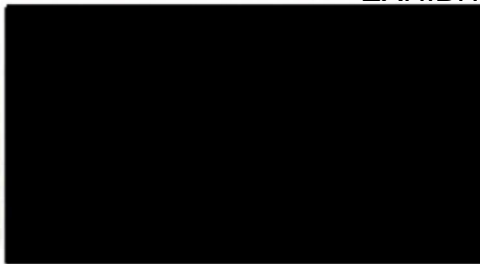
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[REDACTED]

Sent at Date: 04-15-2014 15:20:27

[REDACTED]

Received at Date: 04-16-2014 08:17:17



Sent at Date: 04-16-2014 08:20:46



Received at Date: 04-16-2014 08:26:44



Sent at Date: 04-16-2014 08:28:35



Received at Date: 04-16-2014 08:31:10



Sent at Date: 04-16-2014 08:32:11



Received at Date: 04-16-2014 11:37:23



7/18/2018

SAMSUNG SGH-T999 Messaging

EXHIBIT B MTN.SJ

Received at Date: 04-21-2014 19:34:56

[REDACTED]

Sent at Date: 04-22-2014 09:38:31

[REDACTED]

Sent at Date: 04-22-2014 09:39:36

[REDACTED]

Sent at Date: 04-22-2014 10:03:58

[REDACTED]

Received at Date: 04-22-2014 10:04:55

[REDACTED]

Sent at Date: 04-22-2014 10:05:38

[REDACTED]

Sent at Date: 04-23-2014 15:06:55

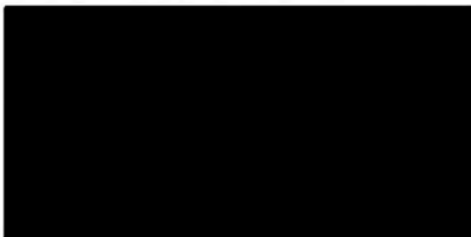
Please call me right away it is important thanks Patricia

Sent at Date: 04-23-2014 15:11:22

EXHIBIT B MTN SJ

I cannot find mama. Do I need to go to Shimla it? I also need to talk to you about other things important good thing. Please call

Sent at Date: 04-23-2014 16:02:34

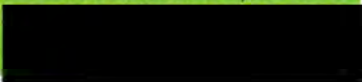


Received at Date: 04-23-2014 16:05:33

Momma told u she wasn't doing it I heard her tell u and heard her call and cx loan

Sent at Date: 04-23-2014 16:06:31

That did not happen after all. Please what time is convenient for you on Friday.



Received at Date: 04-23-2014 16:07:32

I won't sign

Sent at Date: 04-23-2014 18:45:21



Sent at Date: 04-23-2014 18:51:27

Mama only has 18,000 in the bank. I have already paid the closing costs. Heritage Trust loan is at 4 percent. We only need to sign the title document. Mama signs all the loan papers in her name only. I cannot touch the money.

Received at Date: 04-23-2014 18:52:19

That is of no concern of mine. Do not
text or try to call you are deleted aga
in

Sent at Date: 05-02-2014 17:34:05



Sent at Date: 05-02-2014 17:37:32



Sent at Date: 05-02-2014 17:37:32



Sent at Date: 05-08-2014 09:59:41

I borrowed 8800 in paid back 10800 i
n 3 years 36 months. I paid way too
much interest the first time. The prob
lem is I need to fix my house structur
ally. Do Bridget working with her par
ents need to move the loan. There is
plenty of equity between the properti
es that Bridget has her name on. I al
so owe the federal government a few
thousand dollars when I have always
received refund in the past. I need a
loan in my name on my house so I ca
n fix it structurally an itemized on my
taxes.

Received at Date: 05-08-2014 11:22:37

You choose to fix the Cadillac and bu
t john a corvette instead of doing the
much needed repairs on the house. I
repeat that was YOUR decision. NOO
NE is responsible for YOUR debt but
YOU. Sell vette and caddy and FIX th
e house. You cannot have your cake
and eat it too !!! Bridget pays her tax
es and insurance and now you do to.
Comparing apples to apples. You bot

EXHIBIT B MTN SJ

h have name on house deeds. Your taxes are 200.87/mo and insurance is 148.75/mo total is 349.62 due now and monthly. 600 in rent is due for May Now... Immediately.....! Pay me not momma I handle her finances for the millionth time PAY ME!!!! I don't do bookkeeping half ass like you

Sent at Date: 05-08-2014 11:32:26

I already paid my rent. My cars are none of your business. My ability to get a loan on my house is your business. Bridget needs to move her loan now. Her parents have plenty of equity. she can owe her parents instead of her grandmother. This is very upsetting for Mama! Per Dr hope my financial arrangement with Mama is none of your business. I always pay my rent. I will pay it in June to mama! Deal with it

Received at Date: 05-08-2014 11:46:34

Bridget is none of your business per arrangement made between Bridget and momma. Mommas finances ARE my business. What you have done to momma is against the law. Per every dr. And attorney I have talked to. Stay away from me or I will crush you like a bug. Big mistake to underestimate me. You are under the microscope so to speak. Stop running to momma like a kindergarten kid. You should be ashamed of yourself exploiting her. The law is on MY side

Sent at Date: 05-08-2014 11:48:46

She has asked you to move out several times. I lived with her for 1 year and 6 months. With no problem! Please move out and I will move in then she might be happy again.

Sent at Date: 05-08-2014 11:49:13

Please do not text me again I enjoyed being deleted

Received at Date: 05-08-2014 11:50:03

Deleted again sick sob

Sent at Date: 05-10-2014 13:53:05



Sent at Date: 05-10-2014 13:55:57



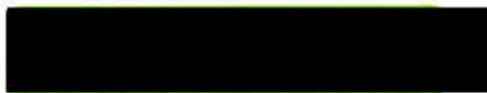
Sent at Date: 05-11-2014 18:57:03



Sent at Date: 05-12-2014 15:53:00



Sent at Date: 05-12-2014 15:57:43



Received at Date: 05-13-2014 20:55:51



Sent at Date: 05-13-2014 21:11:44

[REDACTED]

Received at Date: 05-14-2014 07:40:20

[REDACTED]

Sent at Date: 05-14-2014 07:43:16

[REDACTED]

Received at Date: 05-14-2014 18:35:20

[REDACTED]

Sent at Date: 05-14-2014 18:37:39

[REDACTED]

Received at Date: 05-14-2014 18:38:57

[REDACTED]

Sent at Date: 05-14-2014 19:28:18

[REDACTED]

Sent at Date: 05-21-2014 11:31:50

7/18/2018

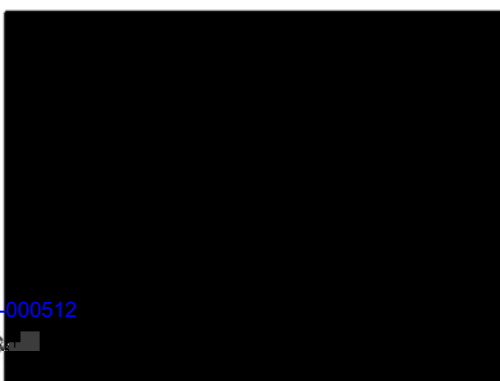
SAMSUNG SGH-T999 Messaging
EXHIBIT B MTN S.I



Sent at Date: 05-21-2014 11:46:01



Received at Date: 05-21-2014 12:01:32



Pet. Ex. A-000512

-000499

file:///E:/SAMSUNG%20S



s my final text. I will not read your response. I only wish you to find health and happiness . Your sister Patricia

Received at Date: 08-08-2014 13:02:46



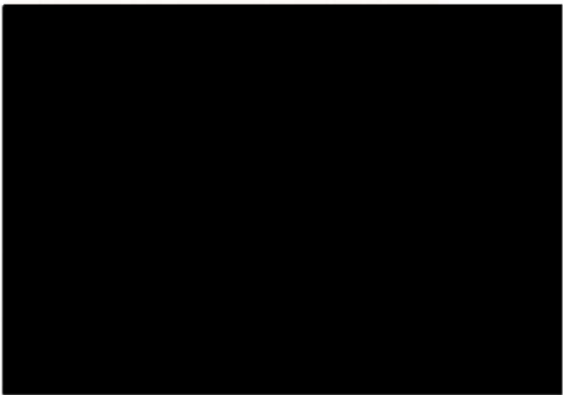
Received at Date: 09-30-2014 16:23:07

Momma just bill from sparky for 700 to replace screens at michaels and now she needs a new refrigerator. Please bring her money over so I can pay her bills. Thanks

Received at Date: 09-30-2014 18:07:44

Sparky is coming over for his check tonight. I'll come over to get money from you if your bus. I need to deposit it tomorrow

Received at Date: 10-24-2014 18:24:43



Received at Date: 11-16-2014 18:09:51

Please have momma call me. I'm home the phone works fine

EXHIBIT B MTN SJ
Received at Date: 12-06-2014 09:47:51

Sent at Date: 12-06-2014 15:03:59

Just read mama the entire book I wrote you last night. Read it twice and stopped periodically to make sure she understood what I just said. She now has full knowledge of the message. Read your messages to me from March 2014 until present. Remember, per Dr Hope, you were informed that I would not ever read texts from you, yet you kept sending them. I did not open them as instructed by Dr Hope/Dr DeHaven. If you want to make amends, that would be wonderful. The past, meaning March until right now, must be buried forever. Amends must be based on facts, such as my present medical discharge paperwork, mama's mental stability..

I am following my present plan until my doctor team includes you in it. It i



Content-Type: multipart/mixed; boundary="089e010d882ec74c80051361ef07"
 Return-Path: patriciaclarksmith1962@gmail.com
 X-EOFAattributedMessage: 0
 X-Forefront-Antispam-Report: CIP:209.85.212.177;CTRY:US;IPV:NLI;EFV:NLI;
 X-DkimResult-Test: Passed
 X-Microsoft-Antispam: UriScan;;BCL:0;PCL:0;RULEID:(3001015);SRVR:BLUPR05MB152;

Final-Recipient: rfe822;kevans@fsisc.com

Action: failed

Status: 5.1.10

Diagnostic-Code: smtp;550 5.1.10 RESOLVER.ADR.RecipientNotFound; Recipient not found by SMTP address lookup

----- Forwarded message -----

From: patricia clarkin Smith <patriciaclarksmith1962@gmail.com>

To: <kevans@fsisc.com>

Cc: Alan Toporek <alan@uricchio.com>

Date: Fri, 10 Apr 2015 13:17:18 -0400

Subject: Patricia Clarkin Smith \$12,000 Wells Fargo - \$10,800 boat slip rental, \$500 boat repair
 Muriel W Clarkin

Kelley,

Muriel explained at mediation that she subtracted her boat slip rental from the State Farm insurance payout for the totaled pontoon in spring, 2014 that my mother gave her.

After you provide me the date the pontoon moved to dry stack storage, we should be able to determine the following balance for me: $\$12,000 - (\$10,800 + \$500) = \$700$

1. Please check the amount State Farm paid for the totaled pontoon. I am pretty sure we had a replacement cost policy.
2. Please note the attached Goat Island Deed that my mother deeded 100% to Muriel on August 14, 2012. As the sole owner, Muriel has been responsible for the storage fees since that date.
3. Please also check the date Muriel registered her pontoon boat - around April, 2014. I believe her State Farm boat policy payments have been drafted from my mother's Wells Fargo checking account since that date.
4. Please provide me the date Muriel moved the pontoon to dry stack storage. I paid the 3 years (\$900 per quarter) we kept boats, a Key West and then a Bentley pontoon, at a wet slip prior to Muriel taking her turn. The date will help me request my documentation.
5. I also paid approximately \$500 for a mobile marine mechanic to replace the stater on the pontoon. Frank Blair can provide a statement.

Wells Fargo: My mother gave me \$6,000 in October, 2012 to help me retire from the state and join the TERI program. The other \$6,000 in November, 2014 was to help me while I was on medical leave.

Thank you,
 Patricia

*

and Assigns forever.

AND the said **MURIEL WALSH CLARKIN and PATRICIA CLARKIN SMITH** do hereby bind their Heirs, Personal Representative, Executors and Administrators to warrant and forever defend, all and singular, the said Premises unto the said **MURIEL WALSH CLARKIN and PATRICIA CLARKIN SMITH**, as joint tenants with rights of survivorship, not as tenants in common, their Heirs, and Assigns and against all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS her Hand and Seal, this 30 day of July in the year of our Lord Two Thousand and Thirteen and in the two hundred and thirty-seven year of the Sovereignty and Independence of the United States of America.

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF

Cheri T. Warren

Muriel Walsh Clarkin
MURIEL WALSH CLARKIN

Charles M. Gibson Jr.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

WE, CHERI T. WARREN and Charles M. Gibson Jr.
do hereby certify that **MURIEL WALSH CLARKIN** personally appeared before us this day and acknowledged the due execution of the foregoing instrument.

Cheri T. Warren

SWORN to before me this 30 day
of July, 2013.

Charles M. Gibson Jr. (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: Feb. 2, 2015

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

Date of Transfer of Title
 Closing Date: July 30, 2013

AFFIDAVIT

Personally appeared before me the undersigned, who, being duly sworn, deposes and says:

1. The undersigned has read the information on this affidavit and understands such information.
2. The property is being transferred by MURIEL WALSH CLARKIN to MURIEL WALSH CLARKIN and PATRICIA CLARKIN SMITH, a joint tenancy with rights of survivorship, not as tenancy in common on or about July 30, 2013.
3. The Deed is _____ subject to the Deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
X exempt from the Deed recording fee because Consideration is Five Dollars.
4. The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$.
5. A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer: ____ Yes X No
6. The Deed recording fee is computed as follows:
 - a. \$ _____ the amount listed in item #4, above
 - b. \$ _____ the amount listed in item #5, above (or zero)
 - c. \$ _____ subtract line 6b from 6a and place result here
7. As required by Code Section 12-24-70, the undersigned states that he/she is a responsible person connected with the transaction as the Grantor/Grantee/Legal Representative.
8. Check if property other than real property is being transferred with this deed:
 _____ Mobile Home
 _____ Other
9. Deed of Distribution, Attorney's Affidavit: In the Estate of _____, Case No. _____, personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Representative in the above Estate; and that the Grantee(s) therein are correct and conform to the Estate file for the above named decedent.
10. The undersigned understands that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

C. Stae Gibson, Jr.
 Grantee, Grantor or Legal Representative

SWORN to before me
 this 31 day of July, 2013.

Cheri T. War

Notary Public for South Carolina

My Commission expires: 12/22/2018

RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document

**Filed By:**

C MAC GIBSON JR

1118 SAVANNAH HIGHWAY
CHAS SC 29407 (MAILBACK)

RECORDED

Date: August 7, 2013

Time: 9:36:47 AM

BookPageDocType

0351

348

Deed

Charlie Lybrand, Register
Charleston County, SC

MAKER:

CLARKIN MURIEL W

RECIPIENT:

CLARKIN MURIEL W AL

Note:

of Pages: 4

Recording Fee \$ 10.00

State Fee <EXEMPT>

County Fee <EXEMPT>

Extra Pages \$ -

Postage \$ -

Chattel \$ -

TOTAL \$ 10.00

DRAWER Drawer 3
CLERK ECP

Original Book:**Original Page:**

AUDITOR STAMP HERE

RECEIVED FROM RMC

AUG - 8 2013

PETER J. TECKLENBURG
CHARLESTON COUNTY AUDITOR

PID VERIFIED BY ASSESSOR

REP

DATE

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8/8/13

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09:36:47
Recorded Time

EXHIBIT E MTN SJ

PayLOGICS Item Summary

ECE Institution ISN: [REDACTED]

PayLOGICS ISN: [REDACTED]

Cash Letter / Bundle Summary

Origin RT	Destination RT	Business Date	Cash Letter Count	Cash Letter Amount	Cash Letter Id	Bundle Count	Bundle Amount	Bundle Id

PATRICIA CLARKIN-SMITH
602 ATLANTIC ST
MT PLEASANT, SC 29464-4408
Date Aug 2, 2013 6003

Pay to the order of Muriel W Clarkin US \$ Five hundred Dollars

 HERITAGE TRUST
FEDERAL CREDIT UNION
August Patricia C Smith

Branch/Teller: 0004/0404
08/02/2013 14:44:23

Muriel W Clarkin

Check Detail Record (Type 25)

Auxiliary On-Us	EPC	Payor Bank RT	Check Digit	On-Us	Amount	ECE Institution ISN	Doc Type	Return Acct.	MICR Valid	BOFD	Corr. Indicator	Archive Type
					\$500.00		G	S	0	U	0	

Check Addendum A Records (Type 26)

Return RT	BOFD Business Date	BOFD ISN	Deposit Account at BOFD	BOFD Deposit Branch	Payee Name	Truncation Indicator	BOFD Conv. Indicator	BOFD Corr. Indicator
	8/2/2013			00404		Y	2	0

Check Addendum C Records (Type 28)

Endorsing Bank RT	Endorsement Date	Endorsing Bank ISN	Truncation Indicator	Conversion Indicator	Correction Indicator	Return Reason	User Field	Endorsing Bank ID
	8/3/2013		N	2	0			

6/27/2018 1:12:02 PM

Pet. Ex. A-000520

SMITH02-000015
ROA-000507

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that I, MURIEL WALSH CLARKIN, (the "Grantor"), for and in consideration of the sum of TEN AND 00/100 (\$10.00) DOLLARS, to the Grantor in hand paid, before the sealing of these presents by PATRICIA CLARKIN SMITH in the State aforesaid, the receipt and sufficiency of which are hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said PATRICIA CLARKIN SMITH, (the "Grantee"), her heirs and assigns, all my right, title and interest in and to the following described property, to wit:

See Attached Exhibit "A" for Legal Description

Grantee's Mailing Address:
602 Atlantic Street
Mt. Pleasant, SC 29464

TOGETHER with, all and singular, the rights, members, hereditaments, and appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, All and singular, the said Premises before mentioned unto the said Grantee, her heirs and assigns, forever.

AND subject to any and all Restrictive Covenants, Easements, Rights-of-Way and Conditions, the said Grantor does hereby bind herself and her heirs and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, her heirs and assigns, against herself and her heirs and assigns, and all persons whomsoever lawfully claiming or to claim the same or any part thereof.

MWC

The singular number as used herein shall include the plural. Wherever there is reference in the covenants and agreements herein contained to any of the parties hereto, the same shall be construed to mean the parties hereto, as well as the heirs, representatives successors, and assigns of the same.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in her name this 17th day of November, 2014.

[Signature]
Witness #1 Sign Here

Muriel Walsh Clarkin
MURIEL WALSH CLARKIN

[Signature]
~~Notary~~ Sign Here as Witness #2

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned Witness and made oath that (s)he saw the within named Grantor, **MURIEL WALSH CLARKIN** sign, seal and as her act and deed, deliver the within written instrument, and that (s)he along with the other subscribing witness herein, witnessed the execution hereof.

[Signature]
signature /Witness #1

SWORN to before me this 17 day of November, 2014.

[Signature] (SEAL)

Notary Public for South Carolina

My commission expires: 5/24/16

**“EXHIBIT A”
LEGAL DESCRIPTION**

ALL that certain lot, piece, or parcel of land, together with all buildings and improvements thereon, situate, lying and being in Mt. Pleasant Heights, Christ Church Parish number 5, Charleston County, State of South Carolina, and known on the Plat or plan of a re-subdivision of Mt. Pleasant Heights made by J. O'Hear Sanders, Jr. dated January, 1950, recorded in the RMC Office for Charleston County, SC in Plat Book G, Page 99-A as LOT NO. 63.

MEASURING AND CONTAINING in front on Atlantic Street sixty (60') feet; the same on the back line and one hundred eighty (180') feet in depth.

BUTTING AND BOUNDING Southeast on Atlantic Street, Northwest on a ten-foot (10') foot roadway; Northeast on Lot No. 64 on said Plats; and Southwest on Boundary Street; all as is more fully shown on the Plat hereinabove referred to and on the Plat of J. O'Hear Sanders, Jr. dated January 25, 1952, which said Plat is made a part and parcel of this conveyance.

TMS # 532-06-00-129

This conveyance is subject to any and all Restrictions, Covenants, Easements, Rights-of-Way, Matters and Conditions of record affecting said property, including without limitation, the matters set forth on the Plat referred to above, as the same may affect the within property; rules and regulations of applicable governmental authorities; real property taxes for the year of delivery hereof.

This being the same property devised to Muriel Walsh Clarkin from the Estate of Muriel Monica Dean Walsh, Estate File No: 1997-ES-10-00254, pursuant to a Deed of Distribution dated January 5, 1998, and recorded on January 5, 1998, in the RMC Office for Charleston County, SC in Book J-295, Page 592; and by Deed of Muriel Walsh Clarkin to Muriel Walsh Clarkin and Patricia Clarkin Smith, as joint tenants with rights of survivorship, and not as tenants in common, dated July 30, 2013, recorded in the RMC Office for Charleston County, SC on August 7, 2013 in Deed Book 0351, Page 348.



STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)

Date of Transfer of Title
 Closing Date: 11/ 17 /14

AFFIDAVIT

- Personally appeared before me the undersigned, who, being duly sworn, deposes and says:
- The undersigned has read the information on this affidavit and understands such information.
 - The property is being transferred by MURIEL WALSH CLARKIN to PATRICIA CLARKIN SMITH on or about November 17, 2014.
 - The Deed is _____ subject to the Deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
✓ exempt from the Deed recording fee because: Transfer from mother to daughter.
 - The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$.00.
 - The Deed recording fee is computed as follows:
 - a. \$.00 the amount listed in item #4, above
 - b. \$.00 the amount listed in item #5, above (or zero)
 - c. \$.00 subtract line 6b from 6a and place result her.
- As required by Code Section 12-24-70, the undersigned states that he/she is a responsible person connected with the transaction as the Grantor/Grantee/Legal Representative.
- A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer: ___ Yes ___ No
 - Check if property other than real property is being transferred with this deed:
 _____ Mobile Home
 _____ Other
 - Deed of Distribution, Attorney's Affidavit: In the Estate of _____, Case No. _____, personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Representative in the above Estate; and that the Grantee(s)n therein are correct and conform to the Estate file for the above named decedent.
 - The undersigned understands that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Muriel W Clarkin
 Grantee, Grantor or Legal Representative
Muriel Walsh Clarkin
 Print Name

SWORN to before me
 this 17 day of November, 2014.
 _____ (SEAL)
 Notary Public for South Carolina
 My commission expires: 3/31/18

RECORDER'S PAGE

EXHIBIT MTN SJ



NOTE: This page **MUST** remain
with the original document

Filed By:

PATRICIA CLARKIN SMITH

602 ATLANTIC STREET
MT PLEASANT, SC 29464

RECORDED

Date: November 18, 2014

Time: 3:45:34 PM

Book	Page	DocType
0441	484	Deed

Charlie Lybrand, Register
Charleston County, SC

MAKER:

CLARKIN MURIEL W

RECIPIENT:

SMITH PATRICIA C

Note:

of Pages: 5

Recording Fee	\$ 10.00
State Fee	<EXEMPT>
County Fee	<EXEMPT>
Extra Pages	\$ -
Postage	\$ 0.50
Chattel	\$ -
TOTAL	\$ 10.50

DRAWER	Drawer 2
CLERK	JBA

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Original Page:

AUDITOR STAMP HERE

RECEIVED From RMC

NOV 19 2014

PETER J. TECKLENBURG
Charleston County Auditor

PID VERIFIED BY ASSESSOR

REP

DATE

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EXHIBIT G MTN SJ

URICCHIO, HOWE, KRELL, JACOBSON, TOPOREK, THEOS & KEITH, P.A.

ATTORNEYS AT LAW
17 1/2 BROAD STREET
CHARLESTON, SC 29401

PAUL N. URICCHIO, JR. (1922-2000)
ARTHUR G. HOWE (1927-2004)
BARRY KRELL
CARL H. JACOBSON
ALAN D. TOPOREK
JERRY N. THEOS
GREGORY D. KEITH
JONATHAN F. KRELL
JEFF BUNCHE, JR.
MARGARET THEOS GUERRY
J. DEVEAUX STOCKTON

June 19, 2018

MAILING ADDRESS:
P.O. BOX 399
CHAS., SC 29402-0399

TELEPHONES:
(843) 723-7491
1-800-899-1683
FAX (843) 577-4179

David Connor Keys, Esquire
Post Office Box 14225
Charleston, South Carolina 29422

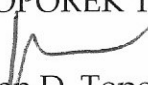
Re: Family Services, Inc Conservator for Muriel W. Clarkin vs.
Patricia Clarkin Smith and Wells Fargo Bank, NA
Case No: 2017-CP-10-5427

Dear David:

Enclosed please find Defendant's Answers to Plaintiff's First Set of Interrogatories and Responses to Plaintiff's Requests for Production relative to the above referenced matter.

With kindest personal regards,

URICCHIO HOWE KRELL JACOBSON
TOPOREK THEOS & KEITH, P.A.


Alan D. Toporek

ADT/lc
Enclosures

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
	) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	) CASE NO: 2016-CP-10-5427
	)
FAMILY SERVICES, INC., as Conservator	)
For Muriel W. Clarkin,	)
	) DEFENDANT, PATRICIA CLARKIN
	) SMITH, ANSWERS TO PLAINTIFFS
Plaintiff,	) FIRST SET OF INTERROGATORIES
	)
Vs.	)
	)
PATRICIA CLARKIN SMITH and WELLS	)
FARGO BANK, N.A.	)
	)
Defendant.	)
	)

TO: DAVID CONOR KEYS, ATTORNEY FOR PLAINTIFF:

The Plaintiff, pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, hereby Answers to the Defendant's Interrogatories as follows:

1. Give the names and addresses of persons known to the party or counsel to be a witness concerning the facts of this case and/or persons You intend to use as a witness at a trial in this matter, and indicate whether or not written or recorded statements have been taken from the witness and indicate who has possession of such statements.

ANSWER: Patricia Clarkin Smith
602 Atlantic Street
Mt. Pleasant, South Carolina 29464

Patricia Clarkin Smith is one of the Defendants in this action. She is expected to testify concerning the issues of this action and the results thereof. No written or recorded statement has been taken from this witness.

Teri and Steve Roberts
Address Unknown
(843-303-7410)

Teri and Steve Roberts are neighbors of Defendant Smith. These witnesses are expected to testify concerning conversations had with Muriel W. Clarkin about her desired ownership of the 602 Atlantic Street property. No written or recorded statement has been taken from these witnesses.

Mary Clarkin Taylor
Address Unknown
843-884-8981/843-270-5447

Mary Clarkin Taylor is a niece of Defendant Smith. She is expected to testify concerning a conversation she had with Muriel W. Clarkin concerning the monies raised in the Complaint of this action. No written or recorded statement has been taken from this witness.

Mary Mamie Bennett
Address Unknown
843-559-6052

Mary Mamie Bennett is a former sister-in-law of Defendant Smith. She is expected to testify concerning the relationship between the Muriel W. Clarkin and Defendant Smith. No written or recorded statement has been taken from this witness.

Dr. John Roberts
Roper St. Francis Physician
843-881-0455

Dr. John Roberts is a board certified psychiatrist. He is currently licensed to practice medicine in South Carolina and is an affiliated with the Medical University of South Carolina. He is expected to testify regarding the competency test used to measure Muriel W. Clarkin. No written or recorded statement has been taken from this witness.

2. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or the defense in the case. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: Defendant Smith is in possession of a handwritten note from Muriel C. Clarkin concerning her finances, a handwritten note from Muriel C. Clarkin concerning the property at Shemwood and Wells Fargo letter dated December 16, 2014 regarding the HELOC Payoff. .

3. List the names and addresses of any expert witness whom the party proposes to use as a witness at the trial of the case.

ANSWER: Defendant Smith has not yet named any expert in this action and reserves the right to supplement this interrogatory as discovery continues.

4. For each expert witness identified in Interrogatory No. 3, provide a brief summary of the opinion(s) you anticipate the expert will render in this case.

ANSWER: None.

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 witness.

ANSWER: Please see Defendant Smith answer to Interrogatory No. 1.

6. List all exhibits you propose to introduce into evidence at trial. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: Defendant Smith has not yet listed any exhibits to introduce as evidence at trial, however, reserve the right to supplement this interrogatory as discovery continues.

7. If a defendant is improperly identified, give the property identification and state whether you will accept service on an amended summons and pleading reflecting the correct information.

ANSWER: Upon information and belief, the Defendant is properly identified.

8. Please state all information, knowledge, and documentation in your possession or control which refers or relates to the drafting, creation, execution, and recording of that certain deed alleged to have been executed on November 17, 2014 and recorded on November 18, 2014, in Book 0441 at Page 484 on the Charleston County Register of Deeds Office. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: This deed was drafted by Attorney Dennis O'Neil of Mt. Pleasant. Mr. O'Neil was called by Defendant Smith to draft the deed and provide all paperwork to complete this transaction. Attorney O'Neil was paid for preparing the Deed.

9. Please state any basis or assertion why you believe you do not have an obligation to repay Plaintiff for the \$6,000.00 you obtained from Defendant on November 18, 2014.

ANSWER: Defendant Smith was given the \$6,000.00 by the Plaintiff to assist in maintaining her bills while she was out of work on medical leave. Defendant Smith agreed to repay the Plaintiff upon receipt of monies she realized from her employment Charleston County School District. Defendant Smith began to pay bills on her mother's behalf as of August 8, 2017, more specifically the HELOC delinquencies in the amount \$590.00 and \$660.00 per month to present date. As such, Defendant Smith feels that she has more than satisfied the \$6,000.00 loan.

10. Please state all information, knowledge and documentation in Your possession or control which you allege provided You with a basis to take a \$10,000.00 cash advance on December 23, 2014, from Plaintiffs Wells Fargo credit card account bearing an account number with the last four digits 5793. For any document identified in this response please produce said document as part of your response to Plaintiffs Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: Defendant Smith utilized the Plaintiff's credit card to withdraw \$10,000.00 to satisfy the legal fees to Attorney Alan Toporek who represented her in the onset of the legal action. Defendant Smith, at the time, believed she was retaining Mr. Toporek for her mother's sake until Mr. Toporek made it clear to her that he was not Plaintiff's counsel.

11. For the period from 2012 through February of 2015 please identify every bank account and/or credit union account, including but not limited to any Heritage Trust Federal Credit Union account, for which 1) you are or were a named owner on the account; 2) You are or were an authorized user; and 3) from which you accessed funds of Plaintiff. For each account identified please state the name of the owner or owners of the account, the name of the bank or credit union, and the account number in full. For any document identified in this response please produce said document as part of Your response to Plaintiff's Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: Defendant Smith has a personal checking and savings account and line of credit at Heritage Trust Federal Credit Union since on or before early 2000s.

Defendant Smith closed Clarkin Trust Savings and Clarkin Trust Checking last month. Defendant Smith does not have anyone else associated with these accounts. Defendant Smith also has bank accounts with Wells Fargo. Defendant Smith is the only person on these accounts. Defendant Smith will supplement account numbers upon receipt of the same.

12. Please state whether you every paid Muriel Clarkin (Your Mother) rent for Your occupation the Subject Property. For every payment please state the amount of the payment, the date made, the method of payment, and whether you deposited money into a bank account as payment of said rent. For any document identified in this response please produce said document as part of Your response to Plaintiffs Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: Defendant Smith has not paid rent to her mother.

13. For the period from 2012 through February of 2015 please identify any and all documentation in your possession or control which is or was located on any cell phone, blackberry, 'phone, iPad, or other mobile communication device, including an itemization of any incoming and outgoing calls, text messages, emails, picture files, as well as an indication of the sender and/or recipient, which relate to you obtain, borrowing, or paying money to the Plaintiff Muriel Clarkin, including rent payments. For any document identified in this response please produce said document as part of Your response to Plaintiffs Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: Defendant Smith does not understand this request.

14. Please identify any and all information and/or documentation which would evidence that you paid back Plaintiff the amounts claimed owed and referenced in Paragraphs 11, 18, and 32 of the Complaint filed on October 20, 2017 in this matter. For

any document identified in this response please produce said document as part of Your response to Plaintiffs Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: Defendant Smith will produce bank statements and receipts from Wells Fargo proving she has satisfied the delinquent balance of the HELOC on behalf of Muriel Clarkin.

15. Please state the date you agreed to begin paying Muriel Clarkin (Your Mother) monthly rent for Your residing in the Subject Property, and the amount of the rent you were suppose to pay each month. Further please state the date of the last payment of rent and the amount paid. For any document identified in this response please produce said document as part of Your response to Plaintiffs Requests for Production of Documents. If you respond by referring to a document produced in discovery, please specifically identify that document including a citation to bates numbers and explain how it responds to this interrogatory.

ANSWER: Defendant Smith has not paid rent to her mother, however, she has given her monies on a monthly basis, at no set amount, beginning August, 2012 to present.

16. Have you withheld any information and/or documentation regarding or related to any of these Interrogatories or not produced any requested documents in response to the Requests for Production? If so, please identify the information or those documents withheld and describe the legal and/or factual basis for their non-production.

ANSWER: None at this time. Defendant Smith reserves the right to supplement this interrogatory as discovery continues.

Respectfully submitted this 19 day of June, 2018.

URICCHIO, HOWE, KRELL, JACOBSON,
TOPOREK, THEOS & KEITH, P.A.



Alan D. Toporek
17 ½ Broad Street
Post Office Box 399
Charleston, South Carolina 29401
Phone: 843/723-7491
Facsimile: 843/577-4179
alan@uricchio.com
Attorney for the Defendant

Charleston, South Carolina

EXHIBIT H MTN SJ



FAMILY SERVICES, INC.
4925 LACROSS ROAD, SUITE 215
NORTH CHARLESTON, SC 29406-6513
843.744.1348 • 843.744.2886 (F) • 800.232.6489
www.fsisc.org



CONSUMER CREDIT COUNSELING
FINANCIAL MANAGEMENT

BEHAVIORAL HEALTH
EMPLOYEE ASSISTANCE PROGRAM

March 4, 2015

Alan D Toporek , Esq.
17 ½ Broad Street
P.O. Box 399
Charleston, South Carolina 29401

RE: Muriel Clarkin
Case #2014GC10-0209

Dear Mr. Toporek:

As you know, Charleston County Probate Court has appointed a Conservator for Ms. Muriel Clarkin. It has come to my attention that there may be a bank account holding funds for Ms. Muriel Clarkin; specifically, rent money paid to Ms. Clarkin by Ms. Smith.

Can you please confirm with Ms. Smith if there is an account jointly held by Ms. Clarkin and Ms. Smith? If so, then please let me know which bank and provide a copy of the bank statement. If Ms. Smith is holding funds that belong to Ms. Clarkin, then I would ask that these funds be turned over to the Conservator immediately.

Please feel free to contact me at (843) 735-7828 if you have any questions or concerns. Thank you for your assistance.

Sincerely,

Kelley Evans
Conservator Counselor

/ke

ELECTRONICALLY FILED - 2020 Oct 06 8:17 PM - CHARLESTON - COMMON PLEAS - CASE#2017CPT1005427



ALLIANCE FOR CHILDREN AND FAMILIES • NATIONAL FOUNDATION FOR CREDIT COUNSELING
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ACCREDITED BY: COUNCIL ON ACCREDITATION OF SERVICES FOR FAMILIES AND CHILDREN

CERTIFIED BY: U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

MEMBER OF: SOUTH CAROLINA COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT

Pet. Ex. A-000535

ROA-000522



EXHIBIT H MTN SJ
FAMILY SERVICES, INC.

4925 LACROSS ROAD, SUITE 215
NORTH CHARLESTON, SC 29406-6513
843.744.1348 • 843.744.2886 (F) • 800.232.6489
www.fsisc.org



CONSUMER CREDIT COUNSELING
FINANCIAL MANAGEMENT

BEHAVIORAL HEALTH
EMPLOYEE ASSISTANCE PROGRAM

April 30, 2015

Patricia Smith
602 Atlantic St.
Mt. Pleasant, SC 29464

RE: Muriel Clarkin
Case #2014GC10-0209

Dear Ms. Smith:

Family Services, Inc. has been appointed to serve as Conservator for your mother by Charleston County Probate Court. At this time, we will need to address the \$6,000 debt that is owed to your mother from November 2014. A payment plan will need to be set up in order for you to pay this balance back.

Please let me know how much you are able to pay each month so that we can set up a formal payment plan. All payments should be made payable to "Family Services, Inc. as Conservator for Muriel Clarkin" and mailed to 4925 Lacross Rd, Ste 215, North Charleston, SC 29406.

Please feel free to contact me at (843) 735-7828 if you have any questions or concerns.

Sincerely,

Kelley Evans
Conservator Counselor

Cc: Charleston County Probate Court

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CERTIFIED BY: U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

MEMBER OF: SOUTH CAROLINA COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT

Pet. Ex. A-000536

ROA-000523

EXHIBIT H MTN SJ
FAMILY SERVICES, INC.4925 LACROSS ROAD, SUITE 215
NORTH CHARLESTON, SC 29406-6513843.744.1348 • 843.744.2886 (F) • 800.232.6489
www.fsisc.org

CONSUMER CREDIT COUNSELING
FINANCIAL MANAGEMENT
June 19, 2015

BEHAVIORAL HEALTH
EMPLOYEE ASSISTANCE PROGRAM

Patricia Smith
602 Atlantic St.
Mt. Pleasant, SC 29464

RE: Muriel Clarkin
Case #2014GC10-0209

Dear Ms. Smith:

Family Services, Inc. has been appointed to serve as Conservator for your mother by Charleston County Probate Court. On November 14, 2014, you received a sum of \$6,000 from your mother. After speaking with both you and Ms. Clarkin, it is clear that both parties had an understanding that these funds would be paid back.

Please let me know how much and when you are able to pay towards this balance each month so that I can set up a formal payment agreement.

All payments should be made payable to "Family Services, Inc. as Conservator for Muriel Clarkin" and mailed to 4925 Lacross Rd, Ste 215, North Charleston, SC 29406. Please put "Muriel Clarkin - Loan" in the memo line.

Please feel free to contact me at (843) 735-7828 if you have any questions or concerns.

Sincerely,

Kelley Evans
Conservator Counselor

Cc: Charleston County Probate Court



Pet. Ex. A-000537

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ACCREDITED BY: COUNCIL ON ACCREDITATION OF SERVICES FOR FAMILIES AND CHILDREN

CERTIFIED BY: U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

MEMBER OF: SOUTH CAROLINA COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT

ROA-000524



EXHIBIT H MTN SJ
FAMILY SERVICES, INC.

4925 LACROSS ROAD, SUITE 215
NORTH CHARLESTON, SC 29406-6513

843.744.1348 • 843.744.2886 (F) • 800.232.6489
www.fsisc.org



CONSUMER CREDIT COUNSELING
FINANCIAL MANAGEMENT
July 29, 2015

BEHAVIORAL HEALTH
EMPLOYEE ASSISTANCE PROGRAM

Patricia Smith
602 Atlantic St.
Mt. Pleasant, SC 29464

RE: Muriel Clarkin
Case #2014GC10-0209

Dear Ms. Smith:

I am writing to follow up on my correspondence sent to you on June 19, 2015. You received \$6,000 on November 14, 2014 from your mother that will need to be reimbursed.

Please let me know how much and when you are able to pay towards this balance each month so that I can set up a formal payment agreement.

All payments should be made payable to "Family Services, Inc. as Conservator for Muriel Clarkin" and mailed to 4925 Lacross Rd, Ste 215, North Charleston, SC 29406. Please put "Muriel Clarkin - Loan" in the memo line.

Please also respond to my letter regarding a quit claim deed for the 911 S Shem Dr. property.

Thank you for your assistance. Please feel free to contact me at (843) 735-7828 if you have any questions.

Sincerely,

Kelley Evans
Conservator Counselor

Cc: Charleston County Probate Court
Alan Toporek, Attorney

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CERTIFIED BY: U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Pet. Ex. A-000538 MEMBER OF: SOUTH CAROLINA COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT

ROA-000525



EXHIBIT H MTN SJ

FAMILY SERVICES, INC.

4925 LACROSS ROAD, SUITE 215
NORTH CHARLESTON, SC 29406-6513
843.744.1348 • 843.744.2886 (F) • 800.232.6489
www.fsisc.org



CONSUMER CREDIT COUNSELING
FINANCIAL MANAGEMENT
March 28, 2016

BEHAVIORAL HEALTH
EMPLOYEE ASSISTANCE PROGRAM

Patricia Smith
602 Atlantic St.
Mt. Pleasant, SC 29464

RE: Muriel Clarkin
Case #2014GC10-0209

Dear Ms. Smith:

I have contacted you several times regarding the \$6,000 that you received from your mother's account on November 14, 2014 that still needs to be reimbursed.

It is also my understanding that you received \$10,000 from a cash advance on your mother's Wells Fargo credit card on December 23, 2014.

Please let me know how much and when you are able to pay towards these balances each month so that I can set up a formal payment agreement.

All payments should be made payable to "Family Services, Inc. as Conservator for Muriel Clarkin" and mailed to 4925 Lacross Rd, Ste 215, North Charleston, SC 29406. Please put "Muriel Clarkin - Payment plan" in the memo line.

Thank you for your assistance. Please feel free to contact me at (843) 735-7828 if you have any questions.

Sincerely,

Kelley Evans
Conservator Counselor

Cc: Charleston County Probate Court
Alan Toporek, Attorney



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ACCREDITED BY: COUNCIL ON ACCREDITATION OF SERVICES FOR FAMILIES AND CHILDREN
CERTIFIED BY: U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
MEMBER OF: SOUTH CAROLINA COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT



EXHIBIT H MTN SJ
FAMILY SERVICES, INC.

4925 LACROSS ROAD, SUITE 215
NORTH CHARLESTON, SC 29406-6513

843.744.1348 • 843.744.2886 (F) • 800.232.6489

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CONSUMER CREDIT COUNSELING
FINANCIAL MANAGEMENT
June 30, 2016

BEHAVIORAL HEALTH
EMPLOYEE ASSISTANCE PROGRAM

Patricia Smith
602 Atlantic St.
Mt. Pleasant, SC 29464

RE: Muriel Clarkin
Case #2014GC10-0209

Dear Ms. Smith:

On December 23, 2014, you signed for a \$10,000 cash advance from your mother's Wells Fargo credit card. This debt, of course, must be paid back to Wells Fargo.

Unless you can provide documentation that the \$10,000 was used for your mother's benefit, then this debt belongs to you. As you know, your mother's resources are being directed towards 24/7 caregivers and this is extremely expensive. It is unreasonable that she should be paying off a \$10,000 debt for funds that were taken by you.

From this point on, I am going to be forwarding her credit card bill to you and expect that you will begin making payments towards this balance.

Please feel free to contact me at (843) 735-7828 if you have any questions.

Sincerely,

Kelley Evans
Conservator Counselor

Cc: Charleston County Probate Court
Alan Toporek, Attorney

ELECTRONICALLY FILED - 2020 Oct 06 8:17 PM - CHARLESTON - COMMON PLEAS - CASE#2017CP1005427



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ACCREDITED BY: COUNCIL ON ACCREDITATION OF SERVICES FOR FAMILIES AND CHILDREN

CERTIFIED BY: U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

MEMBER OF: SOUTH CAROLINA COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT

Pet. Ex. A-000540

ROA-000527

URICCHIO, HOWE, KRELL, JACOBSON, TOPOREK, THEOS & KEITH, P.A.

ATTORNEYS AT LAW
17 1/2 BROAD STREET
CHARLESTON, SC 29401

PAUL N. URICCHIO, JR. (1922-2000)
ARTHUR G. HOWE (1927-2004)
BARRY KRELL
CARL H. JACOBSON
ALAN D. TOPOREK
JERRY N. THEOS
GREGORY D. KEITH
JONATHAN F. KRELL
JEFF BUNCHER, JR.
MARGARET THEOS GUERRY
J. DEVEAUX STOCKTON

July 6, 2016

MAILING ADDRESS:
P.O. BOX 399
CHAS., SC 29402-0399

TELEPHONES:
(843) 723-7491
1-800-899-1683
FAX (843) 577-4179

Family Services, Inc.
ATTN: Kelley Evans
4925 LaCross Road Suite 215
North Charleston, South Carolina 29406-6513

Re: Muriel Clarkin Kennedy vs Muriel W. Clarkin, et al
Case No: 2014-GC-10-0209

Dear Ms. Evans:

I am in receipt of your letter of June 30, 2016, directed to Patricia Smith. Insofar as you did not become involved in this case until after December 23, 2014, I do not believe that this cash advance should be your concern. However, I do intend to discuss this with Patricia Clarkin Smith.

With kindest personal regards,

URICCHIO HOWE KRELL JACOBSON
TOPOREK THEOS & KEITH, P.A.


Alan D. Toporek

ADT/lc

cc: Patricia Clarkin Smith
Charleston County Probate Court

Record and return to:
 Law Office of Jocelyn G. Bolling
 Post Office Box 2039
 Mount Pleasant, SC 29465-2039
 Title Not Examined



BP0545374

PGS:

4

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, That I, PATRICIA CLARKIN SMITH, hereinafter referred to as Grantor, in the State aforesaid, have granted, bargained, sold and released, and by these presents do grant bargain, sell and release unto PATRICIA CLARKIN SMITH, TRUSTEE OF THE PATRICIA CLARKIN TRUST dated March 31, 2016, hereinafter referred to as Grantee, the following described property:

ALL that certain lot, piece or parcel of land, together with all buildings and improvements thereon, situate, lying and being in Mt. Pleasant Heights, Christ Church Parish Number 5, Charleston County, State of South Carolina, and shown on the Plat or plan of a re-subdivision of Mt. Pleasant Heights made by J. O'Hear Sanders, Jr. dated January 1950, recorded in the RMC Office for Charleston County, SC in Plat Book G, Page 99-A as LOT NO. 63.

MEASURING AND CONTAINING in front on Atlantic Street sixty (60') feet; the same on the back line and one hundred eighty (180') feet in depth.

BUTTING AND COUNTING Southeast on Atlantic Street, Northwest on a ten-foot (10') foot roadway; Northeast on Lot No. 64 on said Plats; and Southwest on Boundary Street; all as is more fully shown on the Plat hereinabove referred to and on the Plat of J. O'Hear Sanders, Jr. dated January 25, 1952, which said Plat is made a part and parcel of this conveyance.

TMS #532-06-00-129

This conveyance is subject to any and all Restrictions, Covenants, Easements, Rights-of-Way, Matters and Conditions of record affecting said property, including without limitation, the matters set forth on the Plat referred to above, as the same may affect the within property; rules and regulations of applicable governmental authorities; real property taxes or the year of delivery hereof.

This being the same property devised to Patricia Clarkin Smith by deed of Muriel Walsh Clarkin dated November 17, 2014 and recorded in the RMC Office for Charleston County on November 18, 2014 in Book 0441 at Page 484.

Grantee's Address: 602 Atlantic Street, Mount Pleasant, SC 29464

PCS

EXHIBIT I

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto said Grantee, its Heirs and Assigns forever.

And the Grantor does hereby bind himself and his Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Grantee, their Heirs and Assigns, against said Grantor and their Heirs and against every person whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS their hands and seals this 31st day of March, 2016.

P. Kelley Snyder
(Signature of First Witness)

Patricia Clarkin Smith
Patricia Clarkin Smith

Ime Oku Bell
(Signature of Notary Witness)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Patricia Clarkin Smith, sign, seal and as her act and deed, deliver the within written instrument, and that (s)he with the other witness whose name appears above, witnessed the execution thereof.

Kelley Snyder
(Signature of First Witness)

SWORN TO AND SUBSCRIBED BEFORE ME
this 31st day of March 2016.

Ime Oku Bell
Notary Public for South Carolina
My Commission Expires: 10/5/22

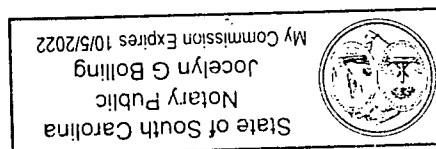


EXHIBIT I

STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON }

AFFIDAVIT FOR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.

2. The property being transferred is located at 604 Atlantic Street
bearing Charleston County Tax Map Number 532-06-00-129,
was transferred by Patricia Clarkin Smith
to Patricia Clarkin Trust on _____

3. The deed is exempt from the deed recording fee because (See Information section of affidavit):
#8 - transfer to trust

If exempt under exemption # 14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:
Grantor

5. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Patricia Clarkin Smith

Responsible Person Connected with the transaction

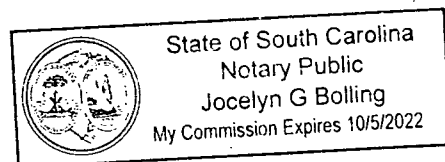
Patricia Clarkin Smith

Print or Type Name Here

Sworn this 31st Day of March 20 16

[Signature]
Notary Public for South Carolina

My Commission Expires: 10/5/22



PCS

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

JOCELYN G BOLLING, ESQUIRE
PO BOX 2039

MT PLEASANT, SC 29465-2039

RECORDED

Date: April 6, 2016

Time: 8:55:20 AM

Book	Page	DocType
0545	374	Deed

Charlie Lybrand, Register
Charleston County, SC

MAKER:

SMITH PATRICIA C

RECIPIENT:

SMITH PATRICIA C TR AL

Note:

of Pages: 4

Recording Fee	\$ 10.00
State Fee	<EXEMPT>
County Fee	<EXEMPT>
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 10.00

Original Book:

Original Page:

AUDITOR STAMP HERE

RECEIVED From RMC

APR 07 2016

Peter J. Tecklenburg
Charleston County Auditor

PID VERIFIED BY ASSESSOR

REP

DATE

1/1/15
4/8/16

42

DRAWER 3
CLERK ECP



0545
Book



374
Page



04/06/2016
Recorded Date



4
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Original Book



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Recorded Time

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO: 2016-CP-10- 5427
	)	
Family Services, Inc., as Conservator	)	
For Muriel W. Clarkin,	)	
	)	AFFIDAVIT OF KELLEY EVANS
Plaintiff,	)	
	)	
vs.	)	
	)	
Patricia Clarkin Smith	)	
	)	
Defendant.	)	
_____	)	

PERSONALLY APPEARED before me, Kelley Evans, who being duly sworn, deposes and says as follows:

1. I am twenty-one years of age or older, legally competent to testify as to the matters contained within this Affidavit, and have personal knowledge of the facts set forth within this Affidavit.
2. I am employed as a Conservator Case Manager for Family Services Inc. and am the case manager for Muriel W. Clarkin's Conservatorship.
3. I attended the hearing for Plaintiff's Motion for Summary Judgement scheduled to heard at 12:00 p.m. on May 11, 2021 before the Master in Equity the Honorable Mikell R. Scarborough.
4. The Court was hearing another case when Plaintiff's counsel and I arrived and did not begin this matter's hearing until at or around 12:15 p.m. At that time the Defendant Patricia Clarkin Smith was not present for the hearing.
5. The hearing lasted for about forty-five minutes after which time Judge Scarborough ruled from the bench granting Plaintiff's Motion for Summary Judgement and requested that Plaintiff's counsel draft a proposed order on the motion and provide it to the Court.
6. The Court informed us that it needed to begin its next hearing and Plaintiff's counsel and I began packing up are things. Thereafter, the Defendant Patricia Clarkin Smith appeared in the courtroom.
7. At that time Judge Scarborough informed Ms. Smith that he had already heard the motion, ruled from the bench granting the motion and that Plaintiff's counsel would be submitting a proposed order on the motion to the Court. Judge Scarborough then instructed Plaintiff's counsel to provide Ms. Smith a copy of the proposed order at the time he provided it to the Court.

8. Plaintiff's counsel, myself and Ms. Smith exited the courtroom together and the three of us then immediately sat down together in the conference directly off the courtroom and spoke for about ten minutes.

9. Plaintiff's counsel again informed Ms. Smith that Judge Scarborough had granted the motion and that he would be drafting a proposed order. Plaintiff's counsel told Ms. Smith that he would provide her a copy of the proposed order when he provided it to the Court and asked Ms. Smith if she would like him to email and/or mail the copy of the proposed order to Ms. Smith. Ms. Smith stated he did not need to mail her a copy seemingly indicating that email would be sufficient. Plaintiff's counsel stated that upon receiving the proposed order if she wished to comment on it, then she should provide written comments to the Court.

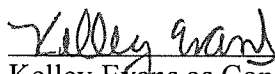
10. Ms. Smith stated that she was on the Cooper River Bridge heading to the courthouse eight minutes before 12:00 p.m., and then noted "but you can't be late for the Judge."

11. Ms. Smith asked how the Judge ruled as to the issue of back rent being owed by her to Plaintiff and stated that she thought it was funny that Plaintiff was requesting that.

12. Ms. Smith then discussed specific facts about the case including referencing discovery responses which her former attorney in the matter Allen Toporek had drafted as her counsel and served upon Plaintiff in this matter.⁴

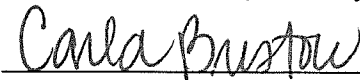
13. In my opinion from observing and speaking with Ms. Smith at this time she understood the facts and situation regarding the case, understood that the Judge had granted the motion, and acknowledged the consequence of not appearing until after the hearing had concluded.

AND FURTHER THE AFFIANT SAYETH NOT.



Kelley Evans as Conservator Case Manager for
For the Conservatorship of Muriel W. Clarkin

SWORN TO before me May 21st, 2021.



Notary Public for South Carolina
My Commission Expires: 10/08/2030

10/26/17
2:08 PM

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Family Services, Inc., as Conservator)
For Muriel W. Clarkin,)
)
Plaintiff,)
)
vs.)
)
Patricia Clarkin Smith and Wells Fargo)
Bank, NA.)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2016-CP-10-5427

2017

LIS PENDENS

FILED
2017 OCT 26 PM 2:05
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

To: THE ABOVE NAMED DEFENDANTS:

NOTICE IS HEREBY GIVEN pursuant to a Complaint of the above named Plaintiff filed against the above named Defendants for a quiet title action relating to the real property located in the County of Charleston, South Carolina. Said premises affected by this action are more particularly described as follows:

ALL that certain lot, piece, or parcel of land, together with all buildings and improvements thereon, situate lying and being in Mt. Pleasant, Heights, Christ Church Parish Number 5, Charleston County, State of South Carolina, and known on the Plat or plan of re-subdivision of Mt. Pleasant Heights made by J. O'Hear Sanders, Jr. dated January, 1950, recorded in the RMC Office for Charleston County, SC in Plat Book G, Page 99-A as LOT NO. 63.

MEASURING AND CONTAINING in front on Atlantic Street sixty (60) feet; the same on the back line and one hundred and eighty (180) feet in depth.

BUTTING AND BOUNDING Southeast on Atlantic Street, Northwest on a ten (10) foot roadway; Northeast on Lot No. 64 on said Plats; and Southwest on Boundary Street; all as is more fully shown on the Plat hereinabove referred to and on the Plat of J. O'Hear Sanders, Jr. dated January 25, 1952, which said Plat is made a part and parcel of this conveyance.

SUBJECT TO ALL RESTRICTIONS AND EASEMENTS OF RECORD

This being the same property devised to Muriel Walsh Clarkin from the Estate of Muriel Monica Dean Walsh, Estate File No. 1997-ES-10-00254, pursuant to a Deed of Distribution dated January 5, 1998, and recorded on January 5, 1998, in the RMC Office for Charleston County, SC in Book

J-295, Page 592; and by Deed of Muriel Walsh Clarkin to Muriel Walsh Clarkin and Patricia Clarkin Smith, as joint tenants with rights of survivorship, and not as tenants in common, dated July 30, 2013, recorded in the RMC Office for Charleston County, SC on August 7, 2013 in Deed Book 0351, Page 348.

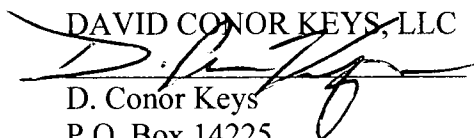
Property Address: 602 Atlantic Street, Mt. Pleasant, SC 29464
TMS # 532-06-00-129

Charleston, South Carolina

October 26, 2017

RESPECTUFLLY SUBMITTED,

THE LAW OFFICE OF
DAVID CONOR KEYS, LLC

A handwritten signature in black ink, appearing to read "D. Conor Keys", is written over a horizontal line.

D. Conor Keys
P.O. Box 14225
Charleston, SC 29422
Phone: 843-906-3998
conor@dconorkeyslaw.com
Attorney for Plaintiff

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Family Services, Inc. as Conservator
for Muriel W. Clarkin,

Plaintiff,

vs. CASE NO. 2017-CP-10-5427

Patricia Clarkin Smith and
Wells Fargo Bank, N.A.,

Defendants.

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 10:58 a.m. on May 11,
2021 at 100 Broad Street, Courtroom 2A, Charleston,
South Carolina.

Christine A. Smith, Court Reporter
Master-in-Equity
100 Broad Street
Suite 266
Charleston, SC 29401
(843) 367-9596
csmith@adacounty.id.gov

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF:

3 David Conor Keys, Esq.
4 The Law Office of David Conor Keys, LLC
5 P.O. Box 14225
6 Charleston, SC 29422
(843) 906-3998
Conor@dconorkeys.law.com

7 ATTORNEYS FOR THE DEFENDANT:

8 Patricia Clarkin Smith, Pro Se
9 602 Atlantic Street
10 Mt. Pleasant, SC 29464
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P R O C E E D I N G S

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2
3 THE COURT: So Ms. Wilkerson, my new law clerk
4 has gone back because Ms. Patricia Clarkin Smith has
5 called into her. I don't expect her. She was
6 informed yesterday by my staff that she could show up
7 today. I guess that's how you-all got the notice to
8 be here, and we're back where we are. When you-all
9 get situated I'm going to set the record the best I
10 can and we'll go from there. Okay? I'm sure she
11 wants to call in.

12 (A recess transpired.)

13 THE COURT: The case before the Court is
14 captioned Family Services, Inc. as Conservator for
15 Muriel W. Clarkin, Plaintiff versus Patricia Clarkin
16 Smith and Wells Fargo Bank, N.A., Defendants. The
17 case number is 2017-CP-10-5427.

18 We're before the Court today on Plaintiff's
19 Motion for Summary Judgment on multiple causes of
20 action. Mr. Conor Keys is here present for the
21 Plaintiff along with --

22 MR. KEYS: Kelly Evans, Your Honor.

23 THE COURT: Ms. Kelly Evans.

24 MS. EVANS: With Family Services.

25 THE COURT: Yes. Ms. Kelly Evans with Family

1 Services. Mr. Keys has filed his motion. That was
2 back in October of last year, and supported it with
3 multiple exhibits, some of which I have before me,
4 not all of them. One of them was the 233-page
5 deposition which I haven't printed.

6 Let me give you a little background on this
7 case at least as far as I know it to be. This is a
8 2017 action and was commenced by Family Services.
9 Ms. Clarkin Smith was originally represented by Alan
10 Toporek. Mr. Toporek was relieved as counsel in
11 April of 2019. Wells Fargo was essentially let out
12 of the case. They have a mortgage on at least one of
13 these properties if not more than one.

14 MR. KEYS: It's just one property.

15 THE COURT: Just one. And their interest is
16 protected through the mortgage, so they sort of
17 backed out of it. Let me see. Mr. Toporek left as
18 counsel for Ms. Clarkin Smith then and she went to
19 Attorney Karen DeJong. Ms. DeJong was then
20 disqualified as counsel for Ms. Clarkin Smith by
21 order of Judge Roger Young in October of 2019.

22 She informed the Court in November, 2019 that
23 she would be proceeding pro se. She asked for her
24 first continuance in writing in January of 2020.
25 This case was then referred over here to the

1 Master-in-Equity on February 12th of 2020 by Judge
2 McCoy. The Court must have set it for a hearing on
3 February 25th of 2020. She asked for her first
4 continuance in writing in Court at that time. So
5 she's had two written continuances. She's had other
6 requests orally including -- I think it was yesterday
7 or the day before. I forget when it was.

8 MR. KEYS: I think Your Honor heard the Motion
9 to Enforce back in June. I think between that motion
10 and this motion requests go back to 2019, and we're
11 at seven or eight requested continuances. Not all of
12 them got filed.

13 THE COURT: It's time to proceed. Let's see.
14 I issued an order in July of last year pursuant to
15 the Plaintiff's Motion to Enforce a Settlement
16 Agreement that was dated in December of '18. The
17 Motion to Enforce was filed in July of '19. At that
18 time she hired Mr. Rick Hyman for the limited
19 appearance to argue against the agreement being
20 enforced.

21 I denied the enforcement of the agreement
22 under Rule 43(k), I believe because it had not yet
23 been approved by the Court pursuant to that Rule and
24 also relieved Mr. Hyman as her attorney and provided
25 that she was to obtain new counsel and ordered to

1 proceed to trial within 90 days. That order was
2 issued in July of 2020. It is now May of 2021. I
3 think it is probably time to move this case along.

4 MR. KEYS: Yes, Your Honor.

5 THE COURT: Any other matters before we
6 proceed with the motion?

7 MR. KEYS: I, though I wouldn't usually do
8 this, but for your benefit, Your Honor, I would
9 probably give you a little bit of background about
10 some of the other litigation going on because she's
11 probably going to bring it up.

12 THE COURT: I don't want to get into that.
13 Let me just say this: She has a wealth of health
14 issues. She's talked to my office staff multiple
15 times. I can't even begin to tell you what they are,
16 but she's got a lot of them. She claims that she
17 can't be here. I advised her yesterday through my
18 staff that this is not a criminal case, and therefore
19 she has no right of confrontation, and under the
20 Constitution and the laws of South Carolina and the
21 USA, she's certainly welcome to come if she can come.
22 If she can't come she could appear by WebEx.

23 When she couldn't appear by WebEx and we had
24 one hearing -- which I think I did abort because she
25 couldn't hear and she couldn't do this and she

1 couldn't do that.

2 MR. KEYS: She was on the phone.

3 THE COURT: Yes. We had one hearing and I
4 just pushed that one off.

5 MR. KEYS: So she's not present on the phone
6 or she is?

7 MS. WILKERSON: I think she's hoping to appear
8 in person but is not here yet.

9 THE COURT: Well, if she comes in, she will
10 come in, but you have the burden of proof on the
11 Motion for Summary Judgment. I have reviewed briefly
12 your memoranda. There are lots of causes of action
13 here. This is an ongoing dilemma with the Probate
14 Court.

15 MR. KEYS: There were some alternative causes
16 of action. Just in a quick synopsis, I would boil it
17 down into three different things.

18 THE COURT: All right.

19 MR. KEYS: You have got these different
20 disbursements of money on one. You've got a question
21 as to payment of rent, that's two. Then you've got a
22 question of voiding a deed interest out there.

23 THE COURT: Okay.

24 MR. KEYS: Now Ms. Clarkin is 88.

25 THE COURT: She's still alive.

1 MR. KEYS: She's still alive.

2 THE COURT: Where is she physically?

3 MR. KEYS: Ms. Clarkin lives with her son,
4 Michael Clarkin in Isle of Palms. They live
5 together. Michael was in a bad -- he was a dock
6 worker and he was in a bad accident a number of years
7 ago, so they're both actually under conservatorships
8 under the Probate Court.

9 THE COURT: I've got you.

10 MR. KEYS: They both require assisted living
11 care, so it kind of works that they're together and
12 share assisted living.

13 THE COURT: He was the one -- Pray For
14 Clarkin, all the bumper stickers around town, had a
15 box dropped on him or something if I remember right;
16 is that the guy?

17 MR. KEYS: Yes.

18 THE COURT: Oh, yes. I do remember that.
19 Okay.

20 MR. KEYS: So she has four living children.
21 You have Charlie, who doesn't seem to get very
22 involved in the family affairs. You have Muriel
23 Kennedy, the oldest daughter. Then you have Patricia
24 Smith, the next daughter, and then you have Michael,
25 who I believe was the youngest. There's also

1 multiple grandchildren.

2 In 2014, she had two properties titled in her
3 name. You have Shemwood, which is in Mt. Pleasant,
4 and that was this generation's family, and then you
5 have Atlantic Street, which is the subject of this
6 action. Atlantic Street was actually Ms. Clarkin's
7 childhood home, I believe. She eventually took title
8 to it through the estate. This is just going back,
9 but not necessarily relevant to what's going on.

10 THE COURT: Atlantic is in the Old Village
11 area?

12 MR. KEYS: Yes, it is. If I may approach, I
13 can give you a Zillow I printed off.

14 THE COURT: That's fine.

15 MR. KEYS: I also sent you some of the
16 underlying Probate Court orders and petitions, but I
17 didn't want to file them just to keep them out of the
18 public record for privacy's sake.

19 So in 2013, Mac Gibson, who had always acted
20 as Ms. Clarkin's counsel, does a lot of work for her.
21 He deeds -- and this is all basically all at the same
22 time. He deeds a half interest to Ms. Smith in
23 Atlantic Street, a right of survivorship. He does a
24 power of attorney for Ms. Clarkin naming Muriel
25 Kennedy as having power of attorney. Then Ms. Smith

1 is named as the alternate in the event that
2 Ms. Kennedy is unable to perform. He does a will,
3 and he deeds out a third interest in the other
4 property I'm speaking of, Shemwood, to both -- a
5 third to Ms. Smith and a third to Ms. Kennedy.
6 That's with rights of survivorship just like the
7 Atlantic Street property.

8 So then in 2014, Ms. Smith testified in her
9 deposition, and it's cited in the memo, Your Honor,
10 that Ms. Kennedy approaches her in October of 2014
11 and says, you know, Mom's having trouble with her
12 memory and basically said, you know, I think we need
13 to put a conservatorship in place. Will you sign
14 this paperwork? Ms. Smith said she stated, No. Hell
15 no. That's when my red lights -- my warning lights
16 went off. So that's October of '14.

17 Then you get to November 18th of 2014.
18 Ms. Smith takes Ms. Clarkin and gets her to execute a
19 deed conveying the other half interest of Atlantic
20 Street to Ms. Smith because just the year prior
21 Attorney Mac Gibson, on Ms. Clarkin's behalf, drafted
22 a deed to Atlantic giving Ms. Smith a half interest
23 with right of survivorship.

24 So she gets her to do the second half on
25 November 18, 2014. No consideration is paid. Mac

1 Gibson, who had just done all this work and had been
2 Ms. Clarkin's attorney for years does not do the
3 drafting of this. Ms. Smith is the one who records
4 it herself, and then on the same day, while she was
5 at it, she also took Ms. Clarkin to the bank and got
6 Ms. Clarkin to withdraw \$6,000 for Ms. Smith. So
7 that's November of '18.

8 Then you get to -- and I would note -- she
9 starts going into Alzheimer's assessment studies in
10 October/November. So on the petition for
11 conservatorship, which was filed 12/22/14, which I'll
12 get to in a second here, they attach some medical
13 records, and one of them is dated 11/12/14 when
14 Ms. Clarkin is going into Roper to be assessed for
15 Alzheimer's.

16 It was a determination of whether or not she
17 could make an informed consent as to her rights in
18 the study of Ms. Smith. They made a determination on
19 11/12/14 that she lacked the capacity to do that. So
20 that's attached to the petition that was filed with
21 the Court.

22 There is also an 11/26/14 report from her
23 doctor with regard to that Alzheimer's research where
24 he states in there that he does not believe that she
25 should be controlling her financial affairs and

1 property any longer, that she's no longer capable of
2 making these decisions.

3 THE COURT: That doctor's name is what?

4 MR. KEYS: Minkota (phonetic). It is listed
5 in the memo. It is also attached to the Probate
6 records that I e-mailed to you last night, Your
7 Honor, or to your clerk.

8 THE COURT: Okay.

9 MR. KEYS: I believe it's Minkota.

10 THE COURT: I'm going to have you do an order
11 probably. Just reference his name in the order, if
12 you would, please, and the date. The date is
13 important. So there was an assessment on 12th of
14 November?

15 MR. KEYS: Right. And then she does a
16 follow-up on the 26th.

17 THE COURT: Two weeks later.

18 MR. KEYS: In between --

19 THE COURT: In the meanwhile a half interest
20 conveyed --

21 MR. KEYS: Half interest conveyed out, plus
22 the \$6,000 in cash, and this is a month after her
23 sister said, hey, you know, we should probably get a
24 conservatorship in place. Will you sign these
25 documents.

1 THE COURT: Okay.

2 MR. KEYS: So then you get to a week later,
3 12/8. She goes out and gets another power of
4 attorney drafted, even though Mac Gibson drafted one
5 just the year prior, that made Kennedy, her sister,
6 attorney-in-fact, and made her the alternative in the
7 event Kennedy couldn't serve.

8 She goes out and gets another one from her
9 attorney, Jocelyn Bolling, not Mr. Gibson, who had
10 always worked with Ms. Clarkin, and it's a dual power
11 of attorney, so she gets Ms. Clarkin to execute that.
12 That's 12/8. Then you get to 12/22. Ms. Kennedy
13 files a petition with the Probate Court to have
14 Ms. Clarkin declared incapacitated, and to have
15 Ms. Kennedy appointed as conservator and guardian.

16 THE COURT: Who filed that in December?

17 MR. KEYS: On December 22nd, 2014, Muriel
18 Kennedy, who is the eldest daughter.

19 THE COURT: Ms. Kennedy filed it?

20 MR. KEYS: Yes. The one who had originally
21 talked to Ms. Smith in October of '14 and said, We
22 need to file some paperwork to have mom declared
23 incapacitated.

24 THE COURT: Guardian and conservatorship both?

25 MR. KEYS: Yes. So her basis asserted --

1 again, I provided you these certified records from
2 the Probate Court, were a number of the issues that
3 we just talked about dealing with with Ms. Smith.
4 She said, Ms. Smith is out here getting my mother to
5 sign legal documents and withdraw money from the
6 bank.

7 She said, There was an agreement in place so
8 in August of 2013 when the half interest in Atlantic
9 Street was deeded to Ms. Smith, she began residing
10 there. Attached to the motion as Exhibit E is what I
11 believe to be her first rent check made to
12 Ms. Clarkin for \$500 a month.

13 THE COURT: I do see it now. She didn't write
14 the number down. She wrote the figure, \$500 down?

15 MR. KEYS: That is correct. So that was
16 another thing that Ms. Kennedy, her sister, listed in
17 the petition, is that she's paying my mother rent but
18 she's supposed to be paying it to me because
19 Ms. Kennedy had the power of attorney, and was at
20 that point in time kind of controlling Ms. Clarkin's
21 finances. She said, It's not coming here.

22 THE COURT: So that rent, that August 2,
23 2013 -- the notice for August rent of \$500 --

24 MR. KEYS: Two days after the deed giving her
25 a half interest --

1 THE COURT: The half interest deed was filed
2 July 30th?

3 MR. KEYS: Right. And then you've got -- so
4 she starts paying monthly rent. So then that was one
5 of the other reasons Kennedy asserted in the
6 petition. She attached the two doctors' letters I
7 spoke of.

8 December 23rd -- the Court on December 22nd
9 issued an ex parte order declaring Ms. Clarkin
10 incapacitated and naming Ms. Kennedy, her daughter,
11 as the temporary conservator. Then December 23rd,
12 Ms. Clarkin, is at Atlantic Street with Ms. Smith and
13 the cops show up and serve her with the order
14 declaring her incapacitated and informing her of what
15 is going on. Ms. Smith is present and in the room.

16 So after the cops leave, Ms. Smith goes out
17 and goes to the bank and withdraws \$10,000 out of an
18 account titled only in Ms. Clarkin's name using a
19 credit card that Ms. Smith apparently had never
20 actually used before but was an authorized user of.
21 This is after she and her mother have both been
22 informed that her mother was declared incapacitated
23 by the State. So the authority is lacking.

24 Family Services didn't know that at the time,
25 but we've come to find out later that that money went

1 to Mr. Toporek to represent Ms. Smith, not
2 Ms. Clarkin. Mr. Toporek made that very clear as is
3 evidenced by the interrogatories attached.

4 THE COURT: Right. It was a cash advance on a
5 Wells Fargo credit card is what that was?

6 MR. KEYS: It was a cash withdrawal, so it
7 didn't show up on the statements as actually going to
8 Mr. Toporek or anything like that, but yes, it was a
9 Wells credit card account.

10 THE COURT: Okay.

11 MR. KEYS: So that's the 23rd. There is a
12 hearing on January 9th in the Probate Court, and they
13 are addressing Ms. Smith's Motion to Dismiss the
14 action. The Court denies the motion. The Court
15 appoints Family Services at that point in time as
16 temporary conservator. The Court orders two
17 independent assessments from doctors to determine
18 capacity and sets a formal final hearing for March
19 13th or March 19th of 2015.

20 March 19, 2015, both the doctors testify. You
21 have the order. It's dated 3/27/15, and they both
22 come to the conclusion that she should be permanently
23 declared incapacitated. It is noteworthy that
24 Dr. Mulberry, I believe, states that he believes that
25 she is susceptible to undue influence.

1 But in between you have the January 9th
2 temporary hearing, and then on January 27th, after
3 she was present at that temporary hearing, Ms. Smith
4 again charges that credit card account \$7,500, and
5 this time it was a straight charge off the credit
6 card, so it showed Mr. Toporek's law firm as having
7 received those funds.

8 Once Family Services comes in, they wrote a
9 letter to Mr. Toporek and said, Those funds were not
10 authorized. We need you to return them. He did
11 return that \$7,500. That is not an issue in dispute.

12 (Off-the-record discussion.)

13 THE COURT: Go ahead.

14 MR. KEYS: So we have the \$10,000 on 12/23
15 that she took out. We have the \$6,000 on 11/18/14
16 she took out. You also have \$6,000 that was taken
17 out on -- she received on ^^11/1/23. And in Exhibit
18 A, which is the deposition transcript, Page 105 to
19 108, she testifies that she owed the amount of both
20 the \$6,000 from the 2014 amount and the \$6,000 from
21 the 2012 amount to her mother.

22 One was -- she called it the TERI program and
23 the other was for medical leave. And she is leaving
24 a voice message. This is a recording of a voice
25 message she left on Ms. Evans' phone. It was played

1 to her during the transcript. She says, I can get
2 that back. I can pay off that portion, and I can
3 also pay off the portion of the equity loan. We
4 talked about the HELOC that was Wells Fargo. In 2014
5 she actually got \$15,000 out of that.

6 (Off-the-record interruption.)

7 THE COURT: Go ahead.

8 MR. KEYS: So she leaves two voice messages in
9 February of 2015, when Family Services just appointed
10 Kelly Evans. She talks about paying -- that she will
11 pay it back, and it's her responsibility to pay the
12 \$6,000 she received from her mother in 2012 what she
13 calls the TERI program, and the \$6,000 that she
14 received in 2014 that she says was for medical leave
15 or something.

16 She also talks about repaying the HELOC amount
17 she received because in April of 2013 she received --
18 or 2014 she received \$15,000 from the HELOC that
19 Wells Fargo is the lender on that is secured by
20 Atlantic Street.

21 She was not good about paying that. That was
22 another reason that her sister brought the
23 conservatorship. Once Family Services came in, they
24 were invoicing her monthly. She did make payments,
25 and she did eventually pay that off in 2017 so that

1 is not an issue here. It is just an ongoing saga of
2 how this woman always was able to get money. She
3 said she was going to pay her mother back, and we're
4 dealing with the issues where she didn't.

5 THE COURT: Okay.

6 MR. KEYS: Then there is one more -- so that's
7 \$12,000 there plus the \$10,000 to Toporek, and then
8 you have \$1,500 on 8/21/13, which in the complaint.
9 We allege that she received the funds and she had
10 stated that she was obligated to repay those funds
11 and she admitted that in her answer to the complaint.

12 She also states in Exhibit D, which is text
13 messages between her sister, Muriel Kennedy, and her.
14 On Page 21 she talks about, I owe the \$6,000 to mom
15 from 2012, and I owe the \$1,500 in 2013. There's
16 another statement where she's conceding that she owes
17 this money that she hasn't repaid to her mother.

18 That is \$23,500. We would assert that under
19 our causes of action, which includes conversion on
20 just enrichment, money not received, quantum meruit.
21 We're not seeking to get four times here, but just
22 different causes of action to get at it.

23 Under those, you are entitled, if the Court
24 were to find, to prejudgment interest. So we would
25 request prejudgment interest, not from the various

1 times that the monies were received, but just going
2 from when the conservatorship was put in place.
3 There are records in the motion where we've asked for
4 these sums at various times and in various manners
5 from her over the years, Family Services has. So
6 they were first appointed by order of 1/16/15, and we
7 would request prejudgment interest from that date.

8 Next, Your Honor, you get to the question of
9 rent that we talked about briefly.

10 THE COURT: Okay.

11 MR. KEYS: The deed is recorded, 7/30/13. The
12 first check she makes for her first rent payment,
13 8/2/13, in the amount of \$500. The petition which
14 Ms. Kennedy filed with the Probate Court says she was
15 supposed to be paying \$600.

16 Exhibit B to the motion is the text messages
17 back and forth with Ms. Kennedy and Ms. Smith, and it
18 evidences that she regularly in 2013 and 2014, so
19 when she first obtained titled, was paying monthly
20 rent to her mother.

21 Pages 144 through 151 of the deposition, she
22 testified that she gave her mother money every month,
23 between \$400 and \$500. So though she paid in 2013
24 and 2014 -- as soon as the conservatorship comes in
25 place in 2015 she stops paying on the agreement they

1 had.

2 Again, she never received any consideration
3 for that transfer, and she testified in her
4 deposition, and it's noted in the motion, that the
5 reason they made the half interest transfer in July
6 30th, 2013, half interest in Atlantic Street
7 regarding survivorship was because -- I believe she
8 had just gotten divorced. So she's moving in there
9 and they wanted to bring the taxes down. They wanted
10 to get out of the 6 percent and go to the 4 percent,
11 which we all know is more than 2 percent.

12 THE COURT: Right.

13 MR. KEYS: And so she said, That was why I
14 actually made that transfer in the first place. Then
15 we are just requesting rent at the low dollar. She
16 said \$450 to \$500. Kennedy says \$600. We're
17 requesting monthly rent of \$450.

18 THE COURT: I'll give you \$500. If it was up
19 to me it would be \$1,500 but that's not my deal.

20 MR. KEYS: And we're requesting it just from
21 when the conservatorship came in until the date of
22 the order.

23 THE COURT: January 15th?

24 MR. KEYS: Yes.

25 THE COURT: Okay.

1 MR. KEYS: And we would also assert that you
2 could award prejudgment interest. We're asserting
3 this under promissory estoppel and on just
4 enrichment, Your Honor.

5 THE COURT: Okay. All right.

6 MR. KEYS: Now we get on to the deed. So this
7 is the --

8 THE COURT: We're up to seven years, six and a
9 half years of rent due now, right?

10 MR. KEYS: Yes, six and a half. You've got
11 the 11/18/14 deed that was not drafted by Mac Gibson,
12 drafted only a year after Mac Gibson gives her a half
13 interest with right of survivorship.

14 In the deposition I asked her, Do you know
15 what right of survivorship means? She said she did.
16 It's quoted in the motion. She goes on to say, But I
17 needed to be able to take out a mortgage for
18 Ms. Smith's benefit and use Atlantic Street as
19 secured collateral for her to get that loan for her
20 benefit, and she said, And my sister came to me a
21 month before she had this deed executed and before
22 she personally recorded it and said, You know, I
23 think mom needs to be declared incapacitated. Will
24 you sign the paperwork?

25 And she testified to this in her deposition.

1 I believe it's Page 105 or 108. It's noted in the
2 motion. If her mother was declared incapacitated,
3 her mother wouldn't be able to sign a mortgage. Then
4 she wouldn't be able to get that loan that Ms. Smith
5 wanted for Ms. Smith's benefit using Atlantic Street.

6 So she basically said that that's why she
7 wanted that deed to be recorded. Again, it's kind of
8 crazy because she already had right of survivorship,
9 and the original deed corresponds with -- that's why
10 I also brought up the (unintelligible) deed, Your
11 Honor. In that she gave each of her daughters a
12 one-third interest with right of survivorship in the
13 (unintelligible) deed. She retained an interest. It
14 looks like a pattern and practice when she was using
15 her counsel to retain an interest in her properties
16 and then gift out a partial interest to her
17 daughters.

18 This second one was not done by Mac. No
19 consideration was paid, and the same day she goes out
20 and forces her mother to take \$6,000 out of the bank.
21 So we would assert that there's undue influence
22 there, Your Honor. Now, there's a couple of
23 different ways to skin this cat. Is there a
24 confidential relationship? We would assert there is.

25 She, in fact, admitted there was in responding

1 to the complaint. You also have two powers of
2 attorney. The 2013 -- she is listed as an alternate,
3 and the December 8, 2014 power of attorney, which she
4 got Ms. Clarkin to execute naming her as power of
5 attorney. So you've got fiduciary duties there.
6 You've got a parent/child relationship. So we would
7 assert that there is a confidential relationship
8 there.

9 We would also assert that under the laws of
10 our state, you don't have to find the existence of a
11 confidential relationship, and you don't even have to
12 prove the incapacity of Ms. Clarkin at the time that
13 she executed the deed.

14 If you'll look at our Supreme Court's decision
15 in Brooks v. Kay, which is 339 SC 479, it's a 2000
16 case. They said, Even acts in a confidential
17 relationship, this Court has several times proved the
18 principal that the imposition or undue influence upon
19 a grantor will be inferred from proof of great mental
20 weakness not amounting to incapacity to execute a
21 deed, but accompanied by gross inadequacy of
22 consideration. There was no consideration paid for
23 the 11/14 deed.

24 They went on to say, regarding Ms. Brooks in
25 that case, even if Brooks was mentally competent

1 enough to execute the deed, there was no doubt that
2 she was rapidly approaching senility. If not already
3 suffering from Alzheimer's disease, responsible for
4 her commitment to the state hospital only one year
5 after the transaction.

6 In this case, she had already been diagnosed
7 with Alzheimer's disease before the transfer, and
8 it's a matter of weeks before the Court declares her
9 incapacitated, not a year after the transaction.

10 So it would say that even though -- we would
11 assert that she was incapacitated at the time she
12 executed the deed, but if you were to find that she
13 was -- that she lacked evidence to do so, you can
14 show from the specs and circumstances, that there was
15 a great mental infirmity coupled with a lack of --
16 there was an inadequacy of the purchase price that
17 you can make an inference of undue influence.

18 THE COURT: Okay.

19 MR. KEYS: So moreover, we would also say that
20 there was a confidential relationship, and the burden
21 shifted to Ms. Smith to show by clear and convincing
22 evidence that the transaction wasn't bona fide and
23 that there was consideration paid. There is
24 definitely inferences of broad going along with the
25 confidential relationship. We also have fraudulent

1 conveyance, Your Honor.

2 Fraudulent conveyance, again, no consideration
3 paid, so you don't actually have to show intent to
4 defraud. We would assert, though, that there are
5 numerous badges of fraud that you could actually find
6 there was fraud in the transaction. Again, you have
7 the mother/daughter relationship. You have
8 essentially a landlord/tenant relationship. No
9 consideration was paid. You've got the confidential
10 relationship I just talked about. Pendency of threat
11 of litigation. Her sister told her the month before,
12 Let's do a conservatorship, and a month later her
13 sister filed an action to do a conservatorship, and
14 Ms. Smith challenged it and moved to dismiss it.

15 You've got sequency or concealment of the act.
16 Again, if they were using the traditional means,
17 which Ms. Clarkin had always operated under, and this
18 also goes to departure from usual methods of
19 business, they would have gone to Mac Gibson and
20 gotten him to draft something. He had always done
21 her work. Why was it not done in this circumstance?
22 At the time, the HELOC was in place and Ms. Clarkin's
23 entire interest was thereby transferred to that 11/14
24 deed. That is a lot of badges of fraud such that you
25 could infer actual intent to defraud on the part of

1 Ms. Smith at the time that she caused the 11/14 deed
2 to be executed and recorded.

3 Even if there wasn't lack of consideration,
4 you don't have to find it, Your Honor. It's just the
5 fact that this transfer was made. It was made just
6 before the conservatorship was put in place, and she
7 knew that her sister was talking about that. So it
8 looks like she's trying to hide property -- it
9 doesn't have to be a creditor -- from anybody who
10 would have an interest in that property.

11 Then we go on to quiet title, Your Honor.
12 There is one other deed that I need to bring up. So
13 that's the 11/14/18 deed. Conservatorship gets put
14 in place in March of 2015. That Probate case,
15 unfortunately, is a litigious unhappy mess. It has
16 been for six years.

17 THE COURT: All right.

18 MR. KEYS: And so a year later she's a party
19 to that action. She's aware that Guardians ad Litem
20 and Family Services are starting to wonder whether
21 that transfer on 11/14 of the deed was appropriate.
22 She goes out and transfers the property again into a
23 trust of which she is the beneficiary and the
24 trustee.

25 THE COURT: Have you-all seen any evidence of

1 the creation of the trust? How was the trust created
2 other than by the deed; do you know?

3 MR. KEYS: It was created, I believe, by
4 Jocelyn Bolling. The deed references the date the
5 trust was created, the same day it was executed.

6 THE COURT: That was in '16, I think it was,
7 wasn't it?

8 MR. KEYS: Yes. March of '16 and Ms. Smith,
9 although it's not in here --

10 THE COURT: Recorded April 6 of '16?

11 MR. KEYS: Yes.

12 THE COURT: I've got it. Okay.

13 MR. KEYS: She's the beneficiary and she's the
14 trustee.

15 THE COURT: Now, is the trust a named party,
16 or do you seek to have the trust named as a party?

17 MR. KEYS: I don't. We're asserting bona
18 fide -- again, she's the trustee, Your Honor. They
19 weren't a bona fide purchaser for value. They knew
20 there were issues there.

21 THE COURT: Same theory as the other deed?

22 MR. KEYS: Yes.

23 THE COURT: Fraudulent conveyance?

24 MR. KEYS: We're just trying to unwind it.
25 That's where you get to the acquired title action.

1 The deed going back to August -- July 30, 2013, where
2 she gets a half interest. Ms. Clarkin retains a half
3 interest, right of survivorship.

4 We would request that you void out the '14
5 deed, you void out the trust '16 deed, and return
6 clear, clean title as it stood when Mr. Gibson
7 drafted the deed.

8 THE COURT: Okay. Very good. So let's do
9 this -- I was going through your Summary Judgment.
10 Frankly, I think under the theory of money not
11 received, you're entitled to judgment on the -- is it
12 \$23,500?

13 MR. KEYS: Yes, Your Honor.

14 THE COURT: \$23,500. That's a sum certain
15 capable of being reduced. You can either get the
16 full amount from the last payment, which looked to
17 have been in December of '14 --

18 MR. KEYS: All of the payments predate when
19 the conservatorship comes in, which is why we're
20 asking for interest from the date --

21 THE COURT: Just from the date of January of
22 '15? All right. I'll give you that. \$23,500 plus
23 interest, and that's either unjust enrichment or
24 money that hasn't been received, same difference
25 really.

1 Under the promissory estoppel, yes. She
2 should be paying rent. I'll set that rent at an
3 agreed upon price. Per the initial agreement,
4 payment was \$500 per month, so I'll award you the
5 amount of rent from that period. That's going to be
6 fairly substantial.

7 MR. KEYS: And we're drawing from January of
8 2015?

9 THE COURT: I think that was January of '15 as
10 well. I hope you-all have a record of what was paid
11 and what was not paid? If you don't have it --

12 MR. KEYS: Again, that's why we're just asking
13 for when the conservatorship comes in. She was
14 making payments before that, but --

15 THE COURT: Sporadic or whatever, okay. I'll
16 do that under promissory estoppel. I think you-all
17 had another theory for that one as well.

18 MR. KEYS: Unjust enrichment and quantum
19 meruit.

20 THE COURT: Unjust enrichment, yes.

21 MR. KEYS: Different names for similar
22 vehicles.

23 THE COURT: And then finally the fraudulent
24 conveyance. I think you-all brought it as fraudulent
25 conveyance, quiet title --

1 MR. KEYS: Declaratory judgment, and
2 fraudulent conveyance and just a quiet title to try
3 and clean things up.

4 THE COURT: I'll grant that relief as well.
5 She would have the opportunity to come in and
6 challenge it, but she has not done so. She has the
7 right to have an attorney, but has not done so. She
8 has been very easily able to pick up the telephone
9 and make phone calls. She has not done so.

10 MR. KEYS: The only other --

11 THE COURT: I think there needs to be some
12 substantial findings in the record about her ability
13 to appear -- her inability to appear for the hearing.
14 Okay? Multiple requests for continuance, multiple
15 attorneys engaged in the matter. The whole shebang,
16 you just need to set the picture before we get to the
17 merits of the hearing.

18 MR. KEYS: The only other request is on
19 declaratory judgment equity, the Court does have the
20 ability to award attorney's fees as to that cause of
21 action.

22 THE COURT: I'll leave the record open for you
23 to submit that. I did see a request for attorney's
24 fees. I'll have to run that one again and take a
25 look at it. It's either going to be statute or

1 contract. Clearly, there's no contract here.

2 MR. KEYS: There's case law on declaratory
3 judgment. It's equitable discretion.

4 THE COURT: All right. Well, I'll allow you
5 to submit an affidavit and request attorney's fees,
6 and then cite me to some law for that one as well.
7 Okay? All right, Mr. Keys, very good.

8 MR. KEYS: Thank you very much, Your Honor.

9 THE COURT: Ms. Evans, anything you want to
10 add?

11 MS. EVANS: No.

12 THE COURT: I think there was an affidavit in
13 the record from you; was there not?

14 MR. KEYS: This is one of four lawsuits going
15 on with this family.

16 THE COURT: You can go back and check the
17 record, but I would supplement the record with her
18 affidavit as well. This is the problem she's had.
19 Whatever. Whatever. Whatever. Just make sure
20 you're supported because I don't know where this case
21 is going to go. I saw some misfiled documents in a
22 successive case. I think it ended in '07.

23 MR. KEYS: Yes. A Motion to Reconsider in a
24 sister case which is currently on appeal. It got
25 filed in this one and accepted in this one, and then

1 the next morning I realized it was the wrong one.

2 THE COURT: Well, when you have a lot of cases
3 going on it's easy to do. Very good. I'm going to
4 get into my next hearing. Okay?

5 MR. KEYS: Thank you, Your Honor.

6 THE COURT: Are you Patricia Clarkin Smith?

7 MS. SMITH: I'm Patricia.

8 THE COURT: Ms. Clarkin Smith, I have just
9 concluded that hearing. We only had it for half an
10 hour. I granted them the relief that they requested.
11 Mr. --

12 MS. SMITH: Sir?

13 THE COURT: I'm talking right now.

14 MS. SMITH: Yes, sir.

15 THE COURT: I've asked Mr. Keys to draft an
16 order. I'll make sure he runs that order by you as
17 well.

18 MS. SMITH: I've been here. I've been going
19 around. What are you saying?

20 THE COURT: Well, I'm going to move into my
21 next hearing, so I'll let you-all talk outside.
22 Okay?

23 MR. KEYS: I'll send it to you. I'll send you
24 an e-mail.

25 MS. SMITH: I appreciate it.

1 THE COURT: I think we're about ready to
2 start. Thank you, Mr. Keys.

3 (The proceedings were concluded at 11:43 a.m.)
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1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 20th day of October, 2021 at
13 Charleston, Charleston County, South Carolina.

14
15
16
17
18 _____
Christine A. Smith
Notary Public
My Commission Expires
19 May 12, 2021
20
21
22
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24
25

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

FAMILY SERVICES, INC

Plaintiff,

vs.

PATRIICA CLARKIN SMITH et al

Defendant.

IN THE COURT OF COMMON PLEAS

NINTJ JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-5427 - ~~CP~~ -

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: ALAN D. TOPOREK, Bar No. 5608 Address: _____ POB 399 CHAS., SC 29402 Phone: 843-723-7491 Fax 843-577-4179 E-mail: Alan@uricchio.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ 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 be Relieved As counsel Estimated Time Needed: 15 mins Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Plaintiff / ☐ Defendant 4/4/2018 Date submitted			
SECTION III: Motion Fee ☒ 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 Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA) IN AND FOR THE COURT OF COMMON PLEAS
) THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO.: 2017-CP-10-5427

Family Services, Inc, Conservator for)
Muriel W. Clarkin,)
)
Plaintiff,)

versus)

Patricia Clarkin Smith and Wells Fargo)
N.A,)
)
Defendant.)
_____)

MOTION TO BE RELIEVED AS COUNSEL

TO: THE ABOVE NAMED DEFENDANT, PATRICIA CLARKIN SMITH:

YOU WILL PLEASE TAKE NOTICE that counsel for the Defendant, Patricia Clarkin Smith, will move before this Court, ten days after filing or soon thereafter as counsel can be heard, for an Order relieving him as counsel for the Defendant, Patricia Clarkin Smith. Specifically, counsel and the Defendant, Patricia Clarkin Smith, have come to a disagreement on how the case should be handled. Counsel for the Defendant negotiated a settlement for Defendant Smith that Defendant Smith had agreed to. Defendant Smith signed documents acknowledging that Agreement. In counsel's belief, the Agreement is in the Defendant Smith's best interest. Defendant Smith now states that she will not go forward with the Settlement and has insisted on going to trial. Counsel is concerned for the health and welfare of Defendant Smith and believes that it would be deleterious for her to go to trial. Counsel advised the Defendant that he wished to be relieved as counsel. The Defendant agreed and stated that she would sign a Consent Order. Counsel provided the proposed Consent Order to the Defendant. (Attached) Despite repeated promises, the Defendant has failed and refuses to provide the counsel

with the requested consent to a proposed Order. Therefore, Counsel respectfully asks this Court to relieve him as counsel for the Defendant, Patricia Clarkin Smith.

I SO MOVE!

URICCHIO, HOWE, KRELL, JACOBSON,
TOPOREK, THEOS & KEITH, P.A.



Alan D. Toporek
17 ½ Broad Street – Post Office Box 399
Charleston, South Carolina 29402
Tel: (843) 723-7491; Fax: (843) 577-4179
~~Attorneys for Plaintiff~~

This 4 day of April, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF Charleston

IN THE COURT OF COMMON PLEAS
____ JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-5427

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Family Services, Inc., Conservator
for Muriel W. Clarkin Plaintiff,
vs.
Patricia Clarkin Smith
Defendant.

Plaintiff's Attorney: <u>David Conor Keys</u> ____, Bar No. ____ Address: <u>PO Box 14225 Charleston, SC 29422</u> Phone: <u>843 906 3998</u> Fax: ____ E-mail: ____ Other: <u>conoredconorkeys@com</u>		Defendant's Attorney: <u>(Karen DeJong - Disqualified)</u> ____, Bar No. ____ Address: <u>602 Atlantic St. Pro Se</u> Phone: <u>843 345 0158</u> Fax: <u>843 423 7</u> E-mail: ____ Other: <u>patricia@nbct2001.com</u>	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ 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: <u>Continuance - Due to Surgery</u> <u>motion to Enforce Settlement</u> Estimated Time Needed: <u>NA</u> Court Reporter Needed: ☐ YES / ☒ NO <u>Jan 30, 2020 Judge Cole</u>			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <u>Patricia Clarkin Smith</u> <u>January 27, 2020</u> Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted			
SECTION III: Motion Fee ☐ 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, SCRCF) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ____ ☐ Other: ____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: ____		JUDGE CODE ____ Date: ____	
CLERK'S VERIFICATION Collected by: ____ Date Filed: ____ ☐ MOTION FEE COLLECTED: \$ ____ ☐ CONTESTED - AMOUNT DUE: \$ ____			

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-5427

Family Services, Inc., Conservator)
for Muriel W Clarkin)
Plaintiff)
versus)
Patricia Clarkin Smith)
Defendant)

**NOTICE OF MOTION AND -
MOTION FOR CONTINUANCE**

Judge Cole
cc Judge Young

Judge McCoy

I, Patricia Clarkin Smith, am scheduled for surgery on January 30, 2020.

I respectfully request the Charleston County Court of Common Please allow a continuance of the Motion Hearing regarding the Motion to Enforce Settlement Agreement, which was filed by Plaintiff's Attorney, David Conor Keys, on July 10, 2019 and is presently scheduled before Judge Cole on January 30, 2020 at 2:30 pm.

I notified Attorney Keys via email and phone message on January 26, 2020.

For this medical reason, Patricia Clarkin Smith, Defendant, hereby respectfully requests this Court grant a continuance in this matter.

Patricia Clarkin Smith

Patricia Clarkin Smith

602 Atlantic St.
Mount Pleasant, SC 29464
(843) 345-0158, (843) 452-7237
Defendant Pro Se

Charleston, South Carolina
January 26, 2020

FILED
2020 JAN 27 PM 4:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-5427

Family Services, Inc., Conservator)
for Muriel W Clarkin)
Plaintiff)
vs)
Patricia Clarkin Smith)
Defendant)

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:
David Conor Keys, Esq., Bar No. _____
Address:
PO Box 14225, Charleston, SC
29422 Phone: 906-3998 Fax _____
E-mail: conor@dconorkeyslaw.com Other:

Defendant's Attorney: Disqualified November 3, 2019
Pro Se/Defendant:
Patricia Clarkin Smith
Address:
602 Atlantic St, Mount Pleasant, SC 29464
Phone: 8433450158, 8434527237 Fax-none
E-mail: patricia@nbct2001.com

SECTION I: Hearing Information

Nature of Motion: CONTINUANCE
Estimated Time Needed:

Court Reporter Needed: NO

SECTION II: Motion/Order Type

MOTION FOR
CONTINUANCE
Written Motion attached

Signature of Pro Se/Defendant _____

Date submitted: February 18, 2020

SECTION III: Motion Fee

PAID — AMOUNT: \$ 25.00

EXEMPT:
reason)

Rule to Show Cause in Child or Spousal Support (check
Domestic Abuse or Abuse and Neglect
Indigent Status State Agency v. Indigent Party Sexually
Violent Predator Act Post-Conviction Relief Motion for Stay in
Bankruptcy
Motion for Publication Motion for Execution (Rule 69, SCRCP)
Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions Name
of Court Reporter: _____
Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached
order.
Other:

JUDGE CODE _____

Date:

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
MOTION FEE COLLECTED: \$ _____
CONTESTED — AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-5427

Family Services, Inc., Conservator)
for Muriel W Clarkin)
Plaintiff)
versus)
Patricia Clarkin Smith)
Defendant)

**NOTICE OF MOTION AND -
MOTION FOR CONTINUANCE**

Judge McCoy
cc Judge Buckner
Judge Scarborough

FILED
2020 FEB 18 AM 9:53
JULIE J. ARISTIDE
CLERK OF COURT

February 16, 2020

Dear Judge McCoy, Judge Buckner, and Judge Scarborough,

The Motion to Enforce Settlement Agreement Hearing is scheduled for February 25, 2020 at 9:30 am before Judge Buckner, and the case has been referred to Mikell R. Scarborough, Master-In-Equity for Charleston County.

Attorney Keys told me today he is requesting a continuance. I have been on medical leave since my surgery on January 30, 2020. A 2nd surgery is scheduled for February 18, 2020, so I also need a continuance. Signed doctor letter is attached.

I respectfully request the Court not reschedule the Motions Hearing or schedule the Hearing before Judge Scarborough at least until I am medically released from the doctor; however, my goal is to explain why truly need case number 2017-CP-10-5426 to be resolved first.

I would like the Court to know I didn't want a Jury Trial.

Attorney Keys filed his Complaint six (6) months after I revoked the Settlement Agreement and six (6) weeks after Attorney Toporek was relieved as my counsel May 23, 2019. Then my Successor Attorney DeJong was disqualified in October, 2019.

I have had substantial attorney fees as Respondent to my Mother's Probate Court case. Given Family Services said they had obtained the Pay Off statement for my approve home loan, I was definitely not expecting case number 2017-CP-10-5427 to be filed against me, thus more attorney fees. In addition, the Lis Pendens prevents me from being able to obtain a home mortgage.

I need an attorney. Representing myself is scary because I am a teacher, not an attorney. I can evidence I have experienced five (5) years of completely unexpected financial drain, thus I presently don't have the \$5,000 to \$10,000 Retainer Fee for a 3rd Attorney.

My teacher retirement salary is attached. I have diligently sought legal assistance. I don't qualify for Legal Aid services in SC.

About 30% of my net pay, approximately \$30,000 to date, has and still is used to assist with payment of my Mother's HELOC and required hazard Insurance.

A family member defaulted on the \$138,000 loan from Mother in 2008 to buy a house after she sold the house in 2017. Please reference case number 2017-CP-10-5426. The Complaint seeks to recover payment of the HELOC balance. Right before the trial date in April 2019, Attorney Keys filed a motion to add the Defendant's mother to the Complaint. The motion was granted, and the case is not scheduled for trial until after May 14, 2020.

It's confusing that Plaintiff would intentionally delay 2017-CP-10-5426 for well over another year, yet take the position of urgency with my case, which I must defend, so the family home isn't sold that is meant to protect my disabled brother who suffered a TBI in an accident.

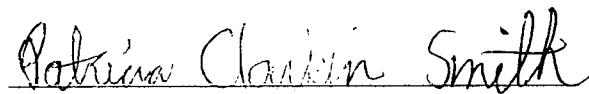
Conservator Family Services spent all of my parents' \$600,000 savings in five (5) years! Mother is possibly soon to experience her worst fear, a nursing home instead of home family care that had been our value for generations.

I beg of the Court to wait until the case filed on Mother's behalf to recover that HELOC loan is over. Attorney Keys hypothetically said today Plaintiff would consider a cash settlement, which I will be able to obtain when the HELOC is repaid. Of course, I want to help my Mother have the life my parents' sacrificed and saved for; Mother is priceless!

Your Honors, please consider delaying the Hearing until the other case is resolved. I need to mortgage my home to provide for Mother and to obtain my legal counsel.

Thank you for reading this lengthy letter.

Respectfully,


Patricia Clarkin Smith
Defendant

602 Atlantic St.
Mount Pleasant, SC 29464
(843) 345-0158, (843) 452-7237
Defendant Pro Se

Charleston, South Carolina
February 17, 2020

Attachments:

Dr. Baird – Work Note
SC Teacher Retirement Salary Statement

**CERTIFICATE OF COMPLIANCE FOR APPELLANT'S
RECORD ON APPEAL**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2021-000793

FAMILY SERVICES, INC., AS
CONSERVATOR FOR MURIEL W.
CLARKIN, RESPONDENT,

Appellant(s),

v.

PATRICIA CLARKIN SMITH AND
WELLS FARGO BANK, NA.,
DEFENDANTS, OF WHOM
PATRICIA CLARKIN SMITH IS
THE APPELLANT,

Respondent (s).

CERTIFICATE OF COMPLIANCE

I certify Appellant's Record on Appeal complies with Rules 209, 210, and 267 of the
South Carolina Appellate Court Rules.

Respectfully submitted this 1 day of July, 2024.

RECEIVED

Jul 03 2024

SC Court of Appeals

DICKSON DAVIS LAW FIRM, LLC

/s/ Deborah D. Davis, Esq.

Deborah D. Davis, Esq.

SC Bar No.: 102942

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D. Conor Keys, Esq.

P.O. Box 14225

Charleston, SC 29422

(843) 906-3998

ATTORNEY FOR RESPONDENT

PROOF OF SERVICE OF PETITION FOR A WRIT OF CERTIORARI

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Appellate Case No. 2021-000793
Circuit Court Case No. 2017-CP-10-05427

FAMILY SERVICES, INC., AS
CONSERVATOR FOR MURIEL W.
CLARKIN, RESPONDENT,

Respondent(s),

v.

PATRICIA CLARKIN SMITH AND
WELLS FARGO BANK, NA.,
DEFENDANTS, OF WHOM
PATRICIA CLARKIN SMITH IS
THE APPELLANT,

Petitioner(s).

PROOF OF SERVICE

I certify that I have served Petitioner Patricia Clarkin Smith's **PETITION FOR A WRIT OF CERTIORARI** on Respondent **FAMILY SERVICES, INC., AS CONSERVATOR FOR MURIEL W. CLARKIN**, by depositing a copy of it in the United States Mail, postage prepaid, or by South Carolina Supreme Court Order 2020-05-29-02 via AIS email to opposing counsel, on October 3, 2024, addressed to the attorney(s) of record to the following addresses:

Family Services, Inc.
c/o D. Conor Keys, Esq.

RECEIVED
Oct 03 2024
SC Court of Appeals

The Law Office David Conor Keys, LLC
Charleston, SC 29609
Attorney for Respondent(s)

Respectfully submitted this 3 day of October , 2024 .

DICKSON DAVIS LAW FIRM, LLC

/s/ Deborah D. Davis, Esq.

Deborah D. Davis, Esq.

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ATTORNEY FOR PETITIONER(S)

Deborah Davis

From: Deborah Davis
Sent: Thursday, October 3, 2024 11:44 PM
To: conor@dconorkeyslaw.com
Cc: kerrykoon@hotmail.com; Christy Owens
Subject: Patricia Clarkin Smith v. Family Services, Inc. (Case No. 2021-000793) re: Petition for Writ of Certiorari
Attachments: 2024_10_03_pet_certiorari.pdf; 2024_10_03_pet_certiorari_POS.pdf; Ex_A_Family Services v. Smith - Letter with Attachments.pdf

Conor,

Please see the attached Petition for Writ of Certiorari.

With the death of Muriel Walsh Clarkin, I've copied Muriel Kennedy's attorney Kerry Koon as Muriel Kennedy is now the executor of the estate for Muriel Walsh Clarkin.

Family Services no longer has standing to represent Muriel Walsh Clarkin in this case.

Thanks.

Best Regards,

Deborah D. Davis, Esq.
Attorney at Law

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DICKSON DAVIS LAW FIRM

**NOTICE OF PETITIONER PATRICIA CLARKIN SMITH'S
PETITION FOR A WRIT OF CERTIORARI**

October 3, 2024

Clerk of Court
Supreme Court of South Carolina
1231 Gervais Street
P.O. Box 11330
Columbia, SC 29211

VIA EMAIL SUPCTFILINGS@SCCOURTS.ORG

Re	: <i>Family Services, Inc., as Conservator for Muriel W. Clarkin v. Patricia Clarkin Smith and Wells Fargo Bank, NA., Defendants, Of whom Patricia Clarkin Smith is the Appellant</i>
Circuit Case No.	: 2017-CP-10-05427
Appellate Case No.	: 2021-000793
File Id.	: 2023-06-002-PSC-002

Dear Clerk of Court:

On behalf of Petitioner Patricia Clarkin Smith, please see the enclosed for e-filing that includes the following:

- (1) Petitioner Patricia Clarkin Smith's Petition for a Writ of Certiorari;
- (2) Proof of Service for Petitioner Patricia Clarkin Smith's Petition for a Writ of Certiorari;
- (3) Service email to opposing counsel for Petitioner Patricia Clarkin Smith's Petition for a Writ of Certiorari; and,
- (4) Notice of Appeal email to the South Carolina Court of Appeals.

A copy of the Petition has been provided to all counsel of record. Petitioner is not filing an Appendix along with the Petition pursuant to the Court's Order issued on April 30, 2024, that suspended said requirement. Rule 242, SCACR. The requisite \$250.00 court filing fee has been mailed via FedEx accordingly.

Please let me know what further you require from me at this time. Thank you for assistance with this matter.

Respectfully submitted this 3 day of October , 2024 .

s/ Deborah D. Davis

Deborah D. Davis, Esq.
SC Bar No.: 102942

ATTORNEY FOR PETITIONER(S)

cc: The Law Office David Conor Keys, LLC
D. Conor Keys, Esq.
P.O. Box 14225
Charleston, SC 29422
(843) 906-3998

ATTORNEYS FOR THE RESPONDENT(S)

South Carolina Court of Appeals
Clerk of Court
1220 Senate Street
Columbia, SC 29201
(803) 734-1890

/ddd