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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
MIKELL R. SCARBOROUGH, CIRCUIT COURT JUDGE

Appellate Case No.: 2024-000947

Vicki Lynn Vergeldt, individually and as
Successor Trustee of the John Vergeldt, Jr.
Revocable living Trust dated September 27, 1978, ...Respondent,

v.

John Edward Vergeldt and
Teresa Shaw-Vergeldt, Defendants,

Of whom John Edward Vergeldt is the, ...Appellant.

**RECORD ON APPEAL
VOLUME I OF II**

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INDEX

Volume I of II

Orders and Decisions

Order Case No.: 2014-CP-46-01956 filed August 31, 2015.....	4
Order Granting Motion to Amend Case No.: 2016-CP-46-00820 filed June 13, 2019	13
Final Order filed February 2, 2021	16
Order Denying Motion to Reconsider filed July 2, 2021.....	31
Consent Order filed August 19, 2022	51
Order Granting Motion to Amend filed September 28, 2023	56
Order Granting Motion to Compel filed September 28, 2023	61
Order on Plaintiff's Motion for Contempt and Sanctions, Defendant's Motion to Stay Proceedings, and Defendant's Motion to Dismiss filed February 2, 2024	66
Unpublished Opinion No. 2024-UP-052 filed February 14, 2024.....	79
Form 4 filed March 28, 2024	83
Order Denying Petition for Rehearing in Appellate Case No.: 2021-0008616 filed April 11, 2024.....	86
Order Denying Motion to Reconsider filed May 6, 2024.....	88

Pleadings

Summons and Complaint with exhibits Case No.: 2014GC460012 filed February 28, 2014	91
Summons and Amended Complaint Case No.: 2014GC460012 filed March 4, 2014	192
Summons and Petition for Removal of Trustee and Related Relief filed March 16, 2016.....	301
Motion to Amend Petition filed May 14, 2019.....	391
Notice of Appeal Case No.: 2016-CP-46-00820 filed August 2, 2021	394

Summons and Complaint Case No.: 2021-CP-10-004257 filed September 14, 2021	445
Petition for Supplemental Proceedings Case No.: 2021-CP-10-03640 filed May 13, 2022	458
Motion to Compel with Exhibits filed May 3, 2023	468

Volume II of II

Motion to Amend Complaint filed July 7, 2023	484
Memo in Opposition to Motion to Amend filed August 4, 2023.....	525
Stipulation of Dismissal of Teresa A. Shaw Vergeldt filed August 4, 2023	527
Amended Summons & Complaint filed October 13, 2023	529
Motion to Stay Proceedings filed October 25, 2023	536
Motion to Dismiss Amended Complaint and Answer filed October 30, 2023	550
Motion for Contempt and Sanctions filed November 3, 2023	555
Motion to Reconsider with exhibits filed February 12, 2024	559
Petition for Rehearing SC Court of Appeals Case No. 2021-000816 filed February 29, 2024.....	597
Return to Petition for Rehearing SC Court of Appeals Case No. 2021-000816 filed March 15, 2024.....	601
Defendant's Motion in Opposition to Motion for Contempt or Sanctions filed March 26, 2024.....	608
Plaintiff's Memorandum in Support of Motion for Contempt or Sanctions in Reply to Defendant's Memorandum in Opposition to Same filed March 27, 2024.....	617
Supplement to Motion to Stay filed March 27, 2024.....	627
Motion to Reconsider filed April 8, 2024.....	640
Plaintiff's Memorandum in Opposition to Motion to Reconsider filed April 18, 2024 ..	644
Petition for Writ of Certiorari to Court of Appeals in South Carolina Supreme Court Case No.: 2024-000775 filed May 13, 2024.....	655

Notice of Appeal filed June 5, 2024 668

Return to Petition for Writ of Certiorari to Court of Appeals in South Carolina Supreme Court Case No.: 2024-000775 filed June 11, 2024.....689

Reply to Return to Petition for Writ of Certiorari to Court of Appeals in South Carolina Supreme Court Case No.: 2024-000775 filed June 27, 2024 702

Transcripts

Hearing Held on January 8, 2024 706

Hearing Held on March 28, 2024 725

Other Documents

Record on Appeal pages 1132-1198 in SC Court of Appeals Case No.: 2021-00816
(Transcript of hearing on Defendant’s Amend Motion to Reconsider held on March 17, 2021.....800

Affidavit of John Edward Vergeldt filed January 5, 2024.....867

Affidavit of Kevin Lowry filed January 5, 2024 871

Certificate of Counsel

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

VICKI LYNN VERGELDT,
Plaintiff,

vs.

JOHN EDWARD VERGELDT,
Individually and as former Co-Trustee
and current Successor Trustee of the
John Vergeldt, Jr. Revocable Living
Trust dated September 27, 1978, as
Amended; and PATTI VERGELDT
DOWNEY, as a Qualified Beneficiary of
the John Vergeldt, Jr. Revocable Living
Trust dated September 27, 1978, as
amended,

Defendants.

ORDER

Case No. 2014CP46-00012

FILED-RECEIVED
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DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

This matter came before me on July 27 and 28, 2015, for a trial. Representing the parties at the hearing were Adam T. Silvernail for Plaintiff, and John P. Gettys for Defendants. Also present were the parties. Both sides presented witnesses and exhibits, and counsel for the parties presented arguments and briefs for the Court's consideration. Based on the testimony, exhibits, and arguments of counsel, I make the following findings of fact and conclusions of law.

BACKGROUND

This is a declaratory judgment action brought by Plaintiff, requesting that the court interpret certain provisions of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978, that became irrevocable upon the death of the Settlor, John Vergeldt, Jr. ("Mr. Vergeldt"). Specifically, Plaintiff's Second Amended Complaint seeks a declaration of the Defendant's duties as the Successor Trustee under the Michigan Trust Code, which governs interpretations of the Trust, and Paragraphs FIFTH, FOURTEENTH A, and FOURTEENTH B of the Trust Agreement. Additionally, Plaintiff seeks a judicial determination of the date on which Settlor became mentally incapacitated, such that he was no longer capable of handling his own affairs, and ceased to be a trustee of the Trust.

Defendants John Edward Vergeldt ("John"), Patti Vergeldt Downey ("Patti"), and

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Plaintiff Vicki Vergeldt ("Vicki") are the children of Mr. Vergeldt. On September 27, 1978, Mr. Vergeldt, as Settlor, entered into a revocable trust agreement with himself as Trustee, which he subsequently amended seven times. Then, on July 29, 2009, Settlor executed an eighth amendment and complete restatement of the trust agreement, in which he also appointed John as Co-Trustee. The trust was subsequently amended a ninth and tenth time on February 5, 2010, and March 7, 2011, respectively; however, these amendments only changed specific provisions of the trust without completely restating it.

Defendant asserts that he did not become the Successor Trustee until Mr. Vergeldt's death on July 9, 2013. He further asserts that prior to the Settlor's death, he had no obligation to furnish trust information or accountings to Plaintiff according to the terms of the Trust, since no one became a "current beneficiary" of the Trust until that event.

FINDINGS OF FACT

The following are findings of fact, presented in narrative format, which I find to be based on all the evidence, and after consideration of any applicable burden of proof. I have also considered the credibility of the witnesses in reaching these findings.

For the purposes of determining the mental condition of Mr. Vergeldt, the evidence presented begins in 2005, and continues through Mr. Vergeldt's death on July 9, 2013. Based on the relief sought in Plaintiff's Complaint, these findings are limited to those necessary to declare the meaning and application of the Michigan Trust Code and the Trust documents to the facts of this case. I make no finding relating to the liability of any party, or the lack thereof, as no claim is stated for breach of any duty, and no relief is sought from the court to compel the Trustee to perform any duties that may be required by the Michigan Trust Code. With this limitation, and correlating and balancing all of the testimony and documents presented, I find the following.

In 2005-2006, Mr. Vergeldt had begun to show signs of deterioration due to age and the symptoms brought on by Parkinson's disease. In the early time period spanned by this discussion, those symptoms primarily related to his physical condition. There were issues with ambulation and coordination that necessarily affected his ability to care for himself. Predictably, the symptoms increased in severity, imposing increasing limitations on his ability to function normally, both physically and mentally, until his death. He likely became unable to manage or conduct his own affairs sometime between the late Fall of 2012, and March, 2013, when Defendant initiated a guardianship proceeding in the York County Probate Court. Due to opposition by Vicki, that proceeding was not completed prior to Mr. Vergeldt's death. The date



of the likely onset of incapacity was early, 2013. Nevertheless, it was not until May 6, 2013, that his primary physician rendered a medical opinion of legal incapacity, which "triggered" certain provisions of the Trust.

In 2005, Teresa Petersen, a college student, stayed in Mr. Vergeldt's home, and assisted him with some of his daily needs. After she left in 2006, Mr. Vergeldt continued to live alone until he moved to a retirement village, where he lived independently until January, 2010. In 2010, Mr. Vergeldt moved to Vicki's home, to be cared for there. He lived with Vicki until October, 2011, when he went to live with Patti. In January, 2012, Mr. Vergeldt moved to South Carolina to live with John.

~~During the period from 2005 to his death, Mr. Vergeldt received assistance with the handling of his personal business and finances. At various times, both Vicki and John rendered such assistance.~~ During the early periods, this assistance was mostly ministerial, due to physical limitations associated with Parkinson's disease, but later became managerial as Mr. Vergeldt's health declined, both physically and mentally. In the later time period, John became the sole manager of Mr. Vergeldt's personal business and financial affairs until Mr. Vergeldt's death on July 9, 2013. It is important to note that John was also appointed Mr. Vergeldt's attorney-in-fact under a durable power of attorney executed December 4, 2009, and the validity of that document has never been challenged. During the time John handled Mr. Vergeldt's affairs, and after Mr. Vergeldt's death, he provided a modicum of information concerning the status of the Trust to Vicki and Patti.

It is apparent that the parties have a poor and strained relationship. Their communications foster acrimony and suspicion. In the course of dealing with Mr. Vergeldt's affairs, Vicki has questioned John's handling of Mr. Vergeldt's affairs, and demanded accountings. John has responded by minimal communications and unnecessary assertions of authority that have contributed to Vicki's questions concerning John's handling of Mr. Vergeldt's affairs as Successor Trustee. This unfortunate set of circumstances has led to the present action, but I find that in the posture presented by Vicki's prayer for relief, she has not directly challenged John's actions as Successor Trustee. Her prayer only seeks an interpretation of the applicable Michigan statutes and the often-amended Trust agreement.

CONCLUSIONS OF LAW

Based on the findings of fact herein, I make the following conclusions of law. In so doing, I follow two fundamental principles. The first is that "[i]f a statute's language is plain,



unambiguous, and conveys a clear meaning, 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.' *Sloan Constr. Co. v. Southco Grassing, Inc.*, 395 S.C. 164, 170, 717 S.E.2d 603, 606 (2011), (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 582 (2000)). An "inclusion in [a] statute of certain specified exclusions leaves the inference that the Legislature intended no other exclusions from the exemption." *W. Va. Pulp & Paper Co. v. Riddock*, 225 S.C. 283, 288, 82 S.E.2d 189, 190 (1954). "The issue of interpretation of a statute is a question of law for the court." *Bostic v. American Home Mortg. Servicing, Inc.*, 375 S.C. 143, 147, 650 S.E.2d 479, 481 (Ct.App. 2007).

The second principle is that "[w]here an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct.App.2004) (quoting *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App.2001)). As with statutory construction or interpretation, construction and interpretation of a contract is a question of law to be decided by the court. *Hawkins v. Greenwood Development Corp.*, 328 S.C. 585, 493 S.E.2d 875 (Ct.App. 1997).

A. Michigan Trust Code and the Trust Agreement.

Paragraph FOURTEENTH E of the Trust Agreement states that the Trust, including any trusts created under the Trust Agreement, must be administered and construed in accordance with Michigan Law. Paragraph FOURTEENTH A of the Trust Agreement incorporates the statutory duties imposed on a Trustee. However, according to § 700.7105(2) of the Michigan Trust Code, the terms of a Trust Agreement generally take precedence over the provisions of the Michigan Trust Code, with the exception of certain non-waivable provisions. Two such provisions pertinent to this case are §§ 700.7814(2)(a), and (4), which deal principally with a trustee's duty of reporting.

§700.7814(2)(a) requires that trustees make certain disclosures to beneficiaries, including, "[u]pon the reasonable request of a trust beneficiary, [the trustee must] promptly furnish to the trust beneficiary a copy of the terms of the trust that describe or affect the trust beneficiary's interest and relevant information about the trust property." Mich. Comp. Laws Ann. § 700.7814(2)(a). §700.7103(1)(i) of the Michigan Trust Code defines a "trust beneficiary" as a person who ". . . has a present or future beneficial interest in a trust, vested or contingent." Thus, Vicki is a trust beneficiary, and is entitled to the information specified by the statute.

§700.7814(2)(a) clearly conflicts with the provision in Paragraph FOURTEENTH B of

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the Trust Agreement, as amended, which states that the Successor Trustee "... shall not provide any account statements or information about the trust to any other beneficiary . . .", other than Settlor during Settlor's lifetime. Since § 700.7814(2)(a) is a non-waivable provision, I conclude that the statute trumps the phrase "... or information about the trust . . ." in Paragraph FOURTEENTH B. Therefore, any Trustee under the subject Trust agreement does have a statutory duty to provide the beneficiaries with "... a copy of the terms of the trust that describe or affect the trust beneficiary's interest and relevant information about the trust property."

Based upon the plain language of the statute, I further conclude that the duty to provide the specified information arises upon any "reasonable request" by any trust beneficiary. Further, concerning the scope of production, I conclude that any records "... that describe or affect the trust beneficiary's interest and relevant information about the trust property. . . ." must be provided, without limitation as to time. I make no finding or conclusion concerning the application of this provision to the facts of this case, as that goes beyond the scope of Plaintiff's prayer for relief.

The second non-waivable provision potentially implicated in this case is § 700.7814(4). Subsection (4) states that "[i]f the terms of a trust direct that accounts and information be provided to less than all qualified trust beneficiaries, at the court's discretion, the trustee shall provide statements of account and other information to persons excluded under the terms of the trust" (Emphasis added.) When a person becomes a "qualified beneficiary" is determined "... on the date the trust beneficiary's qualification is determined" (Michigan Trust Code, §700.7103(g). Vicki became a qualified beneficiary upon Mr. Vergeldt's death. At that time, she was not excluded from receiving statements of account or other information, and the Trust agreement does not exclude anyone from receiving information after Mr. Vergeldt's death.

Therefore, although § 700.7814(4) grants the Court discretion to require the Successor Trustee to provide account statements to additional beneficiaries, that provision does not have application in this case. Further, no action seeking relief from a competent court requesting such information available under subsection (4) has ever been brought by any beneficiary. As such, nothing in the Trust Agreement conflicts with §700.7814(4), and such provision has no bearing on the present case.

Clearly, the foregoing discussion presupposes that the Trustee has a duty, both by statute and under the Trust Agreement, to keep and maintain adequate records of transactions and the administration of the Trust. The relief requested by Plaintiff does not require a determination of

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whether John has breached those duties.

As to Paragraph FIFTH of the Trust agreement, it is apparent that the Settlor intended to provide for forgiveness of loans or advances made to potential beneficiaries prior to the EIGHTH amendment to the Trust, which was executed on July 29, 2009. After that date, it appears that his intent was to assure a balancing of distributions among beneficiaries.

This balancing would be accomplished by reducing a beneficiary's distribution to the extent the beneficiary received gifts or advances from the Trust prior to the Settlor's death that exceeded gifts or advances to other beneficiaries. Specifically, Paragraph FIFTH provides that a beneficiary's share of the trust shall be reduced by the amount of any gifts or advances he or she receives in excess of what any other beneficiary received in gifts or advances from the Settlor during his lifetime. It is implicit in the paragraph that the Successor Trustee would be responsible for calculating any balancing of entitlements.

Carrying out the provisions of the paragraph is subject to the final proviso that any reductions are to be made "... only to the extent there has not been a full reduction ..." under Mr. Vergeldt's Will. In other words, if the Will makes a complete reduction in a beneficiary's entitlement, taking into account prior gifts or advances, Paragraph FIFTH will not be used to further reduce what the beneficiary will receive.

Beyond this, there are no rights specifically or impliedly granted to trust beneficiaries under Paragraph FIFTH. Because Plaintiff seeks only a declaration of the meaning of the paragraph, I make no finding or conclusion concerning whether John, as Successor Trustee, has correctly applied the language of Paragraph FIFTH.

Paragraph EIGHTEENTH A of the Trust, in the TENTH AMENDMENT to the Trust agreement provides for forfeiture of a beneficiary's entitlement under the Trust if the beneficiary challenges the Successor Trustee's performance of his duties. However, Paragraph EIGHTEENTH D of the Trust, avoids such forfeiture if there is probable cause for asserting a challenge. The paragraph provides that probable cause exists if "... there was evidence that would lead a reasonable person, properly informed and advised, to conclude that there was a substantial likelihood that the challenge would be successful." As this action does not directly challenge the actions of the Successor Trustee, I make no declaration concerning probable cause to make such a challenge.

B. Successor Trustee's duties.

No party disputes that John had a fiduciary duty to Trust beneficiaries, as specified by



statute and the Trust agreement, in carrying out his responsibilities as Co-Trustee and Successor Trustee. Except for the provision of information discussed above, I conclude that those duties to Vicki, as a beneficiary, did not arise prior to his becoming Successor Trustee. The Trust agreement clearly provides that Mr. Vergeldt, as Settlor and primary Trustee, retained complete control over the Trust so long as he remained as Trustee. Further, until Mr. Vergeldt's death, the Co-Trustee's duty was entirely to the Settlor. (See paragraphs THIRD, FOURTH A., and SIXTH A., B., and E., of the Trust agreement.)

This is in conformity with § 700.7603 of the Michigan Trust Code, which provides:

700.7603. Powers of settlor; exceptions; settlor as incapacitated individual; powers of withdrawal; actions by predecessor trustee

(1) Subject to subsection (2), while a trust is revocable, rights of the trust beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor. . . . (Emphasis added.)

In order to be a "current trust beneficiary", a named beneficiary in the Trust agreement had to have a current right to receive any distribution of income or principal of the Trust. (See paragraph SECOND R. of the Trust agreement.) So long as Mr. Vergeldt, as Settlor, was living, only "a current trust beneficiary" had a right to receive a statement of account of the Trust, and the Successor Trustee was instructed not to provide such statements to one not a current beneficiary. (See paragraph FOURTEENTH B. of the Trust agreement.) Thus, John's duty, as Successor Trustee, to provide statements of account to Vicki and Patti did not arise until Mr. Vergeldt's death on July 9, 2013. As to that duty when it arose, the Trust agreement provides that "[n]o particular format or formality is required. . ." for a statement or report, unless a court specifies otherwise. (See paragraph FOURTEENTH B. of the Trust agreement.) There has been no such specification to date, and the relief requested in this declaratory action does not require such a specification.

C. Mr. Vergeldt's incapacity.

The inquiry into the date of Mr. Vergeldt's incapacity is pertinent to the relief requested in this action for two purposes: first, for a determination of when John, as Co-Trustee under the Trust agreement, became the sole functioning Trustee; and, second, insofar as it establishes when John became the Successor Trustee under the Trust agreement. The factual findings in this regard serve separate purposes. The first is relevant to the question not answered in this order, namely, the propriety of John's management of trust assets and affairs prior to becoming the Successor Trustee. The second is relevant to his actually becoming the Successor Trustee under

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the terms of the Trust agreement, and his performance of the duties and functions imposed thereby. As to when John became Successor Trustee, it is necessary to look only to the language of the Trust agreement to determine how incapacity must be established.

At paragraph THIRD E., the Trust specifies two circumstances whereunder the Successor Trustee succeeds the Settlor as Trustee, if the Settlor is still living. The first is the appointment of a guardian for Mr. Vergeldt. The second is a written opinion by Mr. Vergeldt's primary care physician that Mr. Vergeldt "... has become incapacitated to the extent that Settlor is unable to act in Settlor's own behalf." (See also paragraph SECOND Q.)

Although John sought to have incapacity established by appropriate judicial proceeding, Mr. Vergeldt died prior to completion of that process. However, in a "Final Report" dated May 6, 2013, Dr. Jason Brancato, Mr. Vergeldt's primary care physician, rendered his medical opinion that Mr. Vergeldt was an "incapacitated person." He opined that Mr. Vergeldt "... lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property." Thus, I conclude that under the terms of the Trust agreement, John became Successor Trustee on May 6, 2013.

As to when John, as Co-Trustee, became the sole acting Trustee, a precise determination of a date cannot be made due to the conflicting evidence. Such a determination is further complicated by the fact that Mr. Vergeldt's Parkinson's disease rendered him physically, but not necessarily mentally, incapable of performing as the primary Trustee. Nevertheless, the preponderance of the testimony indicates that Mr. Vergeldt was mentally incapacitated as early as the Fall of 2012, but certainly by early March, 2013, when John commenced guardianship proceedings. However, I conclude that this finding is not determinative of the rights and duties of the parties, since, as referenced above, John's duty was entirely to Mr. Vergeldt until Mr. Vergeldt's death. Further, John was already functioning as Mr. Vergeldt's attorney-in-fact. (See Plaintiff's Exhibit 15.)

D. Attorneys' fees and costs.

S.C. Code Ann. § 62-7-1004 (1976, as amended) provides:

In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

As pleaded by Plaintiff, this action does not involve, or challenge, the administration of the Trust; rather, it seeks declaratory relief to establish the rights and duties of the parties. I conclude that the statute does not afford an award of fees and costs for pursuit of such relief. In

any event, under the facts and circumstances of this case, I find and conclude that the equities of the parties, and justice, mitigate against an award of fees and costs to either party in this action.

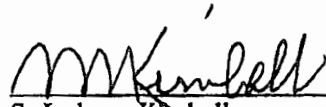
ORDER OF THE COURT

Based on the findings of fact and conclusions of law herein, I make the following declarations as the order of the court.

1. Mr. Vergeldt likely became mentally incapacitated in fact in early March, 2013.
2. Mr. Vergeldt was determined to be mentally incapacitated on May 6, 2013, and became incapacitated under the terms of the Trust, and as a matter of law, on that date.
3. John became Co-Trustee on July 29, 2009, and Successor Trustee on May 6, 2013.
4. John has a duty to provide to all beneficiaries "... a copy of the terms of the trust that describe or affect the trust beneficiary's interest and relevant information about the trust property." (Michigan Trust Code § 7814(2)(a).) That duty encompasses all available information relevant to the Trust property without time limitation. He further has a duty to provide statements of account at least annually to current trust beneficiaries, and to permit inspection of the financial records of the Trust, from the date of Mr. Vergeldt's death. No particular format for the presenting statements of account is prescribed.
5. No declaration concerning probable cause to challenge of the Successor Trustee's performance of his duties is made, as such issue is not presented in this action. Such determination is preserved for such time as Plaintiff challenges the actions of John while acting as Successor Trustee.
6. No finding or conclusion in this order shall be deemed to be a determination of compliance, or non-compliance, with applicable law, or the terms of the Trust agreement. Further, no finding or conclusion in this order shall be deemed to establish the amount of any entitlement of any beneficiary under the terms of the Trust agreement.
7. No party is entitled to an award of attorneys' fees and costs in this action pursuant to § 62-7-1004.

AND IT IS SO ORDERED.

August 28, 2015


S. Jackson Kimball
Special Circuit Court Judge
York County

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP4600820

Vicki Lynn Vergeldt,
PLAINTIFF(S)

John Edward Vergeldt,
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), 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 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 me on May 30, 2019 on Defendant's Motion to Dismiss and Judgment on the Pleadings and Plaintiff's Motion to Amend the Pleadings. Present at the hearing: Daniel J. Ballou, attorney for Defendant and Taylor A. Peace, attorney for Plaintiff.

Rule 15 of the S.C. Rules of Civil Procedure states that "leave shall be freely given when justice so requires and does not prejudice any other party". The party opposing the amendment has the burden of establishing prejudice. *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993). I find and conclude that under the facts and circumstances of this case, there is no prejudice in granting leave to amend and the Defendant will have sufficient time to prepare its defense of these allegations.

Having granted Plaintiff leave to amend, Defendant's Motion to Dismiss and Judgment on the Pleadings is moot, and therefore denied. Plaintiff shall file and serve the amended pleading within 15 days of this order. The Defendant shall have 45 days from the date of service to file and serve any necessary response.

AND IT SO ORDERED.

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 _____.

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.



York Common Pleas

Case Caption: Vicki Lynn Vergeldt VS John Edward Vergeldt

Case Number: 2016CP4600820

Type: Master/Order/Form 4

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2019-06-13 10:56:08 page 3 of 3

ELECTRONICALLY FILED - 2019 Jun 13 11:06 AM - YORK - COMMON PLEAS - CASE#2016CP4600820

ROA 00015

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Vicki Lynn Vergeldt, Individually,
and as Successor Trustee of the John
Vergeldt, Jr. Revocable Living Trust
dated September 27, 1978,

Petitioner,

vs.

John Edward Vergeldt,

Respondent.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP46-00820

FINAL ORDER

THIS MATTER came before the Court for a final hearing on January 30, 2020. Present at the hearing was Petitioner Vicki Lynn Vergeldt (“Petitioner”), Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978, her counsel, Taylor A. Peace, Esq., and Respondent John Edward Vergeldt (“Respondent”), who appeared pro se. The following witnesses appeared and testified: Kathleen Palinski, Esq., Court appointed Limited Special Trustee (“Palinski”); Charles E. Bosler, Jr. (“Bosler”); and Audry Scheible.

FACTUAL AND PROCEDURAL BACKGROUND

This is the second legal proceeding between Petitioner and Respondent who are siblings and the last surviving heirs of John Vergeldt, Jr (“Settlor”). Another sister, Patricia Vergeldt Downey (“Patti”) survived the Settlor, but she died on September 28, 2018. Both actions concern Respondent’s handling and administration of the Trust as Co-Trustee and Successor Trustee.

In the first action, (C/A No.: 2014-46-1956), Petitioner sought to have certain provisions of the trust construed regarding Respondent’s duty to account and produce records as well as to have the Court declare the date when the Settlor became incapacitated.

Petitioner brought the current action in the York County Probate Court on February 1, 2016 seeking to have Respondent removed as Successor Trustee, and Respondent timely responded to the same. Initially, Respondent was represented by Daniel J. Ballou, Esq. The action was removed to the Court of Common Pleas for York County on March 16, 2016.

Due to the matters at issue, the parties consented to appoint Kathleen Palinski, Esq. (“Palinski”), as non-fiduciary Limited Special Trustee, who was empowered and authorized to obtain documents and information about the Trust related to any account(s) at any bank, investment house, or other financial institution, including, but not limited to, statements, account ownership documents/signature cards, correspondence and/or check copies.

On April 29, 2019, Respondent resigned his position as Successor Trustee of the Trust and Petitioner became the Second Successor Trustee. Having resigned as trustee, Respondent filed a motion to have the action dismissed. The motion was denied, and Petitioner was allowed to file an Amended Petition for Removal of Trustee and Related Relief on June 20, 2019.

At trial in January 2020, Respondent objected to certain exhibits offered by Petitioner, stating he had not received the exhibits. This matter was deferred, and an order issued on May 12, 2020 allowing the Respondent thirty days to provide responding affidavits. On August 31, 2020, an order was filed specifying what affidavits or exhibits filed by Respondent after the trial were received into evidence.

With this factual and procedural background set forth, based upon the testimony and other evidence, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On September 27, 1978, Mr. Vergeldt (“Settlor”), executed the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978, in which he identified himself as Trustee and

beneficiary. This trust was amended seven times prior to the current Restatement of Trust, executed on July 29, 2009. The Restatement appointed Respondent to serve as Co-trustee of the trust during the Settlor's lifetime, vesting him with all of the powers, duties and obligations of trustee, and giving him binding decision-making authority for the trust as if made by the Settlor as trustee.

2. Following the Restatement, the trust was amended two additional times; first in February 2010 to account for the death of the Settlor's son, David Leigh Vergeldt (NINTH AMENDMENT); and second in March 2011 to name Respondent as the initial successor trustee and amend other portions (TENTH AMENDMENT).

3. Relevant paragraphs of the trust include the FIFTH (residuary trust), SIXTH (cottage and beneficiary distributions), FOURTEENTH (trustee duties), and EIGHTEENTH (forfeiture). Portions of these paragraphs were amended by the TENTH AMENDMENT.

4. From approximately 2005 through his death on July 9, 2013, the Settlor experienced a decline in his mental and physical condition brought on by Parkinson's disease. The symptoms the Settlor experienced were primarily related to his physical condition, but they, over time, impaired his ability to function physically and mentally until his death on July 9, 2013.

5. In 2008, the Settlor lived independently in a retirement community where he remained until sometime in 2010 when he moved in with Petitioner. In October 2011, the Settlor was moved to Patti's home, and resided there until his transfer to Respondent's home in South Carolina in January 2012. The Settlor resided with the Respondent in South Carolina until his death in July 2013.

6. Following the Settlor's death, Petitioner requested that Respondent provide her with records and accounting as he had proposed distributing assets. It was at this point that the

relationship between the Petitioner and the Respondent became strained and hostile. While Petitioner continued to make request for records and information, the Respondent demanded she sign a release, or be disinherited. Ultimately, Petitioner filed the first civil action between the parties.

7. The first action was presided over by the Honorable S. Jackson Kimball, III, Master-In-Equity for York County and resulted in a bench trial. As discussed previously, this action decided what reporting and accounting duties were owed to the Petitioner. No findings or conclusions were made as to whether or not Respondent breached those duties.

8. After trial, Judge Kimball ordered as follows (“2015 Final Order”):

- a) the Settlor became mentally incapacitated under the terms of the trust as of May 6, 2013;
- b) Respondent became Co-Trustee on July 29, 2009, and Successor Trustee on May 6, 2013;
- c) Respondent has a duty to provide Petitioner with “a copy of the terms of the trust that describe or affect the trust beneficiary’s interest and relevant information about the trust property” without limitation as to time.
- d) Respondent has a duty to provide statements of account, at least annually, to Petitioner, and to permit inspection of the records since the Settlor’s death.

9. Following the 2015 Final Order, this action was brought in probate court where Palinski was appointed as limited special trustee for the purpose of reviewing Respondent’s administration of the trust. Palinski received some records from Respondent, but also had to subpoena various financial institutions to piece together how the assets were disposed. She

prepared an accounting of the trust's accounts, finances and assets covering the period between January 1, 2009 and December 31, 2016. Petitioner called her as an expert witness.

10. Petitioner also called Bosler as an expert witness who reviewed the records received by Palinski. Bosler generated an accounting from the available data, and conducted a *pro forma* and prudent man standard assessment, starting from December 31, 2008, and ending April 30, 2019. The *pro forma* amount shows the adjustment made from the available data to the Prudent Man standard.

11. Both experts determined that the Respondent, while acting as Co-Trustee or Successor Trustee, failed to adhere to the terms of the trust and his fiduciary duties, including as follows:

- a. Comingling trust funds with his personal account;
- b. Comingling funds with accounts jointly owned with the Settlor or the trust;
- c. Failing to keep and maintain adequate records, and account for numerous cash withdrawals by check or ATM card;
- d. Failing to provide records or other information to Petitioner as beneficiary;
- e. Failing to be impartial and loyal to Petitioner as beneficiary;
- f. Failing to administer and distribute funds as directed by the trust.

12. Due to the lack of recordkeeping and comingling of funds, Palinski was unable to verify the frequent transfers to and from Respondent's personal account First Citizen's #9209; numerous checks written to cash from joint owned First Citizens account #4009; and frequent use of an ATM card from this same account. Bosler was also unable to resolve these and other transactions, including a \$17,000.00 withdrawal from a Fifth Third joint owned account in 2011. This was the same year that Respondent failed to provide an annual statement. The amount of

unresolved withdrawals made while Respondent was Trustee reached \$64,410.00 at the time of Settlor's death. This amount increased to \$127,770.00 through his remaining time as trustee. Bosler's report also demonstrates the inaccuracies of Respondent's annual statements in comparison with the available data.

13. In addition to the unresolved transactions, Respondent also mishandled the Residuary Trust. Paragraphs FIFTH A and SIXTH direct how the Residuary Trust would be administered by the Successor Trustee. Initially, \$50,000.00 was to be separated from the Residuary Trust and placed in a "Cottage Trust", to be used solely for the Cottage's maintenance and expenses.¹ Second, \$6,000.00 was to be paid to each grandchild. Thereafter, the Successor Trustee "shall divide the balance of assets of the Residuary Trust into equal shares, one (1) share for each of Settlor's children."

14. At the time of the Settlor's passing in July 2013, the trust assets totaled \$479,703.00. Respondent paid \$48,000.00 to the grandchildren, \$60,000 to himself, \$60,000.00 to Petitioner, and \$51,000.00 to Patti.² Petitioner received no further payments, yet Respondent continued to distribute assets to himself and Patti. Notably in 2014, Respondent paid himself \$45,826.00, Patti \$35,836.00, and nothing to Petitioner.

15. Respondent also failed to follow the terms of the trust by allocating \$50,000.00 solely for the maintenance and upkeep of the Cottage. Also, while Respondent was Successor Trustee, the Cottage experienced mold, mildew or water and other damage, decreasing in value from \$62,500.00 at the time of Settlor's death to \$25,000.00.³

16. Based on the above, I find that Respondent, during his time as Co-Trustee and

¹ The "Cottage" is real estate located in Michigan described in more detail in Petitioner's exhibit 9.

² Patti's amount may have reduced to account for a vehicle gifted to her prior to the Settlor's death valued at \$10,000.00.

³ Petitioner's exhibit 9 contains a copy of the appraisal and estimate.

Successor Trustee, not only failed to abide by the terms of the trust, but also failed in his fiduciary duties owed to the trust and the Petitioner as a beneficiary. As a result, Petitioner and the trust have suffered actual and consequential damages.

CONCLUSIONS OF LAW

Based on the forgoing Findings of Fact, the Court makes the following Conclusions of Law:

1. This Court has jurisdiction over the subject matter and parties and venue is proper pursuant to Rule 53, SCRCP and the Order of Reference filed in this matter on March 27, 2018.

2. As noted in paragraph FOURTEENTH E, the trust must be administered and construed in accordance with Michigan Law, thus this court will determine this matter according to the Michigan Trust Code, §700.7101 *et. al.*, and other applicable Michigan law.

3. First and foremost, a trustee should follow the terms of the trust. “Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, expeditiously, in accordance with its terms and purposes ...” M.C.L.A. §700.7801 (2010). Paragraphs FIFTH and SIXTH set clear terms for administration and disbursement of the Residuary Trust. Respondent ignored those terms as to the “Cottage Trust”, and failed to disburse funds equally between the beneficiaries.

4. Respondent, as Successor Trustee, also failed to follow the terms of the trust in FOURTEENTH A and C. Paragraph FOURTEENTH A required the Successor Trustee keep “full and accurate records of assets, receipts and disbursements, and other financial transactions relative to each trust”, and allow for inspection. Further, the burden rests upon the trustee, under either Michigan or South Carolina law, to show the correctness of his accounting. *See Long v. Earle*, 277 Mich. 505, 269 N.W. 577 (1936); *Neely v. People’s Bank of Anderson*, 133 S.C. 43, 130 S.E. 550 (1925). Respondent failed to adequately account for numerous transactions to his personal

account, checks written to cash, and ATM purchases/withdrawals. He also failed to provide full and accurate annual statements, or make them available for Petitioner at her request. Respondent also failed to pay all “proper” disbursements as required by FOURTEENTH C by withholding funds from the Petitioner.

5. In addition to the terms of the trust, Michigan Trust Code §700.7811(1) required Respondent to maintain adequate records. In this case, Respondent failed to provide a 2011 annual statement, and the statements or other information he did provide were incorrect or insufficient.

6. Respondent breached the trust by comingling funds. “A trustee shall keep trust property separate from the trustee’s own property” M.C.L.A. §700.7811(2) (2010). It is apparent that Respondent over several years as both Co-Trustee and Successor Trustee comingled trust funds with his own personal account First Citizen account #9209, or accounts he jointly owned with the Settlor or the trust.⁴

7. Respondent failed in his statutory duties to provide information and records to the Petitioner, as a beneficiary. According to Michigan Trust Code §700.7814, a trustee shall:

Upon the reasonable request of a trust beneficiary, promptly furnish to the trust beneficiary a copy of the terms of the trust that describe or affect the trust beneficiary’s interest and relevant information about the trust property.” M.C.L.A.

§700.7814(2)(a) (2010); and

[S]end to ... qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust property and, if feasible, their respective market values ...”

⁴ A more detailed list of the joint owned accounts is found in Palinksi’s report. (Petitioner’s 2, Tab 1).

M.C.L.A. §700.7814(3) (2010).

Respondent breached his duties to the Petitioner by failing to account and report on the assets and funds despite Petitioner's multiple requests to do so, thus concealing from Petitioner his commingling and self-dealing of trust property.

8. Respondent, as trustee, owed a duty of loyalty to the beneficiaries. A trustee is obligated to protect the trust property, administering its assets as would a prudent person in accordance with the applicable statutes, for the benefit of the trust beneficiaries. M.C.L.A. §§ 700.7810, 700.7802, 700.7803 (2010). Respondent failed in these duties for the same reasons as discussed above. He failed to keep or provide records to Petitioner, comingled funds, distributed assets to Petitioner's harm and detriment, and failed to follow the terms of the trust regarding the Cottage and protect its value.

9. Respondent as trustee was to expeditiously distribute the trust property to those entitled, upon termination or partial termination of the trust. M.C.L.A. §700.7821 (2010). Following the Settlor's passing, Respondent partially terminated the Residuary Trust by making disbursements to the child beneficiaries in 2013. He should have promptly disbursed the remaining assets.

10. As a remedy for breach of trust, the trustee may be ordered to pay the amount needed to restore the value of the trust to what it would have been had the breach not occurred. M.C.L.A. §700.7902(2)(a) (2010). It is the opinion of this court that this analysis begins by establishing what amount the Residuary Trust should have been prior to any breach. I find that amount to be \$544,113.00, which includes the total assets that existed at the time of Settlor's death according to the available data (\$479,703.00), and the total of unaccounted for expenditures during Respondent's time as Co-Trustee prior to Settlor's death (\$64,410.00).

11. Recognizing that Respondent made some beneficiary distributions, I conclude the amount stated above should be offset by the following: (1) \$48,000 to the grandchildren, (2) \$102,496.00 to Patti, and (3) \$60,000.00 to Petitioner. Further reduction should be made to include the remaining value of the Cottage (\$25,000.00), and by the amount of funds returned to the trust in November 2019 following Respondent's resignation as trustee (\$8,906.74). Therefore, I conclude the amount to restore the trust is \$299,710.26.

12. The trust is also entitled to be reimbursed for \$5,870.00 in costs related to determining the conditions of the Trust's assets and finances. *See* M.C.L.A. §700.7901(c) and (j) (2010) (The court may order the trustee to pay money, or other appropriate relief).

13. Respondent shall also pay reasonable attorney's fees and costs. *See* M.C.L.A. §700.7904 (2010) (Costs, expenses, and reasonable attorney fees, may be awarded to any party who enhances, preserves, or protects trust property...). Petitioner and the Trust have incurred attorney's fees and other related to costs to enforce her and its rights against Respondent in the amount of \$55,512.62. The Court concludes that Petitioner's attorneys' fees are reasonable, and she is entitled to the same under Deborah Dereede v. Living Trust dated December 18, 2013 v. Karp, 427 S.C. 336, 831 S.E. 2d 435 (Ct. App. 2019) and S.C. Code Ann. §62-7-1004 (Supp. 2018). In particular,

- a. Nature, Extent and Difficulty of the Legal Services Rendered. This is an action to remove Respondent as Trustee of the Trust and to seek damages from breaches of his fiduciary duties. The case involved complex issues of probate law including the preparation and examination of pleadings, discovery and the trial preparations. A two-day hearing was held by the York County Master-In-Equity, who required an order to be prepared by Petitioner's counsel. Accordingly, the factual and legal issues presented were complex and detailed in nature, the extent of the work performed was necessary to adequately prepare and try these matters, and the matters decided were of legal and factual difficulty.

- b. Time and Labor Necessarily Devoted to the Case. As stated above, this case involved difficult issues of both legal and factual natures. Approximately One Hundred Seventy-Four (174) hours were devoted to the case by Petitioner's counsel's firm. This does not include amount by Petitioner's previous counsel. Accordingly, the time and labor devoted to this case were necessary to properly prepare and try this case.
- c. Professional Standing of Counsel. The attorneys representing Petitioner in this case are licensed members of the Bar of the State of South Carolina. Collectively, they have many years of experience in practice in South Carolina. The practice of Petitioner's attorneys consists of foreclosure cases, collection cases, real property closing transactions, real property litigation, land title questions, other land related litigation, probate and estate administration and related litigation. Accordingly, Petitioner's attorney has high professional standing in general and in this area of practices.
- d. Contingency of Compensation. As recited above, Petitioner is being charged an hourly rate in the pursuit of this matter, and the contingency of compensation is not appropriate.
- e. Customary Fee Charged on the Locality for Similar Services. I am aware from discussions with other attorneys in the Probate/Estate Bar in the Midlands region of South Carolina, and from my general familiarity with the legal profession, that the fees charged for services similar to those in this case are similar to those charged in other like cases. Accordingly, the fees charged in this case are within the fee range charged in this locality for similar services.
- f. Beneficial Results Obtained. This attorney obtained beneficial results for the Petitioner in this action in that the Court found in favor of the Petitioner. Accordingly, it is submitted that beneficial results were obtained by this firm on the Petitioner's behalf.

14. In addition, any interest Respondent may have in these trust assets has been forfeited. According to paragraph EIGHTEENTH of the Tenth Amendment, "[i]f any beneficiary of this trust ... in any manner, ... seeks to impair or invalidate any of its provisions ... then that person's right to take an interest given to him or her by this trust shall be determined as it would have been determined if the person had predeceased the execution of this Trust Agreement." Respondent's actions as outlined in this order, impaired or invalidated the terms of the trust; therefore, he should be treated as having predeceased the Settlor.

15. As Respondent has failed to present any evidence related to his counterclaims, they are dismissed.

16. It is also appropriate that the Trust be wound up with the assets, property, and/or funds constituting the same be distributed according to the terms of the trust.

ORDER

Accordingly, and based on the Findings of Fact and Conclusions of Law set forth above,

IT IS ORDERED, ADJUDGED AND DECREED that the Trust, as a result of the above, is hereby granted judgment against Respondent in the total amount of \$361,092.88, said amount being comprised of: \$299,710.26, to restore the trust assets; additional expenses of \$5,870.00; and Attorney's fees and costs of \$55,512.62;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Respondent is hereby and shall be treated as having predeceased the Settlor;

IT IS ADDITIONALLY ORDERED that the judgment granted herein shall accrue interest at the legal post judgment legal interest rate; and

MOREOVER, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Petitioner shall take all reasonable and necessary steps to wind up the Trust's business and distribute any remaining assets to the living beneficiaries thereof not having been deemed to predecease Mr. Vergeldt.

FINALLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Respondent's counterclaims are herein **DISMISSED**.

[Judge's Signature Page to Follow]

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-46-00820

Vicki Lynn Vergeldt

PLAINTIFF(S)

John Edward Vergeldt,

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), 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:

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)
Vicki Lynn Vergeldt	John Edward Vergeldt	\$361,092.88
		\$
		\$

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

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

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

ROA 00028

Judge

Judge Code

Date**For Clerk of Court Office Use Only**

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: **Cherie J. Anderson, RMR, RPR, CRR, with EveryWord, Inc.**

A transcript of these proceedings can be obtained by making a written request to EveryWord, Inc. at P.O. Box 1459, Columbia, South Carolina 29202 or calling (803) 212-0012.

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

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

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



York Common Pleas

Case Caption: Vicki Lynn Vergeldt VS John Edward Vergeldt

Case Number: 2016CP4600820

Type: Order/Judgment and Form 4

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2021-02-02 14:01:44 page 15 of 15

ROA 00030

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) CIVIL ACTION NO.: 2016-CP-46-00820

Vicki Lynn Vergeldt, Individually, and as)
Successor Trustee of the John Vergeldt, Jr.)
Revocable Living Trust dated September)
27, 1978,)

Petitioner,)

vs.)

John Edward Vergeldt)

Respondent.)

**ORDER DENYING
MOTION TO RECONSIDER**

THIS MATTER came before the Court on March 17, 2021 at 2:00 PM for a hearing on Respondent John Edward Vergeldt’s (“Respondent”) Amended Motion to Reconsider (“Motion”). Due to the ongoing public health crisis precipitated by the COVID-19 pandemic, the hearing took place *via* the internet-based video conferencing platform Cisco Webex as allowed by the Administrative Order of the Honorable Donald W. Beatty, Chief Justice for the Supreme Court of South Carolina, *Re: Operation of the Trial Courts During Coronavirus Emergency (As Amended March 4, 2021)* (Appellate Case No. 2020-000447). Present at the hearing was Taylor A. Peace, Esq., attorney for Petitioner Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Trust dated September 27, 1978 (“Petitioner”) and Respondent’s counsel, Desa Ballard, Esq. Petitioner also appeared.

In the Motion and Respondent’s Memorandum in Support Motion to Reconsider and Supplemental Motion to Reconsider, Respondent argues the Court should reconsider its rulings in the Final Order entered on February 2, 2016. He also asks the Court to reconsider, amend or vacate other prior temporary orders entered during the present litigation.

Respondent asserts the Court erred in allowing Petitioner to amend her initial Petition for Removal of Trustee and Related Relief (“Petition”) to assert legal causes of action and entitlement to damages. Respondent argues these causes of action are barred by the doctrines of *res judicata* and issue preclusion due to the rulings in the case of *Vicki Lynn Vergeldt v. John Edward Vergeldt, Individually, and as Successor Trustee of the John Edward Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 and Patricia Vergeldt Downey* (C/A No.: 2014-CP-46-01956) (“First Lawsuit”). Respondent also argues amendment of the Petition was in error as the case was already referred to this Court and Respondent was denied his right to a jury trial as a result. Respondent further asserts the Court erred by failing to apply the proper standard of proof and/or that Petitioner presented expert testimony to meet same, erred by freezing assets of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 (“Trust”), and erred by allowing and considering certain items of Petitioner’s evidence while denying Respondent the right to rebut same.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After hearing argument of counsel and reviewing documents in the Court’s file, the following Findings of Fact and Conclusions of Law are made.

A. *Res judicata* and Issue Preclusion

In the Motion, Respondent argues the Court should reconsider, amend, and/or vacate the Final Order on the grounds the Order Granting Motion to Amend (“Order Allowing Amendment”) entered on June 13, 2019 and following Amended Petition for Removal of Trustee and Related Relief filed June 20, 2019 (“Amended Petition”) were in error based on the doctrines of *res judicata* and issue preclusion. This ground for reconsideration fails.

“*Res Judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of prior action between those parties. Under the doctrine of *res judicata*, ‘[a] litigant is barred from raising issues which were adjudicated in the form suit and any issues which might have been raised in the former suit.’” Judy v. Judy, 393 S.C. 160, 172, 712 S.E. 2d 408, 414 (2011). (citing Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E. 2d 106, 109 (1999)). “The doctrine of *res judicata* is founded on the principle that the public interest requires an end to litigation and that no one should be sued twice for the same cause of action.” Town of Sullivan’s Island v. Felger, 318 S.C. 340, 344, 457 S.E. 2d 626, 628 (Ct. App. 1995). “*Res Judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.” Plott v. Justin Enterprises, 374 S.C. 504, 511, 649 S.E. 2d 92, 95 (Ct. App. 2007). “Under *res judicata*, ‘[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit’” Id (internal citations omitted). “To establish *res judicata*, three elements must be shown: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” Plum Creek Development Co., Inc. v. City of Conway, 334 S.C. 30, 34 512 S.E. 2d 106, 109 (1999). However, *res judicata* does not bar a second action for damages and other relief where it follows a first action that seeks a declaratory judgment. See Robison v. Asbill, 328 S.C. 450, 492 S.E. 2d 400 (Ct. App. 1997).

Narrower than *res judicata* is the doctrine of collateral estoppel or issue preclusion. See Liberty Mut. Ins. Co. v. Employers, Ins. of Wausau, 284 S.C. 234, 237, 325 S.E. 2d 566, 568 (Ct. App. 1985) (internal citations omitted). Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. Carolina Renewal, Inc. v.

South Carolina Dept. of Transp., 385 S.C. 550, 553, 684 S.E. 2d 779, 782 (Ct. App. 2009). “While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” Id (citing Snavely v. AMISUB of S.C., Inc., 379 S.C. 386, 398, 665 S.E. 2d 222, 228 (Ct. App. 2008)). To prove a defense of issue preclusion, Respondent must show that the issues in this lawsuit were: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. Id. The doctrine of collateral estoppel should not be rigidly or mechanically omitted. Thus, even if all the elements for collateral estoppel are met, when unfairness or injustice results or public policy requires it, courts may refuse to apply it. Id (internal citations omitted).

To avail themselves of these defenses, a party must affirmatively plead them or they are waived. See Rule 8(c), SCRCP; RIM Associates v. Blackwell, 359 S.C. 170, 183, 597 S.E.2d 152, 159 (Ct. App. 2004) (“Res judicata is an affirmative defense that must be pled at trial in order to be pursued on appeal.....An affirmative defense is waived if not pled....Generally claims or defenses not presented in the pleadings will not be considered on appeal.”).

1. *Res Judicata* and Collateral Estoppel Not Raised in Pleadings

As applied to this matter, neither *res judicata* nor collateral estoppel were raised by the Respondent in his Answer and Counterclaim filed March 7, 2016 (“Answer”) or his Response to Amended Petition for Removal of Trustee and Related Relief and Request for Damages and Disinheritance of Plaintiff filed August 21, 2019 (“Amended Counterclaim”), and, as a result, they are waived. See Id. Because they were raised for the first time in the Motion, it would be improper for the Court to consider them. See Patterson v. Reid, 318 S.C. 183, 456 S.E. 2d 436 (Ct. App. 1995); Miller Construction Co., LLC v. P.C. Construction of Greenwood, 418 S.C. 186, 791 S.E.

2d 321 (Ct. App. 2016).

2. *Res Judicata* Did Not Preclude Amendment of the Petition

Even if Respondent properly raised *res judicata* and collateral estoppel as affirmative defenses, it was proper for the Court to allow amendment of the Petition to assert legal causes of action for damages.

a. Amendment of the Petition was not in error based on *res judicata*.

As to the first element of *res judicata*, identity of the parties is not present. In the First Lawsuit, Petitioner brought her action against Respondent individually and as the successor trustee to declare, among other things, her rights in the Trust and entitlement to information concerning same. In contrast, the present action was brought, ultimately, by Petitioner individually and as successor trustee against Respondent for actions taken while he served as co-trustee and successor trustee that she believed were breaches of his fiduciary duties. In other words, the identity of the parties and their duties toward each other reversed between the First Lawsuit and this case such that the parties are not identical.

The second element of *res judicata* is also not present as there is no identity of subject matter between the First Lawsuit and present litigation nor did the First Lawsuit adjudicate Respondent's liability or Petitioner's resulting damages. In the First Lawsuit, Petitioner sought only declaratory relief related to: (1) John Vergeldt's Jr.'s ("Settlor") mental competency and lack thereof, (2) the effect Settlor's competency had on who was trustee of the Trust, (3) when Respondent became co-trustee and/or successor trustee, (4) his rights and obligations toward Petitioner as one of the Trust's beneficiaries, and (5) whether Petitioner had probable cause to pursue the First Lawsuit. To be sure, the final Order in the First Lawsuit filed August 31, 2015 ("2014 Final Order") found that no declaration concerning probable cause to challenge Respondent's performance of his duties as co-trustee or successor trustee was being made, and it

was preserved until such time that Petitioner had adequate information, which Respondent was withholding, to challenge his actions. The 2014 Final Order further found no conclusion therein should be deemed to be a determination of Respondent's compliance or non-compliance with applicable law or the Trust. No damages were claimed or adjudicated in the First Lawsuit or 2014 Final Order. In contrast, the Amended Petition expressly seeks damages related to Respondent's actions relative to the Trust as co-trustee or successor trustee such that identity of subject matter does not exist. To the extent Respondent argues Petitioner should have brought a claim for damages in the First Lawsuit, the same is not persuasive as the relief requested was only declaratory. In particular, Petitioner brought the First Lawsuit to obtain information about the Trust and Respondent's actions which he was intentionally withholding, presumably, in an attempt to conceal his actions and frustrate her efforts to discover same. To rule otherwise as to the claim for damages would not be fair or just.

The same analysis applies to the third element of *res judicata* as Respondent's liability for his actions as co-trustee and/or successor trustee and damages to Petitioner and the Trust were not adjudicated in the First Lawsuit or needed to support to final decision in the 2014 Final Order. Those issues were also expressly preserved in the 2014 Final Order which went unappealed and from which Respondent has not sought relief.

b. Issue Preclusion is also not present such that allowance of the Amended Petition was not error

The argument that issue preclusion or collateral estoppel requires reconsideration of the Final Order also fails since Respondent's liability and Petitioner's resulting damages were not actually litigated in the First Lawsuit, were not determined, and were not necessary to support the 2014 Final Order. They were expressly preserved under the 2014 Final Order. Presumably, these issues were not litigated and preserved as Respondent did not or would not recognize his own

duties toward the Petitioner and would not provide information relating to the Trust.

c. No error allowing Amended Petition

As a result, the Court finds and concludes that *res judicata* and issue preclusion did not prohibit the Court from allowing amendment and filing of the Amended Petition, and this ground for reconsideration fails.

B. Respondent's Right to a Jury Trial

Respondent also asserts he was denied his right to a jury trial on Petitioner's legal causes of action in the Amended Petition. This ground for reconsideration also fails.

Under Rule 38(b), SCRCP, "Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefore in writing at any time after the commencement of the action and not later than ten (10) days after service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party." Rule 38(b), SCRCP. "The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of a trial by jury." Rule 38(b), SCRCP. Also, "[i]n equity the parties are not entitled, as a matter of right, to a trial by jury. However—counterclaims—including those raised in equitable actions—may, at times, be entitled to a jury trial. As we have previously explained: (1) if both the complaint and the counterclaim are in equity, the entire matter is triable by the court. (2) If both are at law, the issues are triable by a jury. If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial. (4) If the complaint is equitable and counterclaim legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim." Wachovia Bank, Nat'l Assn. v. Blackburn, 407 S.C. 321, 328-329, 755 S.E. 2d 437, 441 (2014). Also, Rule 53(b), SCRCP provides, "In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action may be referred to a master or special referee by order of a

circuit judge or the clerk of court....Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court.” Rule 53(b), SCRCF.

In this matter, the Petition was filed February 1, 2016 in the York County Probate Court and Respondent filed his Answer and Counterclaim in which he asserted counterclaims for: (1) abuse of process, (2) malicious prosecution, (3) violation of the South Carolina Frivolous Civil Proceedings Sanctions Act, and (4) an action for a declaratory judgment. Respondent did not demand a jury trial in his pleading despite having the right to do so. The case was referred to this Court by Order of Reference filed March 17, 2018. The Amended Petition was then filed on June 20, 2019, and Respondent filed his Response to the Amended Petition on August 21, 2019 in which he failed to re-assert his claims or assert a demand for a jury trial. No separate jury trial demand has been filed or entered since.

Because of the nature of the claims Respondent raised in his Answer and Counterclaim, he could have demanded a jury trial when it was filed or shortly thereafter, but he failed to do so. He also could have demanded a jury trial when he filed his Response to Amended Petition and divested this Court of jurisdiction of the causes of action to which he is entitled under Rule 53(b), SCRCF, but he did not do so. In other words, Respondent waived his right to a jury trial under the applicable rules of civil procedure.

As a result, the Court finds and concludes that Respondent was not denied his constitutional right to a jury trial. He waived same, and, therefore, the Court is not required to reconsider, amend, and/or vacate the Final Order on that ground.

C. Sua Sponte Relief

Respondent additionally seeks to have the Court reconsider, amend, or vacate some of its prior temporary orders and/or Final Order due to the purported *sua sponte* relief granted during

this litigation. This ground for reconsideration fails.

1. May 21, 2018 Order

The Court initially notes Respondent's description of the May 21, 2018 Order is a mischaracterization. The May 21, 2018 Order prohibited Respondent from making expenditures from the Trust without Petitioner's consent or order of the Court. If Petitioner's consent could not be obtained, Respondent could make application to the Court. The application was required to include the amount of the expenditure, an explanation of the necessity of the expenditure, and the bill, estimate, invoice or other documentation evidencing the need for an expenditure. In other words, the Trust assets were not frozen. Regardless, the injunction imposed by the May 21, 2018 Order became moot with Respondent's resignation as successor trustee effective April 1, 2019 such the Court is not required to reconsider, amend, and/or vacate same. See Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 630 S.E. 2d 474.

It is additionally worth nothing that Respondent did not seek reconsideration of the May 21, 2018 Order under Rule 59, SCRPC or seek the appeal thereof which would have been allowed under S.C. Code Ann. §14-3-330 (4). As a result, the time for Respondent to seek reconsideration or appeal of the May 21, 2018 Order has passed such that the Court cannot reconsider same if it were not already moot.

Aside from the legal argument, there have only been two (2) instances in this litigation in which Respondent could not obtain Petitioner's approval for expenditures such that Court intervention was required. The first instance concerns the Application of John E. Vergeldt for Approval of Payment which was filed on May 30, 2018 ("First Application") and concerned expenses related to a cottage owned by the Trust located in Au Gres, Michigan. The Court's file reveals no order was entered approving or denying the First Application leaving the Court to assume Petitioner ultimately consented to the proposed expenditures. The second instance was

the Application of John E. Vergeldt for Approval of Payment filed August 29, 2019 in which Respondent sought to have the Trust pay for his former attorney's fees and costs related to this litigation which the Court denied in the Order Regarding Trust Expenditures filed September 12, 2019 ("September 2019 Order"), as amended on November 26, 2019 on the basis Respondent had not followed the procedures in the May 21, 2018 Order. Court also imposed the same injunctive relief on Petitioner which has gone unappealed. If Respondent was unable to make expenditures related to the damage to the cottage as he claims, it was not because of the *sua sponte* relief issued by the Court.

Based on the above, the relief granted in the May 21, 2018 Order is not a ground for reconsideration, vacation, or amendment of the Final Order.

2. Termination of Interest in Trust

In addition to the May 21, 2018 Order, Respondent asserts the termination of his interest in the Trust set forth was not requested in the pleadings and is a ground for reconsideration; however, this argument fails.

Under Rule 8, SCRCP, "All pleadings shall be so construed as to do substantial justice to all parties." Rule 8, SCRCP. In order to achieve substantial justice for all parties, our courts have determined that pleadings should be liberally construed. Fountain v. Fred's, Inc., 429 S.C. 533, 839 S.E. 2d 475 (Ct. App. 2020). It is the substance of the requested relief that matters "regardless of the form in which the request for relief was framed." Richland County v. Kaiser, 351 S.C. 89, 94, 5767 S.E. 2d 260, 263 (Ct. App. 2002) (internal citations omitted). "Indeed, our supreme court has 'repeatedly held that that the plaintiff may obtain any relief appropriate to the case made by the pleadings and the evidence, without regard to the *form* of the prayer for relief'. Fountain at S.C. 487 (2020) (citing Beaty v. Mass Protective Ass'n, 160 S.C. 205, 207, 158 S.E. 206, 207 (1931)). "Especially is this true in an equity case." Id. In a similar vein, "Courts have the inherent

power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.” Ex parte Dibble, 279 S.C. 592, 595, 310 S.E. 2d 440, 442 (Ct. Ap. 1983).

Respondent correctly points out that a party may generally not be granted relief unless it is requested in pleadings. Norwest Properties, LLC v. Strebler, 424 S.C. 617, 819 S.E. 2d 154 (Ct. App. 2018). However, the Amended Petition alleges, among other things, that Respondent placed Trust assets in his own name, that he used Trust funds and assets for his own personal gain and to intimidate and harass Petitioner, distributed Trust assets in a way that was contradictory to the Trust, used them to pay for this litigation, and let Trust assets falls into disrepair and waste. The Amended Petition also alleges that Respondent concealed and/or attempted to conceal these actions from Petitioner and that he took the same willfully, recklessly and with conscious disregard to Petitioner’s rights. Attached to the Amended Petition was the Eighth Amendment and Complete Restatement to Trust Agreement between John Vergeldt, Jr., Settlor, and John Vergeldt, Jr., Trustee, the Ninth Amendment To Trust Agreement, and the Tenth Amendment to Trust Agreement. Under these documents, the Trust provides that a beneficiary is to be treated as if they predeceased Settlor if they seek to impair or invalidate any of the Trust’s provisions. Finally, the Amended Petition prays the Court issue such other and further relief as the Court deems just and proper.

Based on the evidence presented at the hearing in this matter, the Court finds that it, while sitting in equity, has the power to liberally construe the relief requested in the Amended Petition such that it can terminate Respondent’s interest in the Trust and enforce other provisions thereof to ensure that a just result is reached. As a result, the ground for reconsideration of the Final Order fails.

D. Standard of Proof

In addition to the above, Respondent asserts the Final Order should be reconsidered

because the Court failed to include the appropriate standard of proof or apply same. Like those before it, this ground for reconsideration fails.

Respondent argument that the Final Order's failure to address the applicable standard of proof is based on the terms of the Tenth Amendment which states a successor trustee's liability would be limited to his/their actions taken in bad faith and with reckless indifference to the Trust. Respondent attempts to interpret this language to mean that the Court should apply the clear and convincing standard of proof rather than the lower standard of preponderance of evidence.

Respondent has cited no case or statutory law requiring a higher standard of proof, so the Court finds and concludes that the applicable standard of proof in this matter is indeed the preponderance of evidence standard. The Court finds and concludes that the same was applied in this matter based on the evidence was presented such that reconsideration is not required.

Even if the clear and convincing evidence standard of proof were required to be applied, the evidence presented the First Lawsuit and this action proves Respondent's liability and Plaintiff's damages by clear and convincing evidence. The record is clear. If not for Respondent's actions over the past seven (7) or more years of using Trust's assets to enrich himself to Petitioner's detriment, intentionally withholding information and records from her so that she could not exercise her rights under the Trust, and using the Trust to intimidate, harass and threaten Petitioner, the parties would not have become embroiled in two protracted litigations and incurred extensive attorney's fees to both of their detriments.

The Court also finds and concludes that the language of the Tenth Amendment related to proof of a successor trustee's bad faith and reckless indifference is of no assistance to Respondent as that term implicates a conclusion of law to be made by the Court. It does not correlate to a particular standard of proof that Petitioner must meet. As a result, this ground for reconsideration fails.

E. Evidentiary Issues

Many of the remaining objections Respondent raises relate to evidentiary issues; however, these objections do not require the Court to reconsider, alter, and/or vacate its Final Order as the Court does not find that it abused its discretion as to the admission of Petitioner's or Respondent's evidence. See Moore v. Moore, 360 S.C. 241, 599 S.E. 2d 467 (Ct. App. 2004).

1. Timeliness of Production of Exhibits and Disclosure of Witnesses.

One of the evidentiary objections raised by Respondent concerns the timeliness of the production and disclosure of Petitioner's exhibits and witnesses. However, this objection fails.

During the first day of the trial, Respondent objected to Petitioner's exhibits on the grounds they were not timely produced. He claimed he had not seen them prior to. Respondent asked for a continuance on the second day of trial on these grounds. Petitioner was able to provide proof that the witnesses were disclosed and exhibits mailed to Respondent prior to trial albeit shortly before. The Court denied the request considering the age of the case and that Petitioner, her witnesses, and Respondent all traveled to York for the final hearing. However, the Court took the issue of the timeliness of the production of exhibits and disclosure of witnesses under advisement to determine if the same would be admitted into evidence.

After the hearing, Respondent filed multiple motions seeking to have some of Petitioner's witnesses and evidence excluded which are noted in the public record. The Court eventually allowed Respondent to present his own affidavits, reports and/or other proposed exhibits to the Court to eliminate any prejudice Respondent may have suffered, if any, due to the late production of documents and disclosure of witnesses as indicated in an Order entered May 12, 2020 which was amended by an Order Granting Petitioner's Motion to Alter or Amend entered August 31, 2020. In particular, the Court granted Respondent leave to procure his own expert to review the Trust's accounting records and prepare a rebuttal report to that of Plaintiff's expert, Charles E.

Bosler, and to provide affidavits as to the condition of the Cottage. The only affidavits that Respondent submitted were those of Robert T. Nirenberg and Audry Scheible. The Court allowed the former, but the latter was excluded. Respondent also submitted an affidavit executed by himself related to Mr. Bosler's report that was excluded.

Regarding the timeliness of the production of exhibits and disclosure of witnesses, Rule 26(a), SCRCP provides, "Parties may obtain discovery by one or more of the following methods:....written interrogatories...requests for production..." Rule 26(a), SCRCP. "A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response include information thereafter acquired, except that requests for discovery under Rule 31, 33, 34, and 36 shall be deemed to continue from the time of service until the time of trial of the action so that the information sought, which comes to the knowledge of a party, or his representative or attorney, after original answers have been submitted, shall be promptly transmitted to the other party" Rule 26(e), SCRCP. "In addition, a party is under a duty seasonably to supplement his response with respect to any question directly addressed to (1) the identity and location of persons having knowledge of discoverable matters, and (2) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony." Rule 26(e), SCRCP. Also, "[a]t any time after the commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery....Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan for discovery and schedule for discovery...." Rule 26(f), SCRCP. Relatedly, "[t]he order may, in its courts discretion, also: (1) provide that exhibits or witnesses not listed at the hearing may not be called or admitted in evidence at the trial, unless such witness or exhibit is discovered after pre-trial hearing and promptly disclosed to opposing parties." Rule 16(b),

SCRCP. “The entire thrust of discovery rules involves full and fair disclosure, ‘to prevent a trial from becoming a guessing game or one of surprise for either party.’” Samples v. Mitchell, 329 S.C. 105, 113, 495 S.E. 2d 213, 217 (Ct. App. 1997) (internal citations omitted). “Essentially, the rights of discovery provided by the rules give the trial lawyer the means to prepare for trial...” Id at S.C. 113.

In this matter, the Court finds and concludes that the parties exchanged interrogatories and requests for production to which they both answered and/or responded. Also, no court order was entered dictating the time by which discovery had to be completed and/or finalized. Accordingly, either party could have and had a duty to supplement their answers to interrogatories and/or documents produced in response to requests for production at any time prior to trial which Petitioner did by mailing the objection to exhibits to Respondent’s last known address between three times between January 16, 2020 and January 28, 2020. See Rule 26, Rule 33, Rule 34, and Rule 5(b) (“Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and compliant”). The Court concludes that no violation of the discovery rules occurred as a result that would warrant the exclusion of the exhibits if that were Respondent’s position.

To the extent Respondent argues he suffered prejudice by not having the proposed exhibits and witnesses disclosed to him prior to trial as he claims, such prejudice was eliminated by the Court allowing Respondent to submit rebuttal affidavits as to the condition of the cottage as well as the opportunity to obtain his own qualified expert to rebut Mr. Bosler’s report which he failed to do during the six (6) month period after the final hearing. In other words, both parties were allowed an opportunity to offer the same type of exhibits into evidence as the other regarding the cottage and Respondent had an opportunity to but failed to procure an expert witness to rebut Mr. Bosler’s report.

Accordingly, the timeliness of the production of reports and disclosure of Mr. Bosler as a witness is not a ground for reconsideration or amendment of the Final Order.

2. Hearsay

Respondent asserts in the Motion that the Court improperly allowed Petitioner to present hearsay into evidence. However, Respondent failed to timely object to said hearsay, if it existed, and the same is waived as result and cannot be a ground for reconsideration. See Patterson v. Reid, 318 S.C. 183, 456 S.E. 2d 436 (Ct. App. 1995); Miller v. Construction Co., LLC v. P.C. Construction of Greenwood, 418 S.C. 186, 791 S.E. 2d 321 (Ct. App. 2016).

3. Affidavit of Audry L. Scheible and attachments

The Court properly excluded the Affidavit of Audry L. Scheible and attached exhibits considering Respondent attempted to introduce same into evidence after Ms. Scheible presented testimony to the Court and she concluded same. If Respondent wished her to testify as to matters in the affidavit, he should have elicited it at the time of her testimony. The exclusion of her affidavit and attachments is not grounds for reconsideration.

4. Charles E. Bosler Report

Aside from the timeliness of the production of Mr. Bosler's report, Respondent argues the same should have been excluded for other reasons to include but not limited to the fact that it was not based on actual knowledge, included transactions for which the settlor was responsible and could not preclude, and included legal analysis. Tangentially, Respondent argued that the Court erred in failing to consider his written response to Mr. Bosler's report as it was *in lieu* of cross-examination.

In this matter, Mr. Bosler was Petitioner's witness, he provided testimony that he was provided the Trust's bank statements and other account records, and these records serve as the basis of his report. Mr. Bosler's report was based on his actual knowledge of the documents

presented to him as required under Rule 602, SCRE. He was also qualified as an expert in the field of accountancy such that the statements and testimony he made about the facts and data used to come to the conclusions in his report and testimony related thereto were proper under Rule 703, SCRE. As a result, the Court finds and concludes Mr. Bosler had personal knowledge of the facts and records presented to him which serve as the basis of his report, and it was proper to admit the same into evidence.

As to whether the report included transactions for which the Trust's settlor was solely responsible, Respondent had an opportunity to testify after Mr. Bosler's testimony and chose not to do so nor did he present witnesses to testify as to whether the Settlor was responsible for the transactions at issue despite being on notice of Petitioner's claims. Even so, testimony about Respondent's communications with Settlor about what Settlor intended with regard to specific transactions would have been barred by S.C. Code Ann. §19-11-20, as amended, (1976) ("Dead Man Statute"). The Court finds and concludes Respondent presented little evidence, if any, about transactions for which the Settlor was responsible, and this argument is not a ground for the Court to reconsider the Final Order as a result.

To the extent the Bosler report includes legal analysis, the Court finds that Mr. Bosler's report and analysis was being provided solely for a comparison between how Respondent acted with regard to the Trust's assets versus how he believed a similarly situated fiduciary would/should have acted as required by applicable accountancy standards. This testimony is allowable under Rule 703 and Rule 704, SCRE.

Further, Respondent's reply to Mr. Bosler's report was not in compliance with Court's May, 2020 Order, as amended, which allowed him time to engage an accountant or other expert to rebut Mr. Bosler's report as he represented to the Court he had. It also cannot be *in lieu* of cross-examination as it was not given in the form of questions to which Mr. Bosler had an opportunity

to answer or respond. Rather, the response was in the form of a sworn statement which the Court properly excluded as being, at its best, testimony and/or commentary on Mr. Bosler's report given by a person who is not an accountant or similarly qualified expert, who could not be cross-examined by Petitioner's counsel, and represents an attempt by Respondent to testify after he was given his right to do the same at the final hearing.

As a result of the above, the Court finds and concludes that the Court properly admitted Charles E. Bosler's report into evidence, excluded Respondent's response, and the same is not a reason for the Court to reconsider the Final Order.

F. Absence of Expert Testimony

Respondent has additionally argued the Court erred in its Final Order because Petitioner did not present expert testimony as to whether Respondent's breach of duties was the proximate cause of Petitioner's damages.

The Motion takes issue with Petitioner's two (2) expert witnesses. The first expert was Kathleen Palinski, Esq. who was qualified as an expert in fiduciary standards and who was appointed as Limited Special Trustee by Consent Order Appointing Special Trustee and Staying Case filed on February 23, 2017. Respondent argues Ms. Palinski never testified that Respondent's breach and/or breaches of duties under the Trust proximately resulted in Petitioner's damages. However, as noted in Dereede Living Trust dated December 17, 2013 v. Karp, 427 S.C. 336, 831 S.E. 2d 435, the South Carolina Court of Appeals found that a breach of trust makes a trustee liable to beneficiaries regardless of intention. Considering Ms. Palinski testified that Respondent did not comply with the terms of the Trust or fiduciary standards or duties, Respondent is and/or was liable to Petitioner for his breaches the Trust and fiduciary duties. In other words, his failure to comply with the Trust was the proximate cause of Petitioner's damages. As to the amount of damages, Mr. Bosler testified to same. He also testified as to the impact that Respondent's breach and/or

breaches of Trust had on the Trust's assets which resulted in Petitioner's damages that were granted in the Final Order. In particular, the damages being the amount of Trust funds and assets Respondent used to benefit and/or enrich himself to Petitioner's exclusion, the unequal distributions he made to himself and other beneficiaries to Petitioner's exclusion, and expenditures he made that were unaccounted for during the time Respondent was serving as co-trustee and/or successor trustee.

When viewed together and in light of the evidence presented, the Court finds and concludes that it had evidence in hand necessary to find and conclude Respondent was the direct and proximate cause of Petitioner's damages. As a result, this ground for reconsideration fails.

G. OTHER GROUNDS

In addition to the above grounds, the Court notes that the Motion contains several other grounds for reconsideration that are generally tied to the above. However, Respondent did not argue them at the final hearing, separately brief them, or argue them at the hearing on the Motion. The Court is left to assume that Respondent is abandoning these grounds. See Johnson v. Sonoco Products Co, 381 S.C. 172, 672 S.E. 2d 567 (2009); First Sav. Bank v. McLean, 314 S.C. 361, 444 S.E. 2d 513 (1994). . To the extent he is not, they are rejected as grounds for reconsideration.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Court has determined that the numerous grounds for reconsideration raised in the Motion do not rise to a level such that the Court is required reconsider, amend and/or vacate the Final Order.

Accordingly, **IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED** that Respondent's Motion is **DENIED**.

{JUDGE'S SIGNATURE APPEARS ON NEXT PAGE}



York Common Pleas

Case Caption: Vicki Lynn Vergeldt VS John Edward Vergeldt

Case Number: 2016CP4600820

Type: Order/Other

So Ordered

s/ Teasa K. Weaver 3084

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2021-CP-10-04257

Vicki Lynn Vergeldt, Individually, and as)
Successor Trustee of the John Vergeldt, Jr.)
Revocable Living Trust dated September)
27, 1978,)

**CONSENT ORDER TO CONSOLIDATE
AND FOR REFERENCE**

Plaintiff,)

vs.)

John Edward Vergeldt and Teresa A. Shaw-)
Vergeldt,)

Defendants.)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2021-CP-10-003640

Vicki Lynn Vergeldt, Individually, and as)
Successor Trustee of the John Vergeldt, Jr.)
Revocable Living Trust dated September)
27, 1978,)

CONSENT ORDER TO CONSOLIDATE

Plaintiff,)

vs.)

John Edward Vergeldt)

Defendant.)

THIS MATTER came before the Court on Motion of Plaintiff Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 (“Plaintiff”) and with the consent of Defendant John Edward Vergeldt (“John”) and Teresa A. Shaw Vergeldt (“Terry”).

IT APPEARING this matter concerns, in part, Plaintiff's attempts to overturn certain transactions between John and Terry that Plaintiff believes fraudulent and discover to certain assets in which John allegedly has or had an interest as part of her efforts to collect a judgment ("Judgment") granted to her and/or the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 ("Trust") in the case of Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 v. John Edward Vergeldt (C/A No.: 2016-CP-46-820) that was pending in the Court of Common Pleas for York County, South Carolina.

IT ALSO APPEARING Plaintiff transcribed the Judgment in the Charleston County Clerk of Court under Judgment Roll/Case Action No.: 2021-CP-10-03640, an execution has been issued and returned *Nulla Bona*, and she has instituted supplemental proceedings ("Supplemental Proceedings") to discovery any assets John has or may have had that are not otherwise exempt that could applied to the Judgment, and said supplemental proceedings have been and/or are being referred to the Honorable Mikell R. Scarborough, Master-In-Equity for Charleston County, in accordance with S.C. Code Ann. §15-39-310 *et. seq.* (1976, as amended).

IT ADDITIONALLY APPEARING common issues of law and fact exist between this matter and the supplemental proceedings such that it is proper for them to be consolidated pursuant to Rule 42, SCRCF as the same would be in the interest of judicial economy and efficiency.

IT FURTHER APPEARING that the parties have reached an agreement whereby this matter be referred to Honorable Mikell R. Scarborough pursuant to Rule 53, SCRCF.

NOW THEREFORE, for good cause shown and with the consent of this parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that this matter be consolidated with and into the pending Supplemental Proceedings filed under C/A No.: 2021-CP-10-03640 and rosters and other communications by the Clerk of Court shall reflect both case captions and both case

numbers. Counsel shall continue to use the appropriate caption(s) of each in their pleadings as appropriate.

IT IS ALSO ORDERED that this matter be referred to the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, who, pursuant to Rule 53(b), SCRCF, shall exercise all power and authority which a Circuit Judge, sitting without a jury would have, including but not limited to, hearing any and all motions, making finds of fact and conclusions of law, directing entry of a final judgment in the case under Rule 53(b), hearing any issues, including motions after judgment; and issuing any and all Orders and Supplemental Orders. Pursuant to Rule 53(b), SCRCF, any appeal from the final judgment by the Master-in-Equity for Charleston County shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

IT IS SO ORDERED

I SO MOVE AND CONSENT:

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August 5, 2022
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August 5, 2022
West Columbia, South Carolina

{ATTORNEY SIGNATURES CONTINUE ON NEX PAGE}

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August 5, 2022
Pawleys Island, South Carolina

{JUDGE'S SIGNATURE APPEARS ON NEXT PAGE}



Charleston Common Pleas

Case Caption: Vicki Lynn Vergeldt , plaintiff, et al VS John Edward Vergeldt ,
defendant, et al
Case Number: 2021CP1004257
Type: Order/Consolidate

So Ordered

s/Jennifer B. McCoy #2764

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2021-CP-10-04257

Vicki Lynn Vergeldt, Individually, and as)
Successor Trustee of the John Vergeldt, Jr.)
Revocable Living Trust dated September)
27, 1978,)

**ORDER GRANTING PLAINTIFF'S
MOTION TO AMEND COMPLAINT**

Plaintiff,)

vs.)

John Edward Vergeldt and Teresa A. Shaw-)
Vergeldt,)

Defendants.)

THIS MATTER came before the Court on August 7, 2023 at 10:00 A.M. pursuant to Rule 53, SCRPC and the Consent Order of Reference filed for a hearing on the Amended Motion to Amend Complaint (“Motion”) filed July 7, 2023 by Plaintiff Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 (“Plaintiff”). Present at the hearing were Taylor A. Peace, Esq., as counsel for Plaintiff, and Desa Ballard, Esq., as attorney for Defendant John Edward Vergeldt (“Defendant”). The Court notes the other above-named Defendant, Teresa A. Shaw-Vergeldt (“Terry”) (Defendant and Terry are sometimes collectively referred to herein as “Defendants”), was dismissed from the case, without prejudice, by Stipulation of Dismissal filed August 4, 2023. Due to her dismissal, neither Terry nor her counsel appeared.

In the Motion, Plaintiff seeks leave to amend her Complaint pursuant to Rule 15, SCRPC, to assert additional causes of action and relief related to the foreclosure of a judgment lien Plaintiff claims to have attached to real property owned jointly by Defendants located in Charleston County, South Carolina known as 1523 Star Flower Alley, Johns Island, South Carolina 29455

(“Property”). She seeks to have the Property sold at public auction and sale, and have the proceeds from the sale delivered to her in accordance with South Carolina law in partial or complete satisfaction of the judgment she obtained against Defendant in the case of Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 was disposed of by Final Order (“York County Order”) issued by the Honorable Teasa Kay Weaver, Master-in-Equity for York County, on February 2, 2021. The York County Order is currently on appeal.

The York County Order awarded Plaintiff damages against Defendant in the original principal sum of Three Hundred Sixty-One Thousand Ninety-Two and 88/100 (\$361,092.88) Dollars, was transcribed in the Office of the Clerk of Court for Charleston County on August 6, 2021, and has been given Charleston County Judgment Roll No.: 2021-CP-10-03640.

Mr. Peace and Mrs. Ballard represent that Defendant now holds the 100% fee simple interest in the Property as the result of a settlement reached between Defendants in a case Terry brought in the Charleston County Family Court captioned as Teresa A. Vergeldt v. John E. Vergeldt (C/A.: 2021-DR-10-2081). Plaintiff’s proposed amended pleadings indicate Defendant was deeded the 100% interest in the property by deed dated May 25, 2023 and recorded in the Office of Deeds for Charleston County on May 26, 2023 in Book 1182 at Page 278.

In response, Defendant asserts the appeal of the York County Order should stay amendment of the pleadings, that Plaintiff should seek to collect the amounts due under the York County Order through the sale of other assets Defendant has or may have prior to foreclosure of the lien on the Property, which serves as his primary residence, and/or, if the Court were to allow amendment, that Plaintiff should be required to post a bond twice the amount of the Property’s value under S.C. Code Ann. §18-9-130 (A)(2) (1976), as amended.

As to the merits of the Motion, Rule 15(a), SCRCP provides, “A party may amend his

pleading once as a matter of course.... Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does prejudice any party.” Rule 15(a), SCRCF. “This rule strongly favors amendment and the court is encouraged to freely grant leave to amend.” Patton v. Miller, 420 S.C. 471, 489, 804 S.E. 2d 261 (2017) (citing Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E. 2d 711, 717 (Ct. App. 2005)).

If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent declared reason—such as bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed undue prejudice to the opposing party.... leave sought should, as the rules require, be “freely given”. Id. at 490 (citing Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 230, 9 L. Ed 2d 222, 226 (1962)).

“The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it....The party opposing amendment has the burden of establishing prejudice” Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E. 2d 711, 716 (Ct. App. 2005) (internal citations omitted). Rule 15(d), SCRCF, relatedly provides, “Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleadings sought to be supplemented....” Rule 15(d), SCRCF.

As applied to this matter, Plaintiff seeks to amend her pleadings to foreclose the judgment lien she claims attached to the Property, to have the Property sold by public sale and to have the proceeds resulting from same distributed in accordance with South Carolina law. While the Court notes the judgment is currently on appeal, the Court finds and concludes Plaintiff’s proposed amendment does not prejudice Defendant as he was or should have been on notice that Plaintiff’s judgment lien attaches or would attach to his interest in the Property, and, as no final hearing in this matter has been scheduled, Defendant will not be prejudiced by amendment of the pleadings

as he has or will have an opportunity to refute Plaintiff's allegations.

Relatedly, the Court does not find Defendant's argument related to the stay of the proposed amendment persuasive as Plaintiff is attempting to enforce a money judgment which is explicitly excepted from the general rule that service of a notice of appeal in a civil matter acts to automatically stay matters decided in an order. See Rule 241(a), SCACR, Rule 241(b)(1), SCACR, and S.C. Code Ann. §18-9-130(A)(1) (1976), as amended. The Court also does not find Defendant's argument that Plaintiff is required to post a bond to amend her pleadings persuasive as S.C. Code Ann §18-9-130(A)(2) (1976), as amended, is related to the enforcement of the sale of property, which is not subject of the present Motion. It may be that Plaintiff is required to post a bond at a later date, but such a requirement is not required to amend the pleadings. Finally, the Plaintiff is not required to seek to collect on her judgment through other assets.

As a result, and based on the above, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:**

- A. That Plaintiff's Motion is hereby **GRANTED**;
- B. That Plaintiff is granted leave to amend the pleadings to assert a cause of action for foreclosure of her judgment lien attached to the Property;
- C. That Plaintiff shall file her amended pleadings within fifteen (15) days of the date of the entry of this Order; and
- D. That nothing contained herein shall prejudice any of the Parties' rights as to the merits of the case or be considered determinative of any claims made by the Parties herein.

IT IS SO ORDERED!

{MASTER-IN-EQUITY'S SIGNATURE APPEARS ON NEXT PAGE}



Charleston Common Pleas

Case Caption: Vicki Lynn Vergeldt , plaintiff, et al VS John Edward Vergeldt ,
defendant, et al
Case Number: 2021CP1004257
Type: Order/Amend

So Ordered

s/Mikell R. Scarborough 3062

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2021-CP-10-04257

Vicki Lynn Vergeldt, Individually, and as)
Successor Trustee of the John Vergeldt, Jr.)
Revocable Living Trust dated September)
27, 1978,)

Plaintiff,)

vs.)

John Edward Vergeldt and Teresa A. Shaw-)
Vergeldt,)

Defendants.)

**ORDER ON PLAINTIFF'S
MOTION TO COMPEL**

THIS MATTER came before the Court on August 7, 2023 at 10:00 A.M. pursuant to Rule 53, SCRPC, and the Consent Order of Refence filed herein for a hearing on the Motion to Compel (“Motion”) filed on May 3, 2023 by Plaintiff Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 (“Plaintiff”). Present at the hearing were Taylor A. Peace, Esq., as counsel for Plaintiff, and Desa Ballard, Esq., as attorney for Defendant John Edward Vergeldt (“Defendant”). The Court notes the other above-named defendant, Teresa A. Shaw-Vergeldt, was dismissed without prejudice by Stipulation of Dismissal filed August 4, 2023, and, as a result, she and her counsel did not appear.

In the Motion to Compel, Plaintiff seeks an order requiring Defendant and/or Terry to comply with Plaintiff’s Second Set of Requests for Production to Defendant John Edward Vergeldt and Plaintiff’s Second Set of Requests for Production to Defendant Teresa A. Vergeldt (collectively “Second Requests to Produce”), to produce the real property that was then owned by them located at 1523 Star Flower Alley, Johns Island, South Carolina 29455 (“Property”), and to allow Plaintiff and/or her agent access to the interior and exterior thereof and the personal property

contained therein for inspection. Filed with the Motion to Compel was Defendant John Edward Vergeldt's Response to Second Set of Requests for Production indicating no real property is subject of this action, that there has been no order that addresses whether any particular property is subject to execution, and/or that Plaintiff's requests are premature.

As the Motion to Compel concerns the production of the Property, the interior and exterior of the single-family residence thereon, and the personal property contained therein, the procedure for same is governed by Rule 34, SCRCF. Under Rule 34(a), SCRCF, "Any party may serve on any other party a request.....(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Rule 26(b)". Rule 34(a), SCRCF. Rule 26(b)(1), SCRCF provides, "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or any other party..." Rule 26(b)(1), SCRCF. The Court also notes Rule 26(b)(5), SCRCF, and Rule 26(c), SCRCF, sets for the procedure by which information may be withheld or discovery limited, neither of which have been pursued or asserted by Defendant. Accordingly, the question of Plaintiff's Motion revolves on whether the discovery sought is relevant.

Regarding Plaintiff's request, this is an action to collect a judgment Plaintiff obtained against Defendant¹, and, while the judgment is on appeal, Plaintiff is allowed to being collection efforts under Rule 241(a) and (b), SCAC. Also, Plaintiff seeks or was seeking a determination of

¹ Plaintiff obtained her judgment in the case of Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 v. John Edward Vergeldt (C/A No.: 2016-CP-46-00820), which judgment was transcribed in the Office of the Clerk of Court for Charleston County judgment roll no.: 2021-CP-10-03640.

Defendant's rights to the Property as well as her own by virtue of a judgment lien under S.C. Code Ann. §15-35-810 (1976), as amended. Plaintiff has claimed the condition of the Property, the single-family residence located thereon and other attendant improvements, and other personal property and assets he may have possession of is relevant to her collection efforts. Specifically, their condition may provide insight as to which assets might have value and which may be used to satisfy the judgment. The production and/or inspection of the Property and/or other personal property and assets Defendant may be in possession of is certainly relevant into Plaintiff's efforts, and they are not covered by any privilege. At a minimum, none has been asserted nor has Defendant sought a protective order.

However, the Court is cognizant the Property serves as Defendant's primary residence and Plaintiff's primary purpose in seeking the inspection of the Property and the interior and exterior of the single family residence and other personal property is to determine the Property's condition and value, both which can be obtained by an appraisal and inspection, to which the Court understands Plaintiff and Defendant can agree.

NOW THEREFORE, for good cause shown and with the agreement of Plaintiff and Defendant **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

- A. That Plaintiff's Motion to Compel is hereby **GRANTED** insofar as Defendant is required to make the Property and all areas of the interior and exterior of the single-family residence located thereon and other attendant and appurtenant improvements thereon available to an agreed upon South Carolina licensed real estate appraiser and/or home inspector at a date and time convenient to the designated real estate appraiser/home inspector.
- B. The appraisal and/or inspection shall take place within forty-five (45) days of the date of this Order, which time may be extended by subsequent order upon good

cause shown.

- C. In the event Plaintiff and Defendant cannot agree upon a South Carolina licensed real estate appraiser and/or home inspector, the Court may appoint one by subsequent order.

IT IS SO ORDERED!

{MASTER-IN-EQUITY'S SIGNATURE APPEARS BELOW}



Charleston Common Pleas

Case Caption: Vicki Lynn Vergeldt , plaintiff, et al VS John Edward Vergeldt ,
defendant, et al

Case Number: 2021CP1004257

Type: Order/Compel

So Ordered

s/Mikell R. Scarborough 3062

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2021-CP-10-04257
Vicki Lynn Vergeldt, Individually, and as	)	
Successor Trustee of the John Vergeldt, Jr.	)	
Revocable Living Trust dated September	)	
27, 1978,	)	
	)	ORDER ON PLAINTIFF’S MOTION FOR
	)	CONTEMPT AND SANCTIONS,
Plaintiff,	)	DEFENDANT’S MOTION TO STAY
	)	PROCEEDINGS, AND DEFENDANT’S
vs.	)	MOTION TO DISMISS
	)	
John Edward Vergeldt and Teresa A. Shaw-	)	
Vergeldt,	)	
	)	
Defendants.	)	

THIS MATTER came before me on the 8th day of January, 2024 for a hearing on the Motion for Contempt and/or for Sanctions (“Motion for Contempt”) filed by Plaintiff Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 (“Plaintiff”) on November 3, 2023 in which she seeks to hold Defendant John Edward Vergeldt (“Defendant”) (Plaintiff and Defendant are sometimes collectively referred to herein as “Parties”) in contempt for violating the Court’s Order on Plaintiff’s Motion to Compel (“Order to Compel”) entered in this matter on September 28, 2023. The Court also heard Defendant’s Motion to Stay Proceedings filed October 25, 2023 (“Motion to Stay”) and Motion to Dismiss filed as part of Defendant’s Answer and Counterclaim filed October 30, 2023.

The Motions arise out of Plaintiff’s attempts to enforce a judgment in the original principal amount of \$361,092.88 (“Judgment”) Plaintiff obtained against Defendant in the case of Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 v. John Edward Vergeldt that was pending before the Honorable Teasa Kay Weaver, Master in Equity for York County, under C/A No: 2016-CP-46-00820. The

Judgement is presently on appeal with the South Carolina Court of Appeals; however, the same was transcribed in the Office of the Clerk of Court for Charleston County on August 6, 2021, was given Judgment Roll No.: 2021-CP-10-03640, and Plaintiff has instituted supplemental proceedings under said Judgment Roll No.¹ The supplemental proceedings have been consolidated into these proceedings.

In the Motion to Dismiss, Defendant seeks to have Plaintiff's Amended Complaint dismissed on the grounds the Judgment is on appeal and Plaintiff has not offered nor attempted to post a bond as required by S.C. Code Ann. §18-9-130(A)(1) (1976), as amended. Plaintiff's Amended Complaint seeks to enforce the Judgment and collect the amounts due thereunder by the foreclosure of Plaintiff's real property located in Charleston County at 1523 Star Flower Alley, Johns Island, South Carolina ("Property"). The Motion for Contempt and Motion to Stay arise out of Defendant's purported failure and refusal to allow the appraisal and/or inspection of the interior of the Property.

Present at the hearing was Plaintiff's counsel, Taylor A. Peace, Esq., and Kevin C. Lowry with Lowcountry Appraisals, Inc., who was the appraiser designated by the Parties to perform the Property's appraisal and who attempted same. Despite receiving due and proper notice of the hearing, Defendant nor his counsel appeared². From the Court's file, it appears Defendant opposed the Motion for Sanctions and supported the Motion to Stay by filing the Affidavit of John E. Vergeldt on January 5, 2024 ("Vergeldt Affidavit"), and Plaintiff filed the Affidavit of Kevin C. Lowry ("Lowry Affidavit") the same day. Plaintiff's counsel also subsequently filed an Affidavit of Attorneys Fees and Costs in support of Plaintiff's requested assessment of attorneys' fees and costs associated with the Motion for Sanctions.

¹ The Court is informed the South Carolina Court of Appeals heard argument of the appeal on November 8, 2023.

² Subsequent to the hearing, Defendant's counsel informed the Court her absence was due to a medical emergency she suffered on the way to the hearing.

This Order resolves all three pending motions, as set forth below:

I. Defendant's Motion to Dismiss

In the Answer and Counterclaim, Defendant asserts Plaintiff's Amended Complaint should be dismissed pursuant to Rule 12(b)(6), SCRCF, on the grounds Plaintiff lacks standing to bring the action as Plaintiff has not offered nor attempted to post a bond as required by S.C. Code Ann. §18-9-130(A)(1).

A. Bond Requirement under S.C. Code Ann. §18-9-130(A)(1).

Under S.C. Code Ann. §18-9-130(A)(1),

A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution. If the presiding judge grants a stay of execution and requires a bond to or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the amount of the judgment or.... (b) one million dollars, whichever is less, for all other entities or individuals. S.C. Code Ann. §18-9-130(A)(1) (1976), as amended.

This is consistent with Rule 241, SCACR which provides,

As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters directed in the order, judgment, decree or decision on appeal and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision....The exceptions to the general rule are found in statutes, court rules, and case law Where specific conditions must be met before an exception applies, those conditions must be strictly complied with. A list of some, but not all of the exceptions to the general rules is: (1) Money judgments as provided in S.C Code Ann. §18-9-130. Rule 241, SCACR.

In this matter, Plaintiff seeks to execute on the Judgment and collect on the same through the foreclosure of the Property and the supplemental proceedings. Accordingly, Defendant is required to seek a stay of the execution of the Judgment from Judge Weaver, and it appears he has not done so. No evidence of such a request was presented at the hearing.

Accordingly, Defendant's Motion to Dismiss should be denied on the grounds he has failed to strictly comply with the provisions of Rule 241, SCACR and S.C. Code Ann. §18-9-130(A) (1976), as amended.

B. Motion to Dismiss under Rule 12(b)(6), SCRPC

While Defendant claims Plaintiff's Amended Complaint should be dismissed under S.C. Code Ann. §18-9-130(A), he also claims it should be dismissed under Rule 12(b)(6), SCRPC.

Under Rule 12(b)(6), SCRPC, "Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the option of the pleader be made by the following defenses may at the option of the pleader be made by motion....(6) failure to state facts sufficient to state a cause of action..." Rule 12(b)(6), SCRPC. "In considering a motion to dismiss a complaint on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." Doe v. Marion, 373 S.C. 390, 395, 645 S.E. 2d 245, 247 (2007). When deciding a motion to dismiss for failure to state a claim, the question is whether, in the light most favorable to the Plaintiff, with every doubt resolved in his behalf, the complaint states any valid claim for relief. Plyler v. Burns, 373 S.C. 637, 647 S.E. 2d 188 (2007). "If the facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case, then dismissal for failure to state facts sufficient to constitute a cause of action is improper." Sloan Const. Co., Inc. v. Southco Grassing, Inc., 377 S.C. 108, 113, 659 S.E. 2d 158, 161 (2008) (internal citations omitted). A decision on a Rule 12(b)(6) motion to dismiss for failure to state a claim must be based solely upon allegations set forth on fact of complaint. Burns v. Gardner, 328 S.C. 608, 614, 493 S.E. 2d 356, 359 (1997). A complaint should not be dismissed for failure of the pleading to state facts sufficient to constitute a cause of action merely because the court doubts the plaintiff will prevail in the action. Id.

In review of the Amended Complaint, Plaintiff has alleged that she has the Judgment, that it constitutes a valid judgment lien against the Property, and that Plaintiff is entitled to foreclose the lien, have the Property sold at a public sale and the proceeds distributed and applied toward the amounts owed under the Judgment. See Amended Complaint. While the Court acknowledges the Judgment is presently on appeal and the outcome may affect the underlying allegations of Plaintiff's Amended Complaint, the Court concludes the Amended Complaint states facts sufficient to constitute a cause of action for foreclosure when viewing the allegations in the light most favorable to Plaintiff and resolving all doubts in her favor. Relatedly, the Court notes Defendant indicates the Motion to Dismiss is, in part, based on Plaintiff's purported attempt to bring Teresa A. Shaw-Vergeldt back into this matter, but the Amended Complaint seeks no relief from her and/does not state a cause of action against her. See Amended Complaint.

Accordingly, the Amended Complaint states facts sufficient to state a cause of action against Defendant such that Rule 12(b)(6), SCRCF, provides no relief for Defendant and the same should be denied.

II. Motion to Stay Proceedings and Motion for Contempt and/or for Sanctions

With the denial of the Motion to Dismiss, it is proper for the Court to consider the Motion to Stay Proceedings and Motion for Contempt, which will be discussed *infra*, as they both revolve around the Order to Compel and the events stemming therefrom.

A. Factual Background

Defendant, under the Order to Compel filed September 28, 2023, was required to make the Property and all areas of the interior and exterior of the single-family residence located thereon, and other attendant and appurtenant improvements, available to an agreed upon South Carolina real estate appraiser and/or home inspector at a date and time convenient to the designated real estate appraiser/home inspector with said appraisal and/or inspection to occur within forty five

(45) days of the Order. See Order to Compel. The Parties agreed Kevin C. Lowry (a licensed South Carolina real estate appraiser with Low County Real Estate Appraisal) would appraise the Property. The affidavits filed with the Court in support of and in opposition to the Motion for Sanction and Motion to Stay indicate Mr. Lowry was initially selected as a real estate appraiser by Plaintiff and that Defendant failed to object until the events described therein. See ¶¶ 3-5, Lowry Aff.; ¶3, Vergeldt Aff. Through counsel and in coordination with Mr. Lowry, the Parties agreed Mr. Lowry would appraise the Property at 9:00 A.M. on October 24, 2023. See ¶9, Lowry Aff.; ¶4, Vergeldt Aff.

On around October 24, 2023 at 9:39, Mr. Lowry informed Plaintiff's counsel he was delayed due to traffic while travelling to the Property from Mount Pleasant, that the traffic was clearing, and that he would be arriving at the Property within approximately ten (10) minutes. See ¶12, Lowry Aff. Plaintiff's counsel communicated this information to Defendant's counsel at 9:43. See ¶12, Motion to Stay. The Vergeldt Affidavit challenges Mr. Lowry's reason for delay; however, it contains no supporting documentation of the sources cited nor does it identify when the checks of said sources occurred. See Vergeldt Aff. The Vergeldt Affidavit also indicates Defendant's counsel informed him and Ms. Shaw, a real estate professional engaged by Defendant to monitor the appraisal, were released to go about their day at 9:47. See ¶7, Vergeldt Aff. The Motion to Stay indicates Ms. Shaw was released at 9:45 A.M. The Vergeldt Affidavit and the Lowry Affidavit indicate Mr. Lowry arrived at the Property sometime between 9:50 A.M. and 10:00 A.M. See ¶ 13, Lowry Aff.; ¶ 12, Vergeldt Aff. While Defendant's Affidavit and the Lowry Affidavit contain different recitations of the facts, both indicate Defendant informed Mr. Lowry that he was too late to conduct the appraisal and that Mr. Lowry would need to leave thereby prohibiting him from performing his work required by the Order to Compel. See ¶¶ 13-14, Lowry Aff.; ¶¶ 12-15, Vergeldt Aff.

Mr. Lowry's affidavit indicates Plaintiff's counsel has requested additional times when the Property would be made available; however, none have been forthcoming to this date. See ¶ 16, Lowry Aff; ¶16, Motion to Stay. In contrast, Defendant's Affidavit states he agreed to a subsequent appraisal provided he was included in selecting the appraiser as long as Plaintiff would agree to pay for same. See ¶17, Vergeldt Aff. Defendant claims that Mr. Lowry is biased and incapable of providing an accurate appraisal without support. Id. Mr. Lowry disputes any bias.

More than forty (45) days have passed since the Order to Compel was entered and Defendant has not given Plaintiff additional dates by which the Property can be made available for appraisal, and he has not sought the Court's intervention in selecting a new appraiser. Also, there is no pending motion or other proceeding before the Court relating to any dispute between the Parties related to the selection of an appraiser to conduct the appraisal or inspection of the Property other than the Motion to Stay.

At the hearing, Mr. Lowry indicated his fees for performing the appraisal are Four Hundred Seventy-Five 00/100 (\$475.00) Dollars and that he would be willing to go back to the Property to complete his work provided counsel and/or a Charleston County Sheriff's Deputy is present. Additionally, Plaintiff has requested her attorneys' fees and costs be paid from and/or assessed against Defendant, and according to the filed Affidavit of Attorney's Fees and Costs, she has incurred Three Thousand Seventy-One and 25/100 (\$3,071.25) Dollars in attorneys' fees and Two Hundred Eleven and 74/100 (\$211.74) Dollars in costs.

B. Discussion

i. Motion to Stay Proceedings

As described in more depth, *supra*, Rule 241, SCACR, provides, as a general rule, that an order on appeal automatically stays matters decided in the order on appeal and the relief provided in said order. See Rule 241(a). It also provides that exceptions to the general rule are found in

statutes, court rules and case law and, where specific conditions must be met before the exception applies, those conditions must be strictly complied with. See Rule 241(b). Money judgments as provided in S.C. Code Ann. §18-9-130 are one of the exceptions. Id. However, S.C. Code Ann. §18-9-130 expressly states that service of a notice of appeal directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained issues a stay of execution. See S.C. Code Ann. §18-9-130 (1976), as amended. If a stay of execution were to be issued and bond required, the bond could not exceed the amount of the judgment or one million dollars. Id.

In viewing the evidence before the Court, the only reason given for the requested stay is the undue burden these proceedings are having on Defendant while the Judgment is on appeal. See ¶18, Motion to Stay. This reason is not a grounds to stay execution of the Judgment or Plaintiff's attempts to collect same. Based on Rule 241, SCACR, and S.C. Code Ann. §18-9-130 (1976), as amended, Defendant would have to strictly comply with the processes described therein, and no evidence has been presented to indicate Defendant has sought a stay of execution in accordance with the terms thereof. Additionally, this Court would be without authority to issue a stay of execution as it did not issue the underlying judgment Plaintiff seeks to collect.

Accordingly, it is proper for Defendant's Motion to Stay to be DENIED.

ii. Motion for Contempt and/or for Sanctions

As to the Motion for Sanctions, "Contempt is an extreme measure; this power vested in a court is not lightly asserted". Ex parte Kent, 379 S.C. 633, 637, 666 S.E. 2d 921, 923 (Ct. App. 2008). "A party is guilty of contempt when he willfully disobeys a court order." Brantley v. Brantley, 441 S.C. 284, 299, 893 S.E. 2d 349, 358 (Ct. App. 2023) (internal citations omitted). "A willful act is one 'done voluntarily and intentionally with the specific intent....to fail to do something the law requires to be done'" Noojin v. Noojin, 417 S.C. 300, 306 789 S.E. 2d 769, 772

(Ct. App. 2016) (internal citations omitted). “Prior to invoking this power, the court must necessarily consider the ability of the defendant to comply with the order.” Id.

“A party seeking contempt for violation of a court order must show the order’s existence and establish the other party did not comply with the order.” Abate v. Abate, 377 S.C. 548, 554, 660 S.E. 2d 515, 518 (Ct. App. 2008) (internal citations omitted). “Once the party seeking a contempt finding makes prima facie showing by pleading the order and demonstrating noncompliance, the burden shifts to the respondent to establish his defense and inability to comply.” Noojin v. Noojin, 417 S.C. 300, 789 S.E. 2d 769 (Ct. App. 2016). “Civil contempt must be shown by clear and convincing evidence.” Miller v. Miller, 375 S.C. 443, 457, 652 S.E. 2d 754, 761 (Ct. App. 2007) (internal citations omitted).

As applied in this matter, the Order to Compel clearly states Defendant was required to make the Property and all areas of its interior and exterior of the single family residence and all of its improvements available to a South Carolina licensed real estate appraiser and/or home inspector at a date and time convenient to the designated real estate appraiser/home inspector, and that said appraisal should take place within forty five (45) days of the entry of the Order. See Order to Compel. The Order also provides that the time period may be extended upon good cause and the Parties could ask the Court to appoint a real estate appraiser and/or home inspector if one cannot be agreed upon. Id.

It appears that the Parties agreed and/or consented through their conduct to have Mr. Lowry appraise the Property and that a time and date was agreed upon for him to appraise the Property within the forty-five (45) days required by the Order. See Vergeldt Aff. and Lowry Aff. It also appears that, for whatever reason, Mr. Lowry was delayed in arriving on the agreed date and that Defendant refused to allow him access to the interior single-family residence only after being told Mr. Lowry had been delayed. Id.

Under a favorable interpretation of the facts submitted through the Vergeldt Affidavit and the Lowry Affidavit, Defendant released his real estate professional knowing he could not stay due to a doctor's appointment, failed to communicate same to his counsel and/or Plaintiff's counsel and has not cooperated with Plaintiff on providing new dates and times for Mr. Lowry to appraise the Property or provide the name of a new appraiser thereby willfully violating the Order to Compel without justification.

Under the worst interpretation of facts submitted through the Vergeldt Affidavit and the Lowry Affidavit, Ms. Shaw was not actually present during the events described, Defendant did not have a medical/doctor's appointment as stated, refused to let Mr. Lowry enter the Property to perform his work, and has failed and refused to cooperate with Plaintiff on providing new dates and times for Mr. Lowry to appraise the Property, provide the name of a new appraiser thereby violating the Order to Compel, or seek the Court's intervention to select an appraiser.

Under either interpretation of the facts, the Court finds Defendant willfully and intentionally violated the Order to Compel and the same has been shown by clear and convincing evidence considering the Order requires Defendant to make the Property available at a time and date convenient to the appraiser, Mr. Lowry, and Defendant has taken no other steps to comply with the other provisions of the Order that would have provided him relief or mitigated his violation.

Accordingly, a finding of contempt is appropriate, and the Court concludes that a fine of Five Hundred and 00/100 (\$500.00) Dollars payable to the Charleston County Master of Equity in thirty (30) days is appropriate. The Court also concludes an assessment against Defendant of Plaintiff's attorneys fees in the amount of Three Thousand and 00/00 (\$3,000.00) Dollars and costs in the amount of Two Hundred Eleven and 74/100 (\$211.74) Dollars associated with bringing the Motion for Contempt to be an appropriate sanction Ex parte Cannon, 385 S.C. 643, 685 S.E. 2d

814 (Ct. App. 2009), and the Court concludes that said attorney's fees and costs are reasonable considering: (1) extent and difficulty of the legal services rendered, (2) the time and labor necessarily devoted to the case, (3) the professional standing of counsel, (4) the contingency of compensation, the customary fee charged in the locality for similar services, and (5) the beneficial result obtained. See Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 337 S.E. 2d 296 (1989).

Further the Court concludes it is a reasonable and proper sanction that Mr. Lowry's fees for his services in the amount of Four Hundred Seventy-Five and 00/100 (\$475.00) Dollars be charged to Defendant, and the same shall be paid upon receipt by Defendant or his counsel from Mr. Lowry.

Finally, the Court concludes it proper and appropriate for Mr. Lowry to be charged to go back to the Property on a set date and time to complete his work and that he should be accompanied by Plaintiff's counsel and Defendant's counsel or a deputy with the Charleston County Sheriff's Department. Plaintiff and Defendant shall do their best to coordinate with Mr. Lowry; however, the Property is to be made available at Mr. Lowry's convenience.

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
as follows:

1. Defendant's Motion to Dismiss is **DENIED**.
2. Defendant's Motion to Stay Proceedings is **DENIED**.
3. Plaintiff's Motion for Contempt and/or for Sanctions is **GRANTED**, and, as a result:
 - a. Defendant is hereby fined Five Hundred and 00/100 (\$500.00) Dollars and, within thirty (30) days of the entry of this Order, Defendant shall pay the same to the Charleston County Master-In-Equity Court;

- b. Within thirty (30) days of the entry of this Order, Defendant shall pay to Plaintiff's counsel his reasonable attorneys' fees and costs associated with bringing the Motion for Contempt in the amount of Three Thousand Two Hundred Eleven and 74/100 (\$3,211.74) Dollars;
 - c. Defendant shall make the Property available to Mr. Lowry at a time and date convenient to Mr. Lowry, which shall be communicated to Defendant through counsel. At the appointed time and on the appointed date, Defendant shall not harass or abuse Mr. Lowry. To insure compliance with the provision of this Order, Plaintiff's counsel and Defendant's counsel or a Charleston County Sheriff's deputy shall be present at the Property for the appraisal.
 - d. Upon receipt of an invoice or bill from services in the amount of Four Hundred Seventy-Five and 00/100 (\$475.00) Dollars from Mr. Lowry, Defendant shall immediately pay same within 15 days.
4. Defendant's failure to comply with any provisions of the terms of this Order will result in the Court issuing its Rule to Show Cause requiring Defendant to appear and show cause why he cannot comply with the terms hereof and/or a grant of further relief, which may include arrest and detainment.

IT IS SO ORDERED!

Mikell R. Scarborough

Charleston County Master in Equity



Charleston Common Pleas

Case Caption: Vicki Lynn Vergeldt , plaintiff, et al VS John Edward Vergeldt ,
defendant, et al

Case Number: 2021CP1004257

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2024-02-01 17:16:33 page 13 of 13

ROA 00078



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 14, 2024

Desa Ballard, Esquire
226 State Street
West Columbia SC 29169

Mr. Harvey M. Watson, III, Esquire
226 State St
West Columbia SC 29169

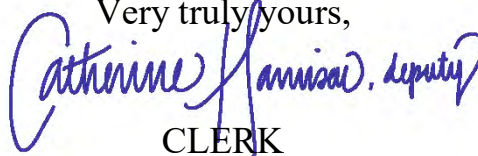
Mr. Taylor Anthony Peace, Esquire
135 Columbia Avenue
PO Box 1000
Chapin SC 29036

Re: Vicki Vergeldt v. John Vergeldt
Appellate Case No. 2021-000816

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

A handwritten signature in blue ink, reading "Catherine S. Harrison, Deputy", is written over the typed name "Catherine S. Harrison, Deputy".

CLERK

cc: The Honorable Teasa Kay Weaver

ROA 00079

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

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

Vicki Lynn Vergeldt, Individually, and as Successor
Trustee of the John Vergeldt Jr. Revocable Living Trust
dated September 27, 1978, Respondent,

v.

John Edward Vergeldt, Appellant.

Appellate Case No. 2021-000816

Appeal From York County
Teasa Kay Weaver, Master-In-Equity

Unpublished Opinion No. 2024-UP-052
Heard November 8, 2023 – Filed February 14, 2024

AFFIRMED

Desa Ballard and Harvey M. Watson, III, both of Ballard
& Watson, Attorneys at Law, of West Columbia, for
Appellant.

Taylor Anthony Peace, of Harrell, Martin, & Peace, P.A.,
of Chapin, for Respondent.

PER CURIAM: John Vergeldt appeals the master-in-equity's order granting the
John Vergeldt, Jr. Revocable Living Trust (the Trust) a money judgment of

\$361,092.88 against him to restore trust assets and pay attorney's fees and additional expenses. On appeal, John argues the circuit court erred by (1) allowing Vicki Vergeldt to amend her petition to seek damages because damages were barred by res judicata and (2) failing to apply the standard of proof imposed by John Vergeldt, Jr.'s (the Settlor's) tenth amendment to his will. We affirm pursuant to Rule 220(b), SCACR.

1. We hold that John's argument that the doctrine of res judicata barred Vicki from amending her petition for his removal as successor trustee and other related relief was not preserved for appellate review because John first raised the argument in his motion for reconsideration. *See Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 182, 826 S.E.2d 585, 588 (2019) ("A trial court has discretion to deny a motion to amend if the party opposing the amendment can show a valid reason for denying the motion."); *id.* at 182, 826 S.E.2d at 588 ("In rare cases . . . a trial court may deny a motion to amend if the amendment would be clearly futile."); *RIM Assocs. v. Blackwell*, 359 S.C. 170, 182, 597 S.E.2d 152, 159 (Ct. App. 2004) ("Res judicata is an affirmative defense that must be pled at trial in order to be pursued on appeal."); *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) ("[A] party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not."); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review."); *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007) (explaining that to be preserved for appellate review, an issue must have been "(1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity" (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002))).

2. We hold the master did not fail to apply the correct standard of proof as required by the Trust agreement. *See Smith v. Barr*, 375 S.C. 157, 160, 650 S.E.2d 486, 488 (Ct. App. 2007) ("Our scope of review for a case heard by a Master permits us to determine facts in accordance with our own view of the preponderance of the evidence."); *Bowles v. Bradley*, 319 S.C. 377, 380, 461 S.E.2d 811, 813 (1995) ("The primary consideration in construing a trust is to discern the settlor's intent."); *Holcombe-Burdette v. Bank of Am.*, 371 S.C. 648, 658, 640 S.E.2d 480, 485 (Ct. App. 2006) ("In ascertaining a settlor's intent, if the language of the trust instrument is perfectly plain and capable of legal construction, such language determines the force and the effect of the instrument.").

AFFIRMED.

MCDONALD and VINSON, JJ., and BROMELL HOLMES, A.J., concur.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1004257

Vicki Lynn Vergeldt et al
PLAINTIFF(S)

John Edward Vergeldt
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 Defendant's Motion for Re-hearing of Court's February 2, 2024 Order. The Defendant's Motion to Reconsider is hereby DENIED and the Court affirms the rulings in its February 2, 2024 Order, except for Paragraph 3(c) as Plaintiff's counsel informed the Court that there was no further need for the appraiser to return to the property. Accordingly, the Plaintiff's Motion for Contempt is GRANTED. The Defendant's Motion to Stay Pending Appeal and the Defendant's Motion to Dismiss are respectfully DENIED.

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 03/28/2024 .

Vicki Lynn Vergeldt Trustee
John Vergeldt Jr Living Trust

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: Vicki Lynn Vergeldt , plaintiff, et al VS John Edward Vergeldt ,
defendant, et al
Case Number: 2021CP1004257
Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2024-03-28 16:30:11 page 3 of 3

ROA 00085

The South Carolina Court of Appeals

Vicki Lynn Vergeldt, Individually, and as Successor
Trustee of the John Vergeldt Jr. Revocable Living Trust
dated September 27, 1978, Respondent,

v.

John Edward Vergeldt, Appellant.

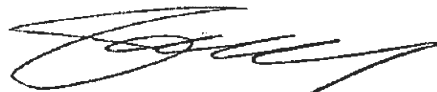
Appellate Case No. 2021-000816

ORDER

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



J.



J.



A. J.

Columbia, South Carolina

cc:

Desa Ballard, Esquire

Harvey M. Watson, III, Esquire

FILED
Apr 11 2024

ROA 00086

Taylor Anthony Peace, Esquire
The Honorable Teasa Kay Weaver

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP1004257

Vicki Lynn Vergeldt et al
PLAINTIFF(S)

John Edward Vergeldt
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:

Upon consideration, this Court DENIES Defendant's Motion to Reconsider filed April 8, 2024, and the Court adopts the Plaintiff's Reply to the Motion filed April 18, 2024, as the basis for its denial of the Motion to Reconsider.

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 05/06/2024 .

Vicki Lynn Vergeldt Trustee
John Vergeldt Jr Living Trust

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: Vicki Lynn Vergeldt , plaintiff, et al VS John Edward Vergeldt ,
defendant, et al

Case Number: 2021CP1004257

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2024-05-06 13:48:58 page 3 of 3

ROA 00090

IN THE STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

VICKI LYNN VERGELDT,)
)
Plaintiff,)

vs.)

JOHN EDWARD VERGELDT,)
Individually and as former Co-Trustee and)
current Successor Trustee of the John)
Vergeldt, Jr. Revocable Living Trust dated)
September 27, 1978, as amended; and)
PATRICIA VERGELDT DOWNEY, as)
a Qualified Beneficiary of the John)
Vergeldt, Jr. Revocable Living Trust dated)
September 27, 1978, as amended,)
Defendants.)

IN THE PROBATE COURT
CASE NUMBER: 2014 GC 460012

SUMMONS

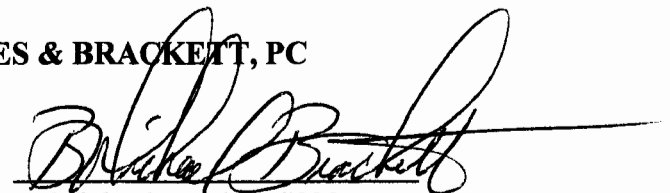
FILED RECEIVED
2014 FEB 28 AM 10:57
JUDGE OF PROBATE
YORK COUNTY, SC

To: The Above-Named Defendants:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint upon the subscribers at their offices, 1333 Main Street, Sixth Floor, Post Office Box 100261, Columbia, South Carolina 29202-3261, within thirty (30) days after the service hereof upon you, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

MOSES & BRACKETT, PC

BY:



B. Michael Brackett #838
Post Office Box 100261
Columbia, South Carolina 29202-3261
803.461.2312
Attorney for Plaintiff

February 25, 2014

CERTIFIED TRUE COPY

ROA 00091

Carolyn W. Rogers
PROBATE JUDGE, YORK COUNTY, SC

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

VICKI LYNN VERGELDT,)

Plaintiff,)

vs.)

JOHN EDWARD VERGELDT,)

Individually and as former Co-Trustee and)

current Successor Trustee of the John)

Vergeldt, Jr. Revocable Living Trust dated)

September 27, 1978, as amended; and)

PATRICIA VERGELDT DOWNEY, as)

a Qualified Beneficiary of the John)

Vergeldt, Jr. Revocable Living Trust dated)

September 27, 1978, as amended,)

Defendants.)

IN THE PROBATE COURT
CASE NUMBER: 2014 GC 460012

COMPLAINT
(Declaratory Judgment)

FILED RECEIVED
2014 FEB 28 AM 10:57
JUDGE OF PROBATE
YORK COUNTY, SC

Plaintiff Vicki Lynn Vergeldt (hereinafter "Plaintiff") brings this action for a declaration of rights or legal relations involving John Edward Vergeldt, Individually and as former Co-Trustee and current Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978, as amended (hereinafter "Vergeldt") and Patricia Vergeldt-Downey (hereinafter "Downey"), as a Qualified Beneficiary of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978, as amended (hereinafter "Trust Agreement"), relating solely to the construction and interpretation of the Trust Agreement, as set forth below.

PARTIES

1. Plaintiff is a citizen and resident of Birmingham, Michigan and a Qualified Beneficiary of the Trust Agreement.

2. Defendant Vergeldt is a citizen and resident of York County, South Carolina, the former Co-Trustee of the Trust Agreement, the current Successor Trustee of the Trust Agreement, and a Qualified Beneficiary of the Trust Agreement.

3. Defendant Downey is a citizen and resident of Dearborn Heights, Michigan and a Qualified Beneficiary of the Trust Agreement.

JURISDICTION

4. This Court has subject-matter jurisdiction over this action pursuant to S.C. Code Ann. § 62-1-302(a) and § 62-7-201(a) (1987).

5. Pursuant to S.C. Code Ann. § 62-7-108 (1987) and Paragraph FOURTEENTH G the Trust Agreement's principal place of administration has been transferred from Michigan to York County, South Carolina which is the place of the Defendant Successor Trustee's residence where the records pertaining to the Trust Agreement are kept.

6. Plaintiff The Court has personal jurisdiction over Defendant Vergeldt because he is a resident of South Carolina, and, pursuant to S.C. Code Ann. § 62-7-202 (1987), he accepted the Successor Trusteeship of the Trust Agreement which has its principal place of administration in South Carolina.

7. Plaintiff The Court has personal jurisdiction over Defendant Downey because, pursuant to S.C. Code Ann. § 62-7-202 (1987), she is a Qualified Beneficiary of the Trust Agreement having its principal place of administration in South Carolina and has accepted distributions from such Trust Agreement

VENUE

8. Venue is proper in York County because the Trust Agreement's principal place of

administration is located in York County, South Carolina, where the Successor Trustee resides and keeps all documents pertaining to the Trust Agreement.

CHOICE OF LAW

By its terms, the Trust Agreement is to be administered and construed in accordance with the laws of the State of Michigan. S.C. Code Ann. § 62-7-107 recognizes Settlor's choice of law.

FACTS

9. John Vergeldt, Jr. ("Decedent") was the Settlor and initial Trustee of the Trust Agreement and the father of Plaintiff, Defendant Vergeldt, and Defendant Downey.

10. Decedent executed the Trust Agreement on September 27, 1978.

11. Decedent executed the Eight Amendment and Complete Restatement to the Trust Agreement on July 29, 2009 (Attached as **Exhibit A**).

12. Plaintiff Decedent executed the Ninth Amendment of the Trust Agreement on February 5, 2010, amending paragraph SIXTH B of the Eighth Amendment and Complete Restatement (Ninth Amendment of Trust Agreement Attached as **Exhibit B**).

13. Plaintiff Decedent executed the Tenth Amendment of the Trust Agreement on March 7, 2010, amending Eighth Amendment and Complete Restatement and Ninth Amendment. Specifically, paragraph SECOND C was amended; paragraph SECOND D was amended; paragraph SECOND Q was added; paragraph SECOND R was added; paragraph SIXTH B was amended; a paragraph was added to SEVENTH; paragraph FOURTEENTH B was amended; and paragraph EIGHTEENTH was amended (Tenth Amendment of Trust Agreement attached as **Exhibit C**).

14. On July 29, 2009, Pursuant to paragraph THIRD C of the Trust Agreement, Decedent appointed John Edward Vergeldt to serve as Co-Trustee of the Trust Agreement during Decedent's

lifetime, was vested with all of the powers duties and obligation of the Trustee, and was given binding decision making authority upon the Trust Agreement, as if made by the Settlor as Trustee (Appointment of Co-Trustee attached as **Exhibit D**).

15. Upon information and belief, Defendant became the sole Successor Trustee of the Trust in 2012.

16. Decedent died on July 9, 2013, thereby triggering the termination of the Trust and the distribution of Trust assets.

17. Decedent's Last Will and Testament is currently being probated in the York County Probate Court under case number 2013-ES-46-00944.

18. Pursuant to Decedent's Last Will and Testament (Attached as **Exhibit E**), Defendant Vergeldt was appointed to serve as Personal Representative for the Estate of John Vergeldt, Jr. by Order of the Honorable Carolyn W. Rogers, Probate Judge for York County, signed on November 12, 2013.

19. Pursuant to Provision Third of the Decedent's Last Will and Testament, the rest, residue, and remainder of Decedent's estate was devised to the Successor Trustee of the Trust Agreement to be added to the trust estate created in such instrument and held, administered and distributed upon its terms, provisions and conditions.

20. Upon information and belief, Defendant Vergeldt has made reductions to the qualified beneficiaries shares under the Trust Agreement pursuant to Paragraph Fifth of the Trust Agreement, stating, in relevant part that

... to the extent that any child of Settlor shall receive from the Settlor on or after the date of his Eight Amendment and Complete Restatement cumulative gifts and/or advances (which have not been repaid) in excess of the cumulative gifts and/or advances (which have not been repaid) to the child of the Settlor who has received

the least amount of cumulative gifts and/or advances (which have not been repaid) from Settlor on or after the date of this Eighth Amendment and Complete Restatement, that excess shall reduce the devise or bequest that such child who received the excess is entitled to receive under this Trust Agreement or any amendments to this Trust Agreement. . . .

21. Plaintiff has asked Defendant Vergeldt to review “records of assets, receipts and disbursements and other financial transactions relative to each trust” as authorized pursuant to Paragraph Fourteenth A of the Trust Agreement, which states:

[t]he Successor Trustee shall have the entire care and custody of all of the assets comprising principal of the trusts hereunder and shall keep the assets safe in accordance with the requirements of like fiduciaries and shall maintain full and accurate records of assets, receipts and disbursements and other financial transactions relative to each trust, all of which shall be available for inspection at any reasonable time by any and all beneficiaries.

22. Defendant Vergeldt has not complied with Plaintiff’s request to review “records of assets, receipts and disbursements and other financial transactions relative to each trust” as authorized pursuant to Paragraph Fourteenth A of the Trust Agreement.

23. Plaintiff Plaintiff has asked Defendant Vergeldt to provide statement of accounts as are required to be produced annually and upon termination of the Trust Agreement by the Tenth Amendment to Trust Agreement, Paragraph Fourteenth B:

[t]he Successor Trustee shall keep a trust account of the affairs of a trust. At least annually and upon termination of a trust, the Successor Trustee shall render a statement of account. A statement of account is a report by the Successor Trustee of the trust property, liabilities, receipts, and disbursements, including the source and amount of the Successor Trustee’s compensation, a listing of the trust assets, and if feasible, their respective market values. No particular format or formality is required for a report unless a court specifies its content and presentation. The statement shall be delivered as soon as practicable after the close of the accounting period or upon termination of the trust

24. Defendant Vergeldt has not provided to Plaintiff a statement of account as required by Tenth Amendment to Trust Agreement, Paragraph Fourteenth B.

25. On November 20, 2013, Defendant Vergeldt sent a Proposal for Distribution for the third and final distribution for the Trust Agreement, notifying Plaintiff of her right to object within thirty days from the date of the Proposal for Distribution, in accordance with S.C. Code Ann. § 62-7-817 (1987) (Proposal for Distribution attached as **Exhibit F**).

26. By letter dated December 3, 2013, Counsel for Plaintiff notified Defendant Vergeldt of Plaintiff's objection to the Proposal for Distribution (Objection Letter attached as **Exhibit G**).

27. By letter dated February 1, 2014, Defendant Vergeldt sent Counsel for Plaintiff a Receipt and Release of Claim and informed Counsel for Plaintiff of his decision to proceed with making the final distributions from the Trust Agreement (Letter and Receipt and Release attached as **Exhibit H**).

28. Plaintiff has not withdrawn her objection to the Proposal for Distribution nor has she signed the Receipt and Release of Claim.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment- Construction of Trust)

29. Plaintiff realleges each and every allegation set forth in the above paragraphs as though fully set forth verbatim herein.

30. The Trust Agreement was validly created by Decedent on September 27, 1978. Said Trust Agreement was thereafter restated on July 29, 2009 and amended on February 5, 2010 and March 7, 2010.

31. Defendant Vergeldt was appointed to serve as Co-Trustee of the Trust Agreement on July 29, 2009.

32. Defendant Vergeldt became the sole Successor Trustee of the Trust Agreement in 2012.

33. With respect to the Trust Agreement, Paragraph Fifth provides that,

. . . to the extent that any child of Settlor shall receive from the Settlor on or after the date of his Eight Amendment and Complete Restatement cumulative gifts and/or advances (which have not been repaid) in excess of the cumulative gifts and/or advances (which have not been repaid) to the child of the Settlor who has received the least amount of cumulative gifts and/or advances (which have not been repaid) from Settlor on or after the date of this Eighth Amendment and Complete Restatement, that excess shall reduce the devise or bequest that such child who received the excess is entitled to receive under this Trust Agreement or any amendments to this Trust Agreement

34. Plaintiff is uncertain as to the proper interpretation and construction of Paragraph Fifth of the Trust Agreement, and therefore requests the advice and instruction of the Court as to the duties bestowed on Defendant Vergeldt by Paragraph Fifth of the Trust Agreement.

35. Paragraph Fourteenth A of the Trust Agreement provides that:

[t]he Successor Trustee shall have the entire care and custody of all of the assets comprising principal of the trusts hereunder and shall keep the assets safe in accordance with the requirements of like fiduciaries and shall maintain full and accurate records of assets, receipts and disbursements and other financial transactions relative to each trust, all of which shall be available for inspection at any reasonable time by any and all beneficiaries. (Paragraph Fourteenth A); and

36. Plaintiff is informed and believes that the proper interpretation and construction of Paragraph Fourteenth A of the Trust Agreement incorporates the statutory duty to administer the trust in good faith, in accordance with its terms, and in the interests of the beneficiaries (MCL § 700.7801); the statutory duty to keep adequate records of the

administration of the trust (MCL §700.7811); the statutory duty to report and to keep Plaintiff, as a qualified beneficiary, reasonably informed during active administration of the trust with information necessary to protect her interests (MCL §700.7814(1)); and upon termination of the trust to provide to Plaintiff a written report of trust property that contains information necessary to protect Plaintiff's interests (MCL §700.7811(3).)

37. Prior to serving his Proposal for Distribution, the Defendant Trustee sought to threaten and intimidate the Plaintiff into not questioning or objecting to the Trustee's administration of the trust by threatening to "sell the cottage," telling the Plaintiff that if she has retained an attorney she must dismiss the attorney and swear under oath that she will not in the future challenge or object to the Defendant Trustee's handling of the estate, and that if an action is taken by Plaintiff against the Defendant Trustee he will "remove [Plaintiff] as a beneficiary."

38. Subsequently, the Defendant Trustee served a Proposal for distribution. Plaintiff objected in writing to the Trustee's Proposal for Distribution and requested records and reports of trust administration so that Plaintiff can determine and protect her rights. Defendant Vergeldt, as Trustee, has failed and refused to provide to Plaintiff a written report with information necessary for the Plaintiff to determine and protect her interests in trust assets.

39. In his response to Plaintiff's request for information, Defendant Vergeldt, as Trustee, has acted with utmost hostility and intimidation toward Plaintiff beneficiary. For example, the Defendant Trustee's response to Plaintiff includes the following: "I need not respond to your letter [requesting report/information] . . . in any manner, but am doing so

as a courtesy;” if Plaintiff files an action, “I [the Trustee] will instruct my attorney . . . ‘to release the kraken;” “I can . . . at my sole discretion and without a court order, remove [Plaintiff] as a beneficiary;” “I [Trustee] am under no legal or moral obligation to provide you or your client with ANY financial transactions that occurred prior to July 9, 2013 . . .” These erroneous and inflammatory statements regarding the Trustee’s duties to Plaintiff reflect an ignorance of the law governing trust administration; reflect unabashed hostility toward Plaintiff for her efforts to protect her rights; demonstrate a breach of the Trustee’s duties of loyalty, to keep and provide records and information to beneficiaries; and demonstrate a breach of the Trustee’s duty to act in good faith.

40. Plaintiff therefore requests the advice and instruction of the Court as to the duties imposed on Defendant Vergeldt and the rights owed to Plaintiff by Paragraph Fourteenth A of the Trust Agreement and by the Michigan Trust Code.

41. Paragraph Fourteenth B as set forth in the Tenth Amendment to Trust Agreement states that:

[t]he Successor Trustee shall keep a trust account of the affairs of a trust. At least annually and upon termination of a trust, the Successor Trustee shall render a statement of account. A statement of account is a report by the Successor Trustee of the trust property, liabilities, receipts, and disbursements, including the source and amount of the Successor Trustee’s compensation, a listing of the trust assets, and if feasible, their respective market values. No particular format or formality is required for a report unless a court specifies its content and presentation. The statement shall be delivered as soon as practicable after the close of the accounting period or upon termination of the trust. . . .

42. Plaintiff is uncertain as to the proper interpretation and construction of Paragraph Fourteenth B of the Trust Agreement, in light of the provisions of the Michigan Trust Code and the Defendant Trustee’s expressed understanding of his duties, and therefore Plaintiff requests the

advice and instruction of the Court as to the duties bestowed on Defendant Vergeldt and the rights owed to Plaintiff by such provision.

43. At the death of the Decedent, as instructed pursuant to Paragraph Sixth B of the Trust Agreement, Defendant Vergeldt distributed Six Thousand Dollars (\$6,000.00) from the trust, to each grandchild of the Decedent who survived him.

44. Also Pursuant to Paragraph Sixth B of the Trust Agreement, after distribution of \$6,000.00 to each grandchild surviving the Decedent, the Settlor directed that the balance of the assets of the Residuary Trust be divided by the Successor Trustee into equal shares, one (1) share for each of Settlor's children to be assigned, transferred, conveyed, and paid over to them free and discharged from the trust.

45. Decedent had three children living at the time of his death: Plaintiff, Defendant Vergeldt, and Defendant Downey.

46. Decedent's son David Leigh Vergeldt predeceased the Decedent on January 30, 2010.

47. Paragraph Sixth B states that the share of David Leigh Vergeldt shall be divided equally between the Settlor's then living children.

48. Pursuant to the Terms of Paragraph Sixth B, Plaintiff, Defendant Vergeldt, and Defendant Downey are the only remaining interested persons to this proceeding, and their full names and addresses are as follows: (1) James Edward Vergeldt 2076 Marquesas Avenue, Tega Cay, South Carolina 29708; (2) Patricia Vergeldt-Downey 8647 Riverdale Street, Dearborn Heights, Michigan 48127; and (3) Vicki Lynn Vergeldt 829 Vinewood Street, Birmingham, Michigan 48009.

49. The above named persons are all of sound-mind and full age, and are citizens of the United States.

50. There are no other persons other than those named above who have an interest in the Trust Agreement or in this proceeding.

FOR A SECOND CAUSE OF ACTION

(Probable Cause)

51. Paragraph Eighteenth A of the Trust, in the Tenth Amendment to Trust Agreement, is a “no contest” provision that purports to discourage challenges to the validity of the Trust and challenges to any action taken or proposed to be taken in good faith by the Successor Trustee.

52. However Paragraph Eighteenth D of the Trust, in the Tenth Amendment to Trust Agreement, provides that the terms of Eighteenth A do not apply if there is probable cause for asserting the challenge.

53. Plaintiff has probable cause to challenge the Defendant Trustee’s actions as described hereinabove.

FOR A THIRD CAUSE OF ACTION

(Litigation Costs)

54. All allegations made hereinabove are repeated and realleged herein.

55. Plaintiff is informed and believes that she is entitled to an award from the trust, or from the Defendant Vergeldt’s distribution, for the costs of this action, including reasonable attorney fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court issue its order

A. interpreting and construing Defendant Trustee Vergeldt’s duties and Plaintiff’s rights pursuant to (1) Paragraph Fifth of the Trust Agreement; (2) Paragraph Fourteenth A of the Trust

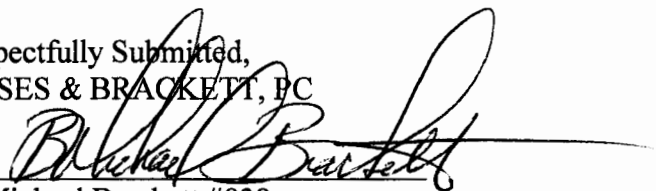
Agreement; (3) Paragraph Fourteenth B as set forth in the Tenth Amendment to Trust Agreement;
and The Michigan Trust Code;

B. declaring that at the time of the institution of these proceedings, Plaintiff had probable cause
to question and to challenge the Defendant Trustee's actions;

C. awarding Plaintiff her litigation costs, including reasonable attorney fees, from trust assets
or from Defendant Vergeldt's final distribution; and

D. granting any such other and further relief as the Court deems just and proper.

Respectfully Submitted,
MOSES & BRACKETT, PC

By: 
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ATTORNEY FOR PLAINTIFF VICKI
LYNN VERGELDT

February 25, 2014

FILED RECEIVED

2014 FEB 28 AM 10: 57

**JUDGE OF PROBATE
YORK COUNTY, SC**

EXHIBIT A

FILED RECEIVED
2014 FEB 28 AM 10:57
JUDGE OF PROBATE
YORK COUNTY, SC

EIGHTH AMENDMENT AND COMPLETE RESTATEMENT

TO TRUST AGREEMENT

between

JOHN VERGELDT, JR.

Settlor

and

JOHN VERGELDT, JR.

Trustee

Bodman LLP
6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226
(313) 259-7777

EIGHTH AMENDMENT AND COMPLETE RESTATEMENT

TO TRUST AGREEMENT

TABLE OF CONTENTS

<u>Paragraph</u>	<u>Title</u>	<u>Page No.</u>
FIRST	FUNDING.....	I-3
SECOND	DEFINITIONS	II-1
THIRD	SETTLOR'S RIGHTS AND SUCCESSION OF TRUSTEE	III-1
FOURTH	ADMINISTRATION OF SETTLOR'S ESTATE	IV-1
FIFTH	FORGIVENESS OF LOANS AND/OR ADVANCES AND ESTABLISHMENT OF RESIDUARY TRUST	V-1
SIXTH	ADMINISTRATION OF RESIDUARY TRUST AND TRUSTS RESULTING FROM THE RESIDUARY TRUST	VI-1
SEVENTH	SUCCESSOR TRUSTEES	VII-1
EIGHTH	TRUSTEE'S POWERS	VIII-1
NINTH	ALIENATION.....	IX-1
TENTH	RULE AGAINST PERPETUITIES.....	X-1
ELEVENTH	ALLOCATION OF ASSETS	XI-1

<u>Paragraph</u>	<u>Title</u>	<u>Page No.</u>
TWELFTH	RESIGNATION OF SUCCESSOR TRUSTEE	XII-1
THIRTEENTH	LIFE INSURANCE PROVISIONS	XIII-1
FOURTEENTH	GENERAL PROVISIONS.....	XIV-1
FIFTEENTH	DISCLAIMER.....	X-1
SIXTEENTH	CONSOLIDATION OF TRUSTS	XI-1
SEVENTEENTH	ENVIRONMENTAL MATTERS	XVII-1
EIGHTEENTH	FORFEITURE	XVIII-1
	SIGNATURE PAGE	XIX-1
	NOTARY	XIX-1

EIGHTH AMENDMENT AND COMPLETE RESTATEMENT
TO TRUST AGREEMENT

THIS EIGHTH AMENDMENT AND COMPLETE RESTATEMENT TO TRUST AGREEMENT dated September 27, 1978 is made this 29th day of July, A.D., 2009, between John Vergeldt, Jr., of the City of Dearborn, County of Wayne, and State of Michigan, hereinafter called the "Settlor"; and John Vergeldt, Jr., hereinafter called the "Trustee". This trust may sometimes be referred to as the "John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978".

W I T N E S S E T H :

WHEREAS, the Settlor desires to completely amend and restate the provisions of the aforesaid Trust Agreement signed by him on September 27, 1978, as amended by Second Amendment and Complete Restatement on June 27, 1990, Third Amendment dated December 23, 1998, Fourth Amendment dated February 22, 2001, Fifth Amendment dated December 10, 2003, Sixth Amendment dated April 26, 2006 and Seventh Amendment dated June 7, 2006, by deleting all of the provisions of said Trust Agreement and Amendments and by substituting the provisions hereinafter set forth; and

WHEREAS, the Trustee is agreeable to the amendments hereinafter set forth.

of 1986, as amended, or such section thereof, as the case may be, as heretofore or hereafter amended or supplemented, or as superseded by laws of similar effect.

E. The term "person" shall mean and include any individual, corporation and/or other legal or business entity.

F. The term "education" shall include all forms of education, including, but not limited to, public or private schools, primary or secondary, college, advanced college or post-college, commercial, technical, business or art education, or otherwise.

G. "EPIC" means the Estates and Protected Individuals Code of the State of Michigan.

H. Whenever this Trust Agreement provides a specific bequest or a devise to an individual, if the individual does not survive the Settlor's death, the bequest or devise shall lapse unless the bequest or devise specifically directs the bequest or devise to pass to the individual's descendants or an alternate taker.

I. If this Trust Agreement refers to "by representation" or "by right of representation", the descendants or issue of a deceased devisee shall receive their share "per stirpes".

J. In the event that any state is determined to be Settlor's heir any distribution that would have been made to the state, but for this provision, shall be added to and distributed as part of the shares being distributed to living individuals.

K. The terms "issue" and "descendants" of a person mean all the lineal descendants of that person of all generations.

L. Use of any gender in this Agreement includes the masculine, feminine, and neuter genders as appropriate. Use of the singular number includes the plural and vice versa unless the context clearly requires otherwise.

M. Use of the verb "shall" in this Agreement indicates a mandatory direction, and use of the verb "may" indicates authorization to take action.

N. Captions, headings, and sub-headings, as used herein, are for convenience only and have no legal or dispositive effect.

O. In the event that any property or interest in property passing under this Agreement (other than as part of the residue) is encumbered by any mortgage, lien, or security interest, or is pledged to secure any obligations, such encumbrance shall not be charged to the residue, but that the devisee or legatee or beneficiary receiving such property or interest in property shall take said property or interest in property subject to all encumbrances existing at the time of Settlor's death.

P. Any generation-skipping tax resulting from a transfer occurring under this Trust Agreement shall be charged to the property constituting the transfer in the manner provided by applicable law.

END

THIRD

SETTLOR'S RIGHTS AND SUCCESSION OF TRUSTEE

A. Settlor reserves the right to use or to direct the payment of any part of or all of the net income and the principal of the trust for Settlor's own benefit during Settlor's entire lifetime. If the Successor Trustee succeeds Settlor as Trustee during Settlor's lifetime by reason of Settlor's mental or physical incapacity, the Successor Trustee shall have the power to apply so much of the net income and the principal of the trust as it shall determine to be necessary for Settlor's health, maintenance and support and the health, maintenance and support of those persons dependent upon Settlor.

B. While Settlor is Trustee, Settlor shall have all of the powers set forth in Paragraph EIGHTH A of this Agreement which Settlor may exercise completely for Settlor's own benefit, in any manner Settlor wishes, and without regard to any restrictions of law or "prudent man" rule which may pertain to investments or other actions of a fiduciary.

C. The Settlor, while acting as Trustee, shall have the exclusive power and authority: (i) to establish and maintain one or more accounts, which may be margin accounts, for the purpose of purchasing, investing in, or otherwise acquiring, selling (including short sales), possessing, transferring, exchanging, pledging, or otherwise disposing of, or turning to account of, or realizing upon, and generally dealing in and with (a) any and all forms of securities, including but not by way of limitation, shares, stocks, bonds, debentures, notes, scrip, participation certificates, rights to subscribe,

options, puts, calls, warrants, certificates of deposit, mortgages, choses in action, evidences of indebtedness, commercial paper, certificates of indebtedness and certificates of interest of any kind and nature whatsoever, secured or unsecured, whether represented by trust, participating and/or other certificates or otherwise; and (b) any and all commodities and/or contracts for the future delivery thereof, whether represented by trust, participating and/or other certificates or otherwise; (ii) to buy, sell and trade in securities of any nature, including short sales, on margin, and for such purposes may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased with such brokers as security for loans and advances made to the Trustee; (iii) to pledge or mortgage trust property as collateral for any personal or business loans of Settlor, or for the benefit of any other person or entity designated by Settlor and to guarantee the repayment of such loans; (iv) to employ investment counselors and investment advisors and to grant them complete discretion to invest for and on behalf of the trust without any restrictions; (v) to delegate to any agent of Settlor's choice by power of attorney or otherwise, the conducting of banking activities for Trustee, or the hiring, cancellation or use of entry of safe deposit box or other storage facilities in the name of Trustee; and (vi) to appoint (and remove or change) during Settlor's lifetime a Co-Trustee to serve during Settlor's lifetime with all of the powers, duties and obligations of the Trustee and the decisions of the Co-Trustee made during Settlor's lifetime shall be binding upon the trust as if made by Settlor as Trustee. Said power and authority shall be peculiar to Settlor while acting as Trustee

and shall not pass to Settlor's successors in trust, except to the extent such power and authority is set forth in other provisions of this Trust Agreement.

D. The Settlor reserves unto Settlor the right to revoke or amend this Agreement in whole or in part, at any time, upon written notification to that effect, duly executed by the Settlor and delivered to the Trustee; provided, that the duties, responsibilities, and liability of the Trustee hereunder shall not be increased without the Trustee's written consent. The right of revocation or amendment shall be personal to Settlor and may not be exercised by any other person acting for Settlor. This Trust Agreement shall become irrevocable upon Settlor's death.

E. The Successor Trustee shall succeed Settlor as Trustee in the event a guardian is appointed for Settlor by a court of competent jurisdiction or if Settlor's primary care physician renders the written opinion that Settlor, by reason of physical or mental infirmity, has become incapacitated to the extent that Settlor is unable to act in Settlor's own behalf. The Successor Trustee may at any time and for any reason determine that Settlor is no longer incapacitated and, upon such determination or upon the restoration of Settlor to full capacity by court order, Settlor shall again act as Trustee and shall have all of the powers Settlor possessed prior to the appointment of a guardian for Settlor or the determination of Settlor's incapacity, as the case may be.

F. Any Successor Trustee to Settlor shall not be liable or responsible in any way for its determinations as to Settlor's capacity or incapacity so long as it acts

in good faith. The Successor Trustee shall always give first consideration to the needs of the Settlor.

END

FOURTH

ADMINISTRATION OF SETTLOR'S ESTATE

A. Upon the death of Settlor, the Successor Trustee, if not then in possession of the trust estate, shall succeed to such property and take possession thereof and shall hold, administer and dispose of the trust estate (together with any undistributed income and any accrued income not received at Settlor's death), as hereinafter set forth.

B. The Successor Trustee shall have the power to purchase any securities or other property belonging to the estate of the Settlor at the then fair market value, and to loan the personal representative of the Settlor's estate, in such amount as the Successor Trustee may deem necessary or advisable to protect and conserve the assets of the Settlor's estate, out of the principal of the trust, other than from: any assets or the proceeds thereof which are not included in Settlor's estate for federal estate tax purposes. Such loans may be secured or unsecured. The Successor Trustee shall not be liable for any losses suffered by the trust estate as a result of its exercise of the powers created in this Subparagraph.

C. To the extent that United States Treasury Bonds held in the trust are redeemable at par in payment of federal estate tax payable by reason of Settlor's death, the Successor Trustee shall apply the redemption proceeds of such bonds in payment of the federal estate tax, anything contained in this Agreement or Settlor's Will to the contrary notwithstanding. To the extent that other property from sources other than the trust is not available to provide the necessary funds, the Successor Trustee

may, in its discretion, pay Settlor's funeral and burial expenses, any allowances by court order for those dependent upon Settlor, administration expenses of Settlor's estate, legally enforceable claims against Settlor or Settlor's estate, federal estate tax remaining after redemption proceeds of United States Treasury Bonds are applied and all inheritance, succession and estate taxes payable by reason of Settlor's death (except generation-skipping taxes and those other taxes which Settlor's personal representative is precluded from paying by reason of Settlor's Will), together with any interest thereon or other additions thereto; provided, however, no such payments shall be made from any assets or the proceeds thereof which are not included in Settlor's estate for federal estate tax purposes. No reimbursement shall be secured from any person for any payments so made. The Successor Trustee may make these payments directly or to Settlor's personal representative. The Successor Trustee may rely upon written statements of Settlor's personal representative as to all facts relating to these payments.

D. Upon Settlor's death, the Successor Trustee shall distribute Settlor's tangible personal possessions (other than any investment assets and other than any cash on hand or on deposit by Settlor) located in Settlor's residence at Henry Ford Village, as follows:

1. Each of Settlor's children shall be given the opportunity to choose items that they would like to receive.

2. After Settlor's children have each taken the items they desire if there are any remaining items, each of Settlor's grandchildren shall be given an opportunity to choose items they would like to receive.

3. If there are any items remaining, the Successor Trustee shall dispose of such items as the Successor Trustee deems reasonable.

In the event a dispute over an item arises between the children or grandchildren, Settlor desires that all disputes be settled by the flip of a coin.

END

FIFTH

FORGIVENESS OF LOANS AND/OR ADVANCES AND
ESTABLISHMENT OF RESIDUARY TRUST

A. Settlor hereby forgives any loans and/or advances (which have not been repaid) which Settlor has made prior to the date of this Eighth Amendment and Complete Restatement to any of Settlor's children and Settlor directs that the amount of such loans and/or advances (which have not been repaid) shall not reduce any devise or bequests that such child of Settlor is entitled to receive pursuant to this Trust Agreement or any amendments to this Trust Agreement. Provided, however, to the extent that any child of Settlor shall receive from Settlor on or after the date of his Eighth Amendment and Complete Restatement cumulative gifts and/or advances (which have not been repaid) in excess of the cumulative gifts and/or advances (which have not been repaid) to the child of Settlor who has received the least amount of cumulative gifts and/or advances (which have not been repaid) from Settlor on or after the date of this Eighth Amendment and Complete Restatement, that excess shall reduce the devise or bequest that such child who received the excess is entitled to receive under this Trust Agreement or any amendments to this Trust Agreement; provided further, the reduction shall only be to the extent there has not been a full reduction under Settlor's Will.

B. After the Settlor's death and subject to the foregoing, all of the rest, residue and remainder of the trust estate, including any lapsed or disclaimed legacies or

devises, shall be held, administered and distributed from the Residuary Trust in accordance with the provisions of Paragraph SIXTH.

END

SIXTH

ADMINISTRATION OF RESIDUARY TRUST

AND TRUSTS RESULTING FROM THE RESIDUARY TRUST

A. After the death of Settlor, and if this trust at said time owns (or will own pursuant to Settlor's Will) real property described as Lots 3, 4, 5, 6, 7 and 8 of Block 5 of Wallace and Orr Park Subdivision, Town 19 North, Range 7 East, Sims Township, Arenac County, Michigan (hereinafter called the "Cottage") and any tangible personal property located in or about the Cottage, then:

1. The Successor Trustee shall allocate from the Residuary Trust to a separate trust, to be known as the "Cottage Trust", the Cottage together with the tangible personal property located in or about the Cottage at the date of Settlor's death and the sum of fifty thousand and 00/100 (\$50,000.00) dollars less any amount set aside with John Edward Vergeldt for the purpose of maintaining the Cottage. The income and principal of the Cottage Trust shall be used to pay all expenses that accrue in connection with the Cottage, including real estate taxes, fire and extended coverage and liability insurance, repairs, utilities and any other expenses related to the ownership and maintenance of the Cottage. The Cottage Trust shall continue until the death of the last surviving child of Settlor or until the Cottage is disposed of in accordance with the provisions of this Paragraph SIXTH A.

2. The Cottage shall be sold upon the occurrence of either of the two (2) following events:

(a) There are no assets in this Trust to pay for the expenses described in 1 above and the individuals who are using the Cottage do not agree to pay said expenses; or

(b) Ten years after the creation of the Cottage Trust and a majority of Settlor's then living children elect to have the Cottage sold or if there is a deadlock between Settlor's children as to whether the Cottage should be sold. In all events John Edward Vergeldt shall have two (2) votes and the other children shall each have one (1) vote.

(c) In the event the decision is made to sell the Cottage, Settlor's children and grandchildren shall have the first option to purchase the Cottage. If none of Settlor's children or grandchildren desires to purchase the Cottage, then Linda Anne Zumner shall be given the option to purchase the Cottage. If Linda Anne Zumner does not wish to purchase the Cottage, then it shall be sold to any willing purchaser. In all events the Cottage is to be sold for fair market value.

3. The use of the Cottage shall be controlled by the Cottage Use Agreement dated August 13, 2008, as it may be amended from time to time. During Settlor's lifetime, Settlor shall have exclusive authority over all matters related to the Cottage. After Settlor's death, the Successor Trustee shall have exclusive authority to settle any disputes that may arise with respect to the Cottage, the maintenance of the Cottage and the use of the Cottage.

Upon the sale of the Cottage, the Cottage Trust shall terminate and the assets of the Cottage Trust shall be added to the Residuary Trust and held, administered and disposed of in accordance with Paragraph SIXTH B below but shall be divided in accordance with Paragraph SIXTH B as if the date of the sale was substituted for Settlor's death.

B. After the death of Settlor, the Successor Trustee shall distribute the sum of six thousand (\$6,000.00) dollars, free and discharged from the trust hereof, to each grandchild of Settlor who survives Settlor and shall divide the balance of the assets of the Residuary Trust into equal shares, one share for each of Settlor's children. If any child of Settlor shall predecease Settlor (other than Settlor's daughter, Patricia A. Vergeldt Downey), said child's share shall be distributed as follows: one-half (1/2) to Settlor's child's spouse, if then living, Settlor's child was married to him or her at the date of his or her death and there was no divorce proceeding pending at the date of his or her death, and the other one-half (1/2) (or all if there is no surviving spouse who meets said conditions) shall be divided equally between Settlor's then living children. If Settlor's daughter, Patricia A. Vergeldt Downey, shall not survive Settlor, then her share shall be distributed, as follows. The Successor Trustee shall distribute from the share of Settlor's daughter, Patricia A. Vergeldt Downey, the sum of ten thousand (\$10,000.00) dollars to Settlor's daughter's spouse, James Downey, if then living, if he was married to Settlor's daughter at the date of her death, there was no divorce proceeding pending at the date of her death and the assets of the residuary estate have a fair market value at the date of Settlor's death of at least five hundred thousand (\$500,000.00) dollars and

the balance shall be divided equally between Settlor's then living children. The part so set aside for Settlor's children and spouses of deceased children shall forthwith be assigned, transferred, conveyed and paid over to them free and discharged from the trust hereof. The part so set aside for the descendants of any of Settlor's children (other than the specific bequest of six thousand (\$6,000.00) dollars) shall, in the discretion of the Successor Trustee, either be distributed to a Uniform Transfers to Minors Act account to age twenty-one (21) or to a trust described in Paragraph SIXTH C, if the descendant has not attained age thirty (30), or otherwise shall forthwith be assigned, transferred, conveyed, and paid over to said descendants free and discharged from the trust hereof.

C. If at the time herein provided for the distribution of the principal of any trust created by or administered under this Paragraph SIXTH there shall be no beneficiary herein designated then living, the trust shall immediately terminate and the remaining trust estate shall be divided equally between Settlor's then living grandchildren and, subject to Paragraph SIXTH D, be distributed to them outright.

D. Unless the Successor Trustee elects the Uniform Transfers to Minors Act to age twenty-one (21), in the event the descendants of any of Settlor's children shall not have attained the age of thirty (30) years at the time he or she is entitled to participate in Settlor's estate, the Successor Trustee shall hold and administer the share of such person (other than the specific bequest of six thousand (\$6,000.00) dollars which shall be distributed outright to each of Settlor's grandchildren) until he or she shall have attained such age and during such period shall pay to or for

the benefit of such person so much of the income and principal of his or her share, as it, in its sole and uncontrolled discretion, shall determine in order to provide for his or her health, support, maintenance and education. Any unexpended portion of the annual net income of such share shall be retained as principal. When such person attains the age of thirty (30) years or upon his or her death, whichever first occurs, the entire share of such person and any accumulations of income shall be transferred and delivered over to him or her or to his or her estate without reservations of any kind.

E. After the death of Settlor, the Successor Trustee may assign, transfer, convey and pay over to the then income beneficiaries, in equal shares if there is more than one income beneficiary, the entire body or corpus of his or her trust estate free and discharged from the trust hereof, in which event any remaindermen shall not be considered as having a vested interest in the trust estate so conveyed to such income beneficiaries, thereby terminating the trust, when in the uncontrolled discretion of the Successor Trustee it might become expedient or advisable to do so for the following reasons or any other reason whatsoever which the Successor Trustee may deem sufficient: (1) changes in the political, economic, or social order in the United States, (2) legislation, regulation or court decisions detrimental to any trust or trusts hereunder, or any beneficiary thereof, (3) lack of availability of suitable trust investments for an extended period, (4) insufficient principal to justify the expense of continuing the trust's existence, or (5) other events which do or may tend to greatly impair the intent and purpose of this instrument.

END

SEVENTH
SUCCESSOR TRUSTEES

If John Edward Vergeldt shall die or resign or be unwilling or unable to act as a Successor Trustee, then the following persons shall be substituted in his place and stead in the following order: (1) Settlor's daughter, Vicki Lynn Vergeldt; and (2) Settlor's daughter, Patricia A. Vergeldt Downey.

END

EIGHTH
TRUSTEE'S POWERS

A. The Trustee shall have the following general powers and is authorized to:

(1) Enter upon and take possession of the trust estate, to collect the income and profits therefrom, and to invest and reinvest the estate in real, personal or mixed assets in accordance with its judgment, including interests in any amounts in common trust funds maintained by the Trustee, without being limited by any present or future investment law;

(2) Vote in person or by proxy with respect to any and all securities, and carry in its name or in the name of its nominee or nominees, and with or without designation of fiduciary capacity, securities or other property requiring or permitting registration;

(3) Retain all property in the form in which the same shall be received or acquired by it without liability for any loss that may be incurred thereby, and without regard to the proportion that any one asset or class of assets may bear to the whole;

(4) Allocate between income and principal all receipts and disbursements in accordance with sound trust accounting principles;

(5) Sell real or personal property, or both, either for cash or part cash and part deferred payments and at public or private sale, and option, convey, exchange, lease and release for any length of time, mortgage, pledge, partition,

plat, sub-divide, improve, repair, surrender, abandon or otherwise deal with or dispose of all of the trust estate, or any part thereof, at such time or times and in such manner, either public or private, and upon such terms as in the discretion of the Trustee may seem expedient and proper;

(6) Borrow money on the general credit of any trust or trusts, or by pledge or mortgage of any of the trust property as security for the repayment thereof, and to renew from time to time any such indebtedness;

(7) Prosecute and defend and, in the exercise of its sole discretion, which shall be binding on all interested parties, to compromise, settle or abandon claims by or against the trust and the trust estate;

(8) Make, execute and deliver any and all such instruments in writing as shall be necessary and proper to carry out any disposition whatever of any trust property;

(9) Make any distributions of income or principal, whether before or after the beneficiary attains age eighteen (18), in the Trustee's discretion, (i) directly to the beneficiary, (ii) if the beneficiary is under a legal disability or if the Trustee determines that the beneficiary is unable to properly manage his or her affairs, to a person furnishing support, maintenance or education for the beneficiary or with whom the beneficiary is residing or to any person having legal or actual custody of the beneficiary, or to the guardian or conservator of the beneficiary, or to any trustee appointed by a court for the benefit of a beneficiary, or to any institution attended by the beneficiary, for expenditure on the

beneficiary's behalf, or (iii) if the beneficiary is a minor, to a custodian for the beneficiary as selected by the Trustee (who may be the Trustee) for the beneficiary under a Uniform Transfers (Gifts) to Minors Act until age twenty-one (21) or similar applicable law, or (iv) in any manner whereby it may reasonably be expected that the funds will be expended for the benefit of and on behalf of the beneficiary, and the Trustee shall be under no duty to audit the use of such funds.

(10) Allocate different kinds or disproportionate shares of property or undivided interests in property among the trusts herein or the beneficiaries thereof;

(11) Enter into any transaction with the personal representative of Settlor's estate without the necessity of the consent or approval of any interested person or a court, and enter into any transaction with the trustee of any trust or the personal representative of any other estate in which any beneficiary or distributee has any interest, even though the Trustee also is the other trustee or personal representative;

(12) Continue any business (other than a profession) of Settlor so long as it shall deem it to be in the best interests of the beneficiaries and exercise all powers with respect to such business which Settlor could exercise if living;

(13) Disclaim, in whole or in part, any disclaimable interest as defined in the applicable law; and

(14) Exercise all of the powers and authority provided by applicable law.

B. Certain elections afforded by the Internal Revenue Code may be exercised only by the person who is the "executor" within the meaning of the Internal Revenue Code. The Successor Trustee shall exercise those powers enumerated below, which under the applicable provisions of the Internal Revenue Code may be exercised only by the executor, only if the Successor Trustee is also the "executor" within the meaning of the Internal Revenue Code. Subject to the limitation expressed in the preceding sentences, the Successor Trustee shall have the power to: (1) elect to claim expenses or losses as either income or estate tax deductions; (2) elect, to the extent permitted by the Internal Revenue Code, to defer the payment of all or part of the Settlor's estate taxes; (3) exclude from or include in the Settlor's gross estate, any asset, in the first instance, for federal estate tax purposes; (4) value all assets, in the first instance, for federal estate tax purposes, using date of death or alternate values as the Successor Trustee shall elect; (5) elect to value qualified real property at its value for the use under which it qualifies and enter into any agreements required by such election; (6) elect to have gain or loss recognized on distribution of property in kind under Internal Revenue Code Section 643(e)(3); (7) elect to make, continue or revoke any election to be taxed under Subchapter S of the Internal Revenue Code with respect to any securities eligible for such an election; (8) elect to allocate the Settlor's unused generation-skipping tax exemption; and (9) elect to exercise or not to exercise any other option or election afforded by the Internal Revenue Code unless Settlor has specifically given directions with respect to such matter.

C. Notwithstanding any provision herein to the contrary, with respect to any trust administered under this Trust Agreement no Trustee or Successor Trustee (hereafter called the "Trustee") shall have the power to use or apply trust property (i) for the support and maintenance of anyone the Trustee is obligated to support and maintain, or (ii) for the purpose of directly or indirectly discharging the personal legal obligations of that Trustee or of any beneficiary with respect to any other person, nor shall any Trustee who is also a beneficiary of any trust administered under this Trust Agreement have the power, as Trustee, to make discretionary distributions to him or herself except (if expressly permitted by this instrument) to the extent necessary for such Trustee's health, education, support and maintenance as described under Internal Revenue Code Sections 2041 and 2514 (concerning powers of appointment and ascertainable standards), and such beneficiary-Trustee shall exercise its Trustee powers solely in a fiduciary capacity and shall possess no powers that would otherwise permit that beneficiary-Trustee to enlarge or shift any of the beneficial interests (except as an incidental consequence of the discharge of such fiduciary duties); and to the extent a beneficiary-Trustee has the authority to make discretionary distributions of income and/or principal to another beneficiary from a trust administered under this Trust Agreement that the beneficiary-Trustee is also a beneficiary thereof, such distributions shall be limited by an ascertainable standard related to the distributee beneficiary's health, education, support and maintenance. No beneficiary-Trustee shall possess any power or discretion that is "conclusive," "sole," "absolute" or "uncontrolled" with respect to the exercise or non-exercise of such power or discretion; and such beneficiary-

Trustee's power or discretion in that regard shall at all times be exercised or not exercised in a reasonable manner, be limited by a reasonably definite standard, and shall be subject to review and judicial scrutiny. Notwithstanding the foregoing, this provision shall not apply to Settlor while Settlor is serving as Trustee.

D. Notwithstanding any other provision of this Trust Agreement to the contrary, the following provisions under this Paragraph EIGHTH D shall apply upon the death of the Settlor:

1. If a trust held under this instrument would otherwise be partially exempt from generation-skipping tax ("GST") due to the intended allocation of a GST exemption to it (as used in this instrument, the "GST exemption" means the exemption from generation-skipping tax allowed under Section 2631 of the Internal Revenue Code), then, before such allocation and as of the relevant valuation date under Section 2642 of the Internal Revenue Code with respect to such allocation, the Successor Trustee may (but need not) divide that trust (the "original trust") into two separate trusts of equal or unequal value which shall be identical in all other respects to the original trust, so that the allocation of GST exemption can be made to one trust which will be entirely exempt from generation-skipping tax. The two trusts created under this Paragraph EIGHTH D 1 shall have the same name as the original trust except that the trust to which the GST exemption is allocated shall have the phrase "GST Election" added to its name.

2. If property which is held in, or is to be added or allocated to, a trust pursuant to this instrument is subject to different treatment for any reason for purposes of the generation-skipping tax under Chapter 13 of the Internal Revenue Code than other property being added or allocated to, or also held in, that trust, then the Successor Trustee may (but need not) hold such property instead as a separate trust that is appropriately designated to distinguish it from the trust to which the property otherwise would have been allocated, but that is identical in all other respects to that trust.

3. It is the Settlor's intent that the Successor Trustee shall not be required to administer a trust hereunder that is only partially exempt from generation-skipping taxes, or to commingle property subject to different treatment for generation-skipping tax purposes whether because the transferors with respect to the property are assigned to different generations or otherwise. The provisions of this Paragraph EIGHTH D are intended to enable the Successor Trustee to avoid such situations by empowering the Successor Trustee to segregate trust property (a) that is entirely exempt from generation-skipping tax from trust property that is not exempt, or (b) that is otherwise treated differently from other trust property for purposes of the generation-skipping tax, and the provisions of this Paragraph EIGHTH D shall be applied in a manner consistent with this intention.

4. To the extent it is consistent with the Successor Trustee's fiduciary obligations, the Successor Trustee, in making discretionary distributions of net

income and principal from the trusts referred to in this Paragraph EIGHTH D, shall take advantage of the opportunities provided by the creation of such trusts to avoid or delay generation-skipping tax when making discretionary distributions, and to maximize the amount of trust property that eventually may be distributed to the Settlor's grandchildren or more remote descendants without transfer tax of any kind at the termination of all trusts created under this Agreement.

5. For purposes of dividing trusts under this Paragraph EIGHTH D, the Successor Trustee shall select property in a manner that the assets of each trust will have an aggregate fair market value fairly representative of each trust's proportionate share of the appreciation or depreciation in the value (from the values as finally established for federal estate tax purposes) to the dates of allocation of all property then available for allocation.

6. Any person may add property to any trust hereunder, with the consent of the Successor Trustee, and such property shall thereafter be held by the Successor Trustee as a part thereof. However, no property shall be added to a trust if such addition would cause the inclusion ratio of such trust to become other than zero (0), and such property shall be held as a separate trust with terms identical to those of the trust to which the property would have been added.

7. For purposes of this Paragraph EIGHTH D, a separate share shall be treated as a separate trust.

E. Notwithstanding anything contained in this Trust Agreement to the contrary, upon Settlor's death, the Successor Trustee may appoint (and remove and substitute) Independent Investment Advisor(s) (herein collectively referred to as the "Advisor") under this Trust Agreement and if so appointed the Successor Trustee shall exercise investment powers only on the written direction of the Advisor to the trust. Provided, however, if at any time during the continuance of any such trust there shall be no Advisor of such trust, or if the Advisor of such trust shall fail to communicate in writing to the Successor Trustee the Advisor's direction as to the exercise of any of the aforesaid powers for which exercise the direction of such Advisor shall be necessary, within twenty (20) days after the Successor Trustee shall have sent to such Advisor, by certified mail, at the Advisor's last known address(es), a written request for such direction (notwithstanding that the Successor Trustee shall be under no obligation to request any such direction), then the Successor Trustee is hereby authorized and empowered to take such action in the premises as it, in its sole discretion, shall deem to be for the best interest of the beneficiaries of such trust, and shall be relieved of any and all liability for losses incurred thereby. The Advisor shall be reimbursed for out-of-pocket expenses and reasonable investment counsel fees. The Successor Trustee is relieved of any and all liability for losses incurred as a result of obeying the Advisor's investment directions.

F. The Trustee may register this trust in accordance with Section 700.7101 of EPIC.

G. The Successor Trustee is authorized (but not required) to make distributions from the trust estate to the Guardian(s) of any trust beneficiary, or to the person(s) acting in such capacity to any trust beneficiary (all such being collectively referred to as the "Custodian"), for the following purposes, taking into account the funds available in the trust estate:

1. Reimbursement of the Custodian for traveling to and from the place of the beneficiary's last residence and to the Custodian's place of residence for the purpose of making arrangements for and the actual transportation of the beneficiary to the Custodian's place of residence.

2. Allowance to the Custodian in such amount as the Successor Trustee deems advisable after consultation with the Custodian for the added expenses occasioned by the beneficiary's residence with the Custodian.

3. If the Custodian's residence is inadequate to handle the addition of the beneficiary, the Successor Trustee may, in its sole discretion, disburse and/or loan to the Custodian upon such terms of repayment as the Successor Trustee deems appropriate, money to assist the Custodian in remodeling or expanding the Custodian's then present residence or to purchase a more suitable residence.

4. If the Custodian's family car/van is not adequate in size to accommodate the addition of any beneficiary, the Successor Trustee may, in its sole discretion, disburse and/or loan to the Custodian money to assist the Custodian in purchasing a new and larger car/van.

5. The Successor Trustee may advance to the Custodian the cost of any educational expense committed to on behalf of any beneficiary hereunder. These expenses shall include tuition, room and board, books, related expenses, extracurricular seminars and other expenditures which in the opinion of the Successor Trustee would further and broaden the educational opportunities available to the trust beneficiary.

H. Notwithstanding anything else contained in this Agreement to the contrary, if there is capital stock of a "small business corporation", as defined in Section 1361(b) of the Internal Revenue Code, allocable to or comprising a part of the principal of any trust created under this Trust Agreement, then, if such "small business corporation" is an "S corporation" as defined under Section 1361(a)(1) of the Internal Revenue Code, because an election had previously been made under Section 1362(a) of the Internal Revenue Code, there is only one current income beneficiary and the current income beneficiary indicates his or her willingness in writing to consent to such election, the Successor Trustee shall allocate all the capital stock of such "small business corporation" to a separate trust for the benefit of such beneficiary, or prior to making an election under said Section 1362(a) the Successor Trustee, if it has determined to make such an election and the current income beneficiary indicates his or her willingness in writing to consent to such an election, shall either allocate or sever the capital stock of such "small business corporation" from such trust and allocate the capital stock to a separate trust for the benefit of such beneficiary. The trust created hereunder shall be known as the "Qualified Subchapter S Trust FBO" said beneficiary.

The following terms and conditions of such trust shall supplement or override, if to the contrary, any other terms and conditions contained elsewhere in this Trust Agreement to the trust for the benefit of the then current income beneficiary.

1. All income, within the meaning of Section 643(b) of the Internal Revenue Code, of the trust shall be distributed to the current income beneficiary while the small business corporation is an "S corporation";

2. During the lifetime of the current income beneficiary, the income and principal of the trust may be distributed only to the current income beneficiary or, while the current income beneficiary is under any legal disability, may be paid by the Successor Trustee to any court appointed guardian or similar appointee with respect to such legally disabled current income beneficiary;

3. The income interest of the current income beneficiary shall terminate on the earlier of the beneficiary's death or the termination of the trust;

4. Upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary; and

5. The trust's terms and conditions, not to the contrary that would otherwise apply if this trust was not created, shall control the administration and disposition of any trust created hereunder.

1. Notwithstanding anything else contained in this Agreement to the contrary, if there is capital stock of a "small business corporation", as defined in Section 1361(b) of the Internal Revenue Code, allocable to or comprising a part of the principal

of any trust created under this Trust Agreement, then, if such "small business corporation" is an "S corporation" as defined under Section 1361(a)(1) of the Internal Revenue Code, because an election had previously been made under Section 1362(a) of the Internal Revenue Code, and there are two or more current income beneficiaries or the sole current income beneficiary indicates his or her unwillingness to consent to such election, or the trust does not otherwise qualify for qualified subchapter S tax treatment, the Successor Trustee may allocate all the capital stock of such "small business corporation" to a separate trust for the benefit of such beneficiary, or prior to making an election under said Section 1362(a) the Successor Trustee, if it has determined to make such an election and there are two or more current income beneficiaries or the current income beneficiary indicates his or her unwillingness to consent to such an election, or the trust does not otherwise qualify for qualified subchapter S tax treatment, may either allocate or sever the capital stock of such "small business corporation" from such trust and allocate the capital stock to a separate trust for the benefit of such beneficiary. The trust created hereunder shall be known as the "Electing Small Business Trust FBO" said beneficiary(ies). At any time while there shall be in place a valid election to administer the trust as an Electing Small Business Trust ("ESBT"), the Successor Trustee shall not be permitted to take any action, other than an express revocation of the trust's ESBT election, which would result in the trust failing to qualify as an ESBT pursuant to Section 1361(e) of the Internal Revenue Code and the Regulations promulgated thereunder, and in furtherance thereof the following shall be observed:

1. The trust shall not have as a current beneficiary any person other than an individual, an estate, or an organization described in paragraphs (2), (3), (4) or (5) of Section 170(c) of the Internal Revenue Code.

2. No interest in the trust shall be acquired by purchase.

3. An election under Section 1361(e)(3) of the Internal Revenue Code shall be made by the Successor Trustee and shall be in effect for the trust.

4. The trust shall not have a number of "potential current beneficiaries", as defined in Section 1361(e)(2) of the Internal Revenue Code, which would cause the corporation(s) whose stock is owned by the trust, to exceed the numerical shareholder limitation imposed upon such corporation(s) at any time by Section 1361(b) of the Internal Revenue Code.

J. Notwithstanding any provisions to the contrary contained in this Trust Agreement, the Successor Trustee shall be subject to the following restrictions, duties and obligations for any beneficiary of any trust receiving or entitled to receive government assistance or aid:

1. The Successor Trustee shall, in its sole and absolute discretion, expend principal or income for the needs of the beneficiary not otherwise provided for by government financial assistance and benefits or by the providers of the services. Such needs include, by way of description and not by way of limitation, additional food, clothing, health services not provided, radios, record players, television sets, camping, vacations, athletic contests, movies or trips; provided, however, that the Successor Trustee is under no obligation to expend

ELEVENTH
ALLOCATION OF ASSETS

The Successor Trustee may make any division or allocation in cash or in kind, and as to any property incapable of exact division, it shall not be necessary for the Successor Trustee to divide the same physically into parts to which each trust shall be entitled, but individual parts thereof may, by appropriate book entries, be allocated among the trusts. In any case where exact division of property or allocation of undivided interests therein between or among the other trusts hereunder is not practical or expedient, the Successor Trustee may select assets to be appropriated in whole or in part to any of said trusts.

END

TWELFTH

RESIGNATION OF SUCCESSOR TRUSTEE

A. The Successor Trustee of a trust may resign by written notice setting forth the effective date thereof delivered personally or sent by registered mail, at least thirty (30) days prior to said effective date, to each of the ascertained and then living beneficiaries of the trust to or for whom income may currently be paid or used, or their guardians, addressed to the last known address of such person as disclosed by the resigning Successor Trustee's records.

B. Except as otherwise provided in Paragraph SEVENTH, within twenty (20) days after the delivery or mailing of such notice of resignation, a majority of such adult beneficiaries, or a majority of the guardians of minor beneficiaries, if there are no adult beneficiaries, shall select a corporate successor to the resigning Successor Trustee and shall in writing, signed by a majority of the beneficiaries or their guardians, whichever is applicable, inform the resigning Successor Trustee of the identity of the selected corporate successor to the resigning Successor Trustee. If the beneficiaries shall fail to select a corporate successor to the resigning Successor Trustee within the twenty (20) day period or if there are no adult beneficiaries and a majority of the minor beneficiaries do not have guardians, then the resigning Successor Trustee shall select a corporate successor.

C. The resigning Successor Trustee, upon the effective date of its resignation, shall deliver to its successor and to each such beneficiary of the trust a statement of all receipts and disbursements of the trust together with an inventory of the

assets belonging to the trust. When the successor shall deliver its receipt for the assets of each of the trusts to the Successor Trustee so resigning, the latter shall stand and be discharged of all of its duties and obligations hereunder.

D. Each and every successor to the original Successor Trustee shall have the identical powers, rights, duties and obligations of the original Successor Trustee named in this Agreement unless otherwise provided herein.

END

THIRTEENTH

LIFE INSURANCE PROVISIONS

A. The Settlor shall pay all premiums or assessments on any life insurance policies on Settlor's life made payable to this trust. The Trustee shall be under no obligation to see that said premiums or assessments are paid or to pay the same, and shall be under no obligation in respect to the policies deposited hereunder other than for their safekeeping, except to the extent expressly provided herein. Nothing herein contained shall be deemed to impose any obligation on the Settlor to maintain any or all of said policies in force. If, at any time, and so long as, the only assets held by the Trustee are insurance contracts or beneficiary designations under employee benefit plans and cash of nominal amount, the Trustee shall be under no duty or obligation to invest and/or keep invested such cash of nominal amount.

B. The Settlor reserves unto Settlor during Settlor's lifetime, all incidents of ownership, payments, dividends, surrender values and benefits of any kind which may accrue on account of any of the policies of life insurance on Settlor's life made payable to this trust, under this Agreement, and the right at any time to assign, pledge or use said policies or any of them or to change the beneficiary thereof, and to borrow money thereon; and the Settlor shall have the right and power at any time to withdraw from the possession of the Trustee any and all policies of life insurance deposited with the Trustee hereunder, upon the execution and delivery to said Trustee of a proper receipt therefor.

C. No insurance company who shall make payment of insurance proceeds to this trust shall be required to inquire into or take notice of any of the provisions of this Agreement or to see to the application or disposition of the proceeds of said policies, and the receipt of the Successor Trustee to any such insurance company shall be effectual to release and discharge them for any payment so made and shall be binding upon every beneficiary of the trusts hereby created.

D. The Successor Trustee shall use its best efforts to collect the proceeds of any life insurance policies that are payable to this trust, or may, at its option, exercise any of the options of settlement that may at that time be available to the Successor Trustee under the terms of any of said policies. The Successor Trustee may institute any proceedings at law or in equity in order to enforce the payment thereof, it being distinctly understood, however, that the Successor Trustee shall not, except at its option, enter into or maintain any litigation to enforce the payment of said policies until it has been indemnified to its satisfaction against all expenses and liabilities to which it may, in its judgment, be subjected by any such action on its part. The Successor Trustee is authorized to compromise and adjust claims arising out of the insurance policies or any of them, upon such terms and conditions as it may deem just, and the decision of the Successor Trustee shall be binding and conclusive upon all persons and corporations interested therein. The Successor Trustee shall be responsible for the proceeds of the insurance only when, as and if collected or paid to it, and the Successor Trustee shall not be liable to anyone if for any reason the policies shall lapse or be otherwise uncollectible in whole or in part.

E. An instrument in writing completely terminating the trust shall, without more, upon delivery to the Trustee, completely terminate all of this trust's right, title and interest to insurance proceeds otherwise payable to it. The Settlor assumes full responsibility for changing the insurance beneficiary designations to reflect Settlor's intent with respect to such policies.

F. Anything contained in this Trust Agreement to the contrary notwithstanding, the Trustees (and Successor Trustees) of each trust hereunder, other than any individual Trustee or individual Successor Trustee (except Settlor) whose life may be insured under the life insurance policy in question, shall have and, in their sole discretion, may exercise all of the incidents of ownership in each and every policy of life insurance which may at any time be owned or purchased by such trust. The term "incidents of ownership" with respect to a policy shall include, by way of illustration and not limitation, the right to collect, receive, and retain all payments, dividends, surrender values, sickness, accident, disability, retirement, or other benefits, including all death benefits, maturing on such policy during the insured's lifetime and thereafter, as well as the right to at any time transfer, assign, sell, pledge, hypothecate, borrow on, surrender, prepay, convert, divide, change the beneficiary of, and/or exercise or select any options, elections, and waivers with respect to such policy. All other provisions of this Trust Agreement to the contrary notwithstanding, any individual Trustee or individual Successor Trustee (except Settlor) whose life is insured under a trust owned policy shall under no circumstances be entitled to partake in any way in decisions relating to such policy or in the exercise of any of the foregoing powers or discretions with respect to

such policy (and in the absence of another then acting Trustee or Successor Trustee no incidents of ownership as to such policy shall be exercised).

1. The payment of premiums on each policy owned by any trust hereunder shall be charged against the principal of that trust unless the Trustees or Successor Trustees of such trust (other than any (except Settlor) who might be financially affected thereby), in the exercise of reasonable discretion, shall determine to charge such premiums against the income of such trust on the basis of that being in the best interests of the present and future beneficiaries of such trust.

2. Furthermore and also notwithstanding all other provisions of this Trust Agreement, if any insurance on the life of a beneficiary of a trust hereunder is an asset of such trust, such insurance and all proceeds thereof, unless held by the original trust hereunder, shall be excluded from the assets which might otherwise be subject to any use, enjoyment, withdrawal, or appointment by that beneficiary (and on such beneficiary's death such proceeds shall be disposed of as though any power of appointment held by such beneficiary had not been exercised).

END

FOURTEENTH
GENERAL PROVISIONS

A. The Successor Trustee shall have the entire care and custody of all of the assets comprising principal of the trusts hereunder and shall keep the assets safe in accordance with the requirements of like fiduciaries and shall maintain full and accurate records of assets, receipts and disbursements and other financial transactions relative to each trust, all of which shall be available for inspection at any reasonable time by any and all beneficiaries.

B. The Successor Trustee shall furnish at least annually, to the beneficiary or beneficiaries to whom income is currently payable or for whose benefit it may currently be expended, a complete inventory of the assets held in the trust for such beneficiary and shall furnish at least annually, or at such other periodic intervals as may be agreed upon between the Successor Trustee and such beneficiary, or beneficiaries, a statement of all receipts and disbursements.

C. The Successor Trustee shall pay all necessary and proper disbursements, expenses and liabilities in the administration of the trusts hereunder, including reasonable compensation of the Successor Trustee or its successor.

D. In cases where the Internal Revenue Code affords the Successor Trustee any election or option, the Successor Trustee shall exercise such election or option for what it believes to be the best interest of the trust and the beneficiaries thereof. The Successor Trustee shall not make any adjustment between income and principal because of a benefit conferred or a detriment imposed upon any trust or any of

the beneficiaries thereof by reason of the applicable provisions of the Internal Revenue Code, including elections or options.

E. The trusts herein provided shall be administered and this Agreement shall be construed in accordance with the laws of the State of Michigan.

F. In any proceeding involving the construction, operation or modification of this Agreement, the then living beneficiary or beneficiaries to whom income is currently payable or for whose benefit it may currently be expended shall represent any unknown and undetermined beneficiaries, and any order, judgment or decree rendered in such proceeding shall be binding not only upon such known persons but also upon all unknown and undetermined beneficiaries.

G. The Successor Trustee shall have the power to maintain the situs of the property of any trust created under this Agreement in any jurisdiction, in the Successor Trustee's absolute discretion, and thereafter transfer the situs at any time or times to any jurisdiction selected by the Successor Trustee. Upon any such transfer of situs, the trust estate may thereafter, at the election of the Successor Trustee, be administered exclusively under the laws of (and subject, as required, to the exclusive supervision of the courts of) the jurisdiction to which it has been transferred. If the Successor Trustee of any trust created hereunder elects to change the situs of any such trust, the Successor Trustee is hereby relieved of any requirement of having to qualify in any other jurisdiction and of any requirement of having to account in any court of such other jurisdiction.

END

FIFTEENTH

DISCLAIMER

The acceptance to serve as Successor Trustee shall be construed as no more than acceptance of the terms of this Agreement as they apply to the rights, powers, duties and obligations of the Successor Trustee during its tenure as trustee and shall in no way be construed to mean acceptance, ratification or approval of any of the acts, omissions, or defaults of the individual Trustee nor any undertaking by the Successor Trustee to audit or verify the records of the individual Trustee. The Successor Trustee shall be entitled to rely upon any statements and records (which may come into the Successor Trustee's possession after a reasonable search) of the individual Trustee as to the assets of this trust and shall have no responsibility or liability hereunder to any person for the assets of this trust until reduced to the possession of the Successor Trustee.

END

SIXTEENTH

CONSOLIDATION OF TRUSTS

After the death of Settlor, if the provisions under the trust or trusts created herein shall become substantially the same as the provisions under any trust or trusts established by the Settlor or by any other person for the irrevocable benefit of the same beneficiary or beneficiaries, the Successor Trustee may, in its complete discretion, terminate such trust or trusts created hereunder and distribute all of the assets thereof to the trustee of said similar trust or trusts, or may accept from the trustee of said similar trust or trusts, all of the assets thereof, and the assets so distributed or received shall be treated as an addition to said similar trust or trusts or to this trust or trusts, as the case may be, and shall be held, treated and disposed of as a part thereof or hereof, and if distributed to a similar trust or trusts, the trust or trusts created hereunder shall thereupon terminate. The purpose of this Paragraph is to eliminate the necessity of maintaining two or more separate trusts with similar provisions for the same beneficiary. However, the Successor Trustee shall not combine any trust having an inclusion ratio, as defined in Section 2642 of the Code, of other than zero (0) with a trust having an inclusion ratio of zero (0).

END

SEVENTEENTH
ENVIRONMENTAL MATTERS

A. For purposes of this Paragraph, the following terms have the meanings set forth below:

1. "Assets held in the trust estate" include interests in sole proprietorships, partnerships, corporations, limited liability companies and other business entities and the assets owned by such business entities.

2. "Environmental law" means any federal, state, or local statute, rule, regulation or ordinance relating to protection of the environment or human health.

3. "Hazardous substance" means any substance defined as hazardous or toxic in or otherwise regulated by any environmental law.

4. "Environmental concerns" means, as determined by the Successor Trustee in its sole discretion, (a) any condition of, or activity conducted on or with, any property or assets held in the trust estate that violates, or may cause violation of any environmental law; (b) the presence of or any actual or threatened release of any hazardous substance from, to, at, under, or upon any property or assets held in the trust estate; and (c) any actual or threatened spill, leak, discharge, disposal, emission, dispersal, leaching, or migrating of any hazardous substance from, to, at, under, or upon any property or assets held in the trust estate.

5. "Governmental body" means any unit of federal, state, or local government, and any agency, department, board, commission, or subdivision thereof, and any quasi-governmental agency thereof and any court or quasi-judicial entity.

B. The Successor Trustee shall have the powers, in addition to those powers provided by applicable law:

1. To inspect, assess, and evaluate any property or assets held in the trust estate or proposed to be donated or transferred to the trust estate, and any records related thereto, for the purpose of determining if any environmental concerns exist with respect to such property or assets.

2. To respond to any actual or suspected environmental concerns relating to property or assets held by the Successor Trustee in the trust estate.

3. To take, on behalf of the trust estate, any action necessary to prevent, abate, or otherwise remedy any environmental concerns relating to property or assets held by the Successor Trustee in the trust estate, either before or after the initiation of an enforcement action by any governmental body.

4. To refuse to accept property or assets in trust if the Successor Trustee determines or suspects that environmental concerns are present at, affect or relate to any property or assets to be donated or transferred to the trust which the Successor Trustee believes could result

in liability to the trust or the Successor Trustee, or otherwise impair the value of the property or assets held therein.

5. To settle or compromise at any time any and all claims or lawsuits against the trust estate or against the Successor Trustee which may be asserted by any governmental body or private party involving any alleged environmental concern relating to property or assets held in the trust estate.

6. To disclaim any power granted by any document, statute or rule of law which, in the sole discretion of the Successor Trustee, may cause the Successor Trustee to incur personal liability under any environmental law or under the common law.

7. To decline to serve as Successor Trustee if the Successor Trustee reasonably believes that there is or may be a conflict of interest between the Successor Trustee in its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust estate because of any environmental concerns that relate to property or assets held in the trust estate.

8. To disclaim, in whole or in part, any interests in property or assets for any reason including, but not limited to, a concern that holding such property or assets in the trust estate could result in liability to the trust or the Successor Trustee as a result of any environmental concerns.

9. To use and expend the trust income and principal to: (i) conduct environmental assessments, audits, and site monitoring to determine if any environmental concerns are present at or affect any property or assets held in the trust estate; (ii) take all appropriate remedial action to contain, remedy, cleanup, or respond to environmental concerns that relate to property or assets held in the trust estate, either on its own accord or in response to an actual or threatened claim by any governmental body or private party; (iii) institute legal proceedings concerning any environmental concerns that relate to property or assets held in the trust estate or contest or settle legal proceedings brought by any governmental body or by any private person or entity regarding environmental concerns that relate to any property or assets held in the trust estate; (iv) comply with any order of any governmental body directing an assessment, investigation, remedial action, response action, abatement or cleanup of any environmental concerns relating to property or assets held in the trust estate; (v) to take any action or do anything permitted in the above paragraph, or as otherwise permitted by law; and (vi) employ agents, consultants and legal counsel to assist or perform the above undertakings or actions. Any expenses incurred by the Successor Trustee under this paragraph may be charged against income or principal as the Successor Trustee shall determine.

C. The Successor Trustee shall not be personally liable to any beneficiary or other person or entity for any decrease in value of property or assets held in the trust estate by reason of the Successor Trustee's compliance with any environmental law, specifically including any reporting requirement under such law. Neither the acceptance by the Successor Trustee of property nor a failure by the Successor Trustee to inspect property or assets shall be deemed to create any inference as to whether there is or may be any liability under any environmental law with respect to such property or assets.

D. No Successor Trustee shall be liable for any loss or depreciation in value sustained by the trust as a result of the Successor Trustee retaining any property or assets upon which there is later discovered to be environmental concerns requiring remedial action pursuant to any environmental law, unless the Successor Trustee contributed to the loss or depreciation in value through willful default, willful misconduct, or gross negligence.

E. Settlor's estate shall indemnify, defend, protect, and hold harmless the Successor Trustee, and each of the Successor Trustee's successors, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses (including without limitation, diminution in the value of the trust property or assets, damages for the loss of or restriction on the use of rentable or usable space or of any amenity of the trust property), costs, or expenses (including attorneys' fees, consultants' fees, and experts' fees) arising from or caused in whole or in part, directly or indirectly, by any environmental concerns relating to property or assets held in the trust estate,

regardless of the cause of such environmental concerns. Settlor's obligations under this indemnification shall include, without limitation, whether foreseeable or unforeseeable, any and all costs incurred in connection with any investigation or testing of site conditions, and any and all costs of any required or necessary repair, remedial action, response action, cleanup, detoxification, or decontamination of the trust property (including, without limitation, the soil and ground water on, under or about the trust property), and the preparation and implementation of any closure, remedial action, or other required plans in connection therewith. Settlor's obligation under this indemnification shall survive the expiration or earlier termination of the Successor Trustee's term as fiduciary under the Trust Agreement. For purposes of the release and indemnity provisions, hereof, any acts or omissions of Settlor, or by employees, agents, assignees, contractors, or subcontractors of Settlor, or by others acting for or on behalf of Settlor (whether or not they are negligent, intentional, willful, or unlawful), shall be strictly attributable to Settlor.

END

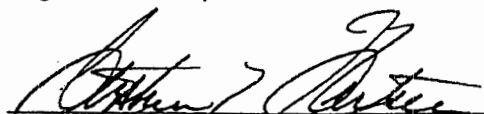
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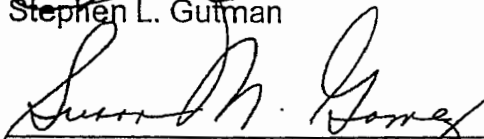
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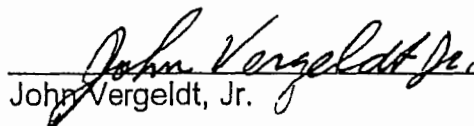
The beneficial provisions of this Trust Agreement and of Settlor's Last Will and Testament are intended to be in lieu of any other rights, claims or interests, whether statutory or otherwise, except bona fide pre-death debts, which any beneficiary hereunder may have against or in Settlor's estate or the assets held under this Trust Agreement. Therefore, if any beneficiary shall assert any claim, statutory election or other right or interest against or in the Settlor's estate, either pursuant to Settlor's Last Will and Testament, this Trust Agreement (as it may be amended) or otherwise, or directly or indirectly contest the Settlor's Last Will and Testament or this Trust Agreement (as it may be amended), or attack or seek to impair or invalidate any of the provisions thereof, or conspire with or voluntarily assist anyone attempting to do any of those things, then (a) all beneficial interest, powers and rights of every kind and nature which such beneficiary might otherwise have had under this Trust Agreement shall be forfeited and such forfeited interest shall augment proportionately the shares of the beneficiaries designated in Paragraph SIXTH B who shall not have participated in such acts or proceedings, (b) all of the provisions of this Trust Agreement, to the extent that they confer any benefits, powers or rights whatsoever upon such beneficiary, shall thereupon become absolutely void and revoked, and (c) such beneficiary, if then acting as a Successor Trustee hereunder, shall automatically cease to be a Successor Trustee and shall thereafter be ineligible either to select, remove or become a Successor Trustee hereunder. The foregoing shall not be construed, however, to limit the

IN WITNESS WHEREOF, the parties hereto have executed this Eighth Amendment and Complete Restatement as of the day and date first above written and by so doing the Trustee herein named accepts all of the duties and conditions imposed.

Signed in the presence of:

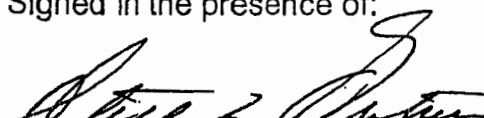

Stephen L. Gutman


Susan M. Gomez

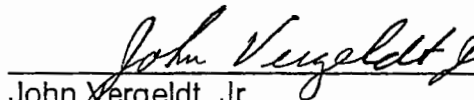

John Vergeldt, Jr.

"Settlor"

Signed in the presence of:


Stephen L. Gutman


Susan M. Gomez

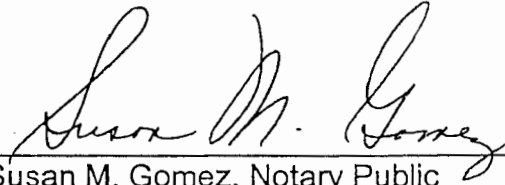

John Vergeldt, Jr.

"Trustee"

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

On this 29th day of July, 2009, before me personally appeared John Vergeldt, Jr., to me known to be the person described in and who executed the

foregoing instrument and acknowledged that he executed the same as his free act and deed.

A handwritten signature in cursive script, reading "Susan M. Gomez", written over a horizontal line.

Susan M. Gomez, Notary Public
Wayne County, Michigan acting in
Wayne County, Michigan
My Commission expires: 11/11/2012

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**JUDGE OF PROBATE
YORK COUNTY, SC**

EXHIBIT B

NINTH AMENDMENT TO TRUST AGREEMENT

THIS NINTH AMENDMENT TO TRUST AGREEMENT dated September 27, 1978, is made this 5th day of February, A.D., 2010, between John Vergeldt, Jr., of the City of Dearborn, County of Wayne, and State of Michigan, hereinafter called the "Settlor;" and John Vergeldt, Jr., hereinafter called the "Trustee." This Trust is sometimes referred to as the "John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978."

W I T N E S S E T H

WHEREAS, on July 29, 2009 the Settlor completed amended and restated the provisions of the aforesaid Trust Agreement signed by him on September 27, 1978, by deleting all of the provisions of said Trust Agreement and Amendments and by substituting the provisions set forth in the Eighth Amendment and Complete Restatement;

WHEREAS, the Settlor desires to amend the Eighth Amendment and Complete Restatement; and

WHEREAS, the Trustee is agreeable to the amendments hereinafter set forth.

NOW, THEREFORE, it is agreed that the Eighth Amendment and Complete Restatement shall be amended as follows:

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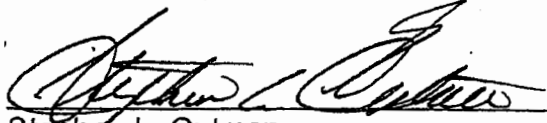
Paragraph SIXTH B of the Eighth Amendment and Complete Restatement

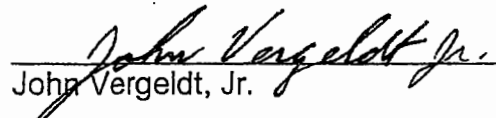
shall be deleted and the following Paragraph SIXTH B shall be substituted therefor:

B. After the death of Settlor, the Successor Trustee shall distribute the sum of six thousand (\$6,000.00) dollars, free and discharged from the trust hereof, to each grandchild of Settlor who survives Settlor and shall divide the balance of the assets of the Residuary Trust into equal shares, one (1) share for each of Settlor's children. If any child of Settlor shall predecease Settlor (other than Patricia A. Vergeldt Downey and other than David Leigh Vergeldt who died on January 30, 2010), said child's share shall be distributed as follows: one-half (1/2) to Settlor's child's spouse, if then living, Settlor's child was married to him or her at the date of his or her death, and there was no divorce proceeding pending at the date of his or her death, and the other one-half (1/2) (or all if there is no surviving spouse who meets said conditions) shall be divided equally between Settlor's then living children. If Patricia A. Vergeldt Downey shall not survive Settlor, then her share shall be divided equally between Settlor's then living children. The Successor Trustee shall distribute from the share of David Leigh Vergeldt the sum of twenty thousand (\$20,000.00) dollars to his surviving spouse, Bonnie Graham Vergeldt, if and only if she survives Settlor and if the assets of the residuary estate have a fair market value at the date of Settlor's death of at least five hundred thousand (\$500,000.00) dollars, and the balance (or all if these conditions are not satisfied) shall be divided equally between Settlor's then living children. The part so set aside for Settlor's children and spouses of deceased children shall forthwith be assigned, transferred, conveyed and paid over to them free and discharged from the trust hereof. The part so set aside for the descendants of any of Settlor's children (other than the specific bequest of six thousand (\$6,000.00) dollars) shall, in the discretion of the Successor Trustee, either be distributed to a Uniform Transfers to Minors Act account to age twenty-one (21) or to a trust described in Paragraph SIXTH C, if the descendant has not attained age thirty (30), or otherwise shall forthwith be assigned, transferred, conveyed, and paid over to said descendants free and discharged from the trust hereof.

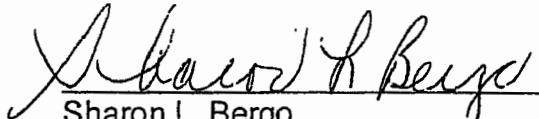
IN WITNESS WHEREOF, the parties hereto have executed this Ninth Amendment as of the date and date first above written and by so doing the Trustee herein named accepts all of the duties and conditions imposed.

Signed in the presence of:

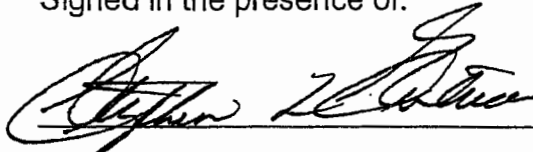

Stephen L. Gutman

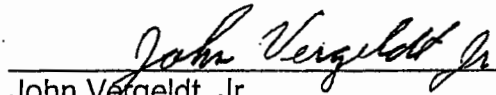

John Vergeldt, Jr.

"Settlor"

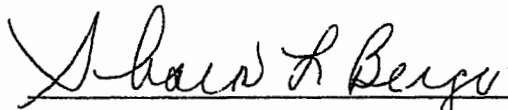

Sharon L. Bergo

Signed in the presence of:


Stephen L. Gutman


John Vergeldt, Jr.

"Trustee"


Sharon L. Bergo

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

On this 5th day of February, 2010, before me personally appeared John Vergeldt, Jr., to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

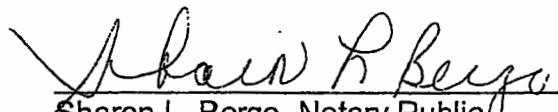

Sharon L. Bergo, Notary Public
Oakland County, Michigan acting in
Wayne County, Michigan
My Commission expires: 09/14/2012

EXHIBIT C

TENTH AMENDMENT TO TRUST AGREEMENT

THIS TENTH AMENDMENT TO TRUST AGREEMENT dated September 27, 1978, is made this 7th day of March, A.D., 2011, between John Vergeldt, Jr., of the City of Birmingham, County of Oakland, and State of Michigan, hereinafter called the "Settlor;" and John Vergeldt, Jr., hereinafter called the "Trustee." This Trust is sometimes referred to as the "John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978."

WITNESSETH

WHEREAS, on July 29, 2009 the Settlor completely amended and restated the provisions of the aforesaid Trust Agreement signed by him on September 27, 1978, by deleting all of the provisions of said Trust Agreement and Amendments and by substituting the provisions set forth in the Eighth Amendment and Complete Restatement;

WHEREAS, on February 5, 2010 the Settlor amended the Eighth Amendment and Complete Restatement by the Ninth Amendment;

WHEREAS, the Settlor desires to amend the Eighth Amendment and Complete Restatement and Ninth Amendment; and

WHEREAS, the Trustee is agreeable to the amendments hereinafter set forth.

NOW, THEREFORE, it is agreed that the Eighth Amendment and Complete Restatement and Ninth Amendment shall be amended as follows:

1. Paragraph SECOND C as set forth in said Trust Agreement shall be deleted and the following Paragraph SECOND C substituted therefor:

C. The initial Successor Trustee is John Edward Vergeldt. The Settlor may change the Successor Trustee at any time during Settlor's lifetime. The Successor Trustee and each Trustee is referred to in the neuter gender. The Successor Trustee and each Trustee of each trust created pursuant to this Trust Agreement shall have all of the rights, duties and powers herein created and conferred upon the Trustee and/or Successor Trustee except those powers which this Agreement specifically limits to either the Settlor acting as Trustee or to the Successor Trustee. The Successor Trustee's duties relate to the trust while Settlor is alive, the trust after Settlor's death and during the post-death administration period and before its division for the beneficiaries' shares and each and every trust created pursuant to this Trust Agreement after Settlor's death unless this Agreement specifies a different Trustee for one or more of such trusts.

2. Paragraph SECOND D as set forth in said Trust Agreement shall be deleted and the following Paragraph SECOND D substituted therefor:

D. All tax-related terms, provisions and sections mean the same in this Agreement as they mean in the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder, and any successor provisions of either. Notwithstanding, if at any time a federal tax including, but not limited to, estate, gift or generation-skipping transfer tax, is not applicable and there is no term, provision or section of the federal tax law that corresponds to any term, provision or section contained in this Agreement, then such term, provision or section contained in this Agreement shall nevertheless be interpreted with reference to the term, provision or section that was in effect at the time of the execution of this Agreement or the term, provision or section that was in effect immediately before such tax law became inapplicable, as the case may be.

3. The following Paragraphs SECOND Q and SECOND R shall be added to the end of Paragraph SECOND:

Q. The term "mental incapacity" shall mean the court appointment of a guardian or conservator for a person or if that person's primary care physician renders such an opinion.

R. The term "current trust beneficiary" means each beneficiary who currently either has a right to receive all or a portion of the income of a trust or is eligible to receive a mandatory or discretionary distribution of income or principal of a trust.

4. Paragraph SIXTH B as set forth in said Trust Agreement shall be deleted and the following Paragraph SIXTH B shall be substituted therefor:

B. After the death of Settlor, the Successor Trustee shall distribute the sum of six thousand (\$6,000.00) dollars, free and discharged from the trust hereof, to each grandchild of Settlor who survives Settlor and shall divide the balance of the assets of the Residuary Trust into equal shares, one (1) share for each of Settlor's children. If any child of Settlor shall predecease Settlor (other than Patricia A. Vergeldt Downey and other than David Leigh Vergeldt who died on January 30, 2010), said child's share shall be distributed as follows: one-half (1/2) to Settlor's child's spouse, if then living, Settlor's child was married to him or her at the date of his or her death, and there was no divorce proceeding pending at the date of his or her death, and the other one-half (1/2) (or all if there is no surviving spouse who meets said conditions) shall be divided equally between Settlor's then living children. If Patricia A. Vergeldt Downey shall not survive Settlor, then her share shall be divided equally between Settlor's then living children. The share of David Leigh Vergeldt shall be divided equally between Settlor's then living children. The part so set aside for Settlor's children and spouses of deceased children shall forthwith be assigned, transferred, conveyed and paid over to them free and discharged from the trust hereof. The part so set aside for the descendants of any of Settlor's children (other than the specific bequest of six thousand (\$6,000.00) dollars) shall, in the discretion of the Successor Trustee, either be distributed to a Uniform Transfers to Minors Act account to age twenty-one (21) or to a trust described in Paragraph SIXTH C, if the descendant has not attained age thirty (30), or otherwise shall forthwith be assigned, transferred, conveyed, and paid over to said descendants free and discharged from the trust hereof.

5. The following paragraph shall be added to the end of Paragraph SEVENTH:

An individual Successor Trustee's liability is limited to an act or omission committed in bad faith or with reckless indifference to the purposes of the trust or

the interests of the trust beneficiaries. The individual Successor Trustee shall be indemnified from the applicable trust estate for reasonable legal expenses in defending any claim or action filed by a trust beneficiary, except for a claim or action based upon an act or omission by the Successor Trustee to have been committed in bad faith or with reckless indifference to the purposes of the trust but only if the beneficiary prevails in such litigation.

6. Paragraph FOURTEENTH B as set forth in said Trust Agreement shall be deleted and the following Paragraph FOURTEENTH B shall be substituted therefor:

B. The Successor Trustee shall keep a trust account of the affairs of a trust. At least annually and upon termination of a trust, the Successor Trustee shall render a statement of account. A statement of account is a report by the Successor Trustee of the trust property, liabilities, receipts, and disbursements, including the source and amount of the Successor Trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values. No particular format or formality is required for a report unless a court specifies its content and presentation. The statement shall be delivered as soon as practicable after the close of the accounting period or upon termination of the trust. The Successor Trustee need not render account statements so long as Settlor is a Trustee. If Settlor is living but is not a Trustee, the Successor Trustee shall account only to Settlor or, if Settlor is deemed mentally incapacitated, to Settlor's spouse, and to each current trust beneficiary, but shall not provide any account statements or information about the trust to any other beneficiary. If a current trust beneficiary is another trust, accounts statements shall be delivered to the trustee of the other trust. Except as provided above, if any current trust beneficiary is a minor or otherwise disabled, delivery shall be made to his or her designated agent, to the conservator of his or her estate, or, if none, then to his or her parent, nearest of kin, or an adult with whom he or she is living.

8. Paragraph EIGHTEENTH as set forth in said Trust Agreement shall be deleted and the following Paragraph EIGHTEENTH substituted therefor:

EIGHTEENTH

CONTEST

A. The beneficial provisions of this Trust Agreement and of Settlor's Last Will and Testament are intended to be in lieu of any other rights, claims or interests, whether statutory or otherwise, except bona fide pre-death debts,

which any beneficiary hereunder may have against or in Settlor's estate or the assets held under this Trust Agreement. Except as provided in subsection (D) below, every share, interest, or power conferred by this trust is made on the condition precedent that the recipient acquiesce in all aspects of Settlor's estate planning and not engage in any activity described in clauses (i) through (x) set forth below. If any beneficiary of this trust, singly or in conjunction with any other person or persons, directly or indirectly, (i) contests in any court the validity of this trust or, in any manner, attacks or seeks to impair or invalidate any of its provisions; (ii) contests in any court the validity of the Settlor's Last Will in any manner, or attacks or seeks to impair or invalidate any of its provisions; (iii) seeks to obtain an adjudication in any proceeding in any court that this trust or any of its provisions or that Settlor's Will or any of its provisions is void; (iv) claims entitlement by way of any written or oral contract to any portion of the Settlor's estate, whether in probate or under this instrument; (v) unsuccessfully challenges the appointment of any person named as Successor Trustee of this trust, or as personal representative or successor personal representative of the Settlor's Will; (vi) objects in any manner to any action taken or proposed to be taken in good faith by the Successor Trustee or the personal representative of the Settlor's Will, or other agent, whether said personal representative is acting under court order, advice of legal counsel, or otherwise; (vii) objects to any construction or interpretation of this Trust, or any provision of it, that is adopted or is proposed in good faith by the acting Successor Trustee; (viii) unsuccessfully seeks the removal of any person acting as Successor Trustee of any Trust created under this instrument, or of the personal representative of the Settlor's Will; (ix) files any creditor's claim in Settlor's estate (without regard to its validity), whether the claim arose before or after the date of this instrument, except for claims for cash advanced or paid for expenses of last illness or funeral by said claimant; or (x) contests or seeks to invalidate any of the following: any trust which Settlor has created or may create during Settlor's lifetime, or any provision thereof, any gift which Settlor has made or will make during Settlor's lifetime, whether before or after the date of this instrument, any exercise of a power of appointment possessed by the Settlor, or any other transaction by which Settlor sold any assets (whether to a relative of Settlor's or otherwise), then that person's right to take any interest given to him or her by this trust shall be determined as it would have been determined if the person had predeceased the execution of this Trust Agreement. Further, such beneficiary, if then acting as a Successor Trustee hereunder, shall automatically cease to be a Successor Trustee and shall thereafter be ineligible either to select, remove or become a Successor Trustee hereunder. The provisions of this paragraph shall not apply to any disclaimer by any person of any benefit under this trust or under any Will. The foregoing shall not be construed, however, to limit the appearance of any beneficiary as a witness in any proceeding involving the Settlor's Last Will and Testament or this Trust Agreement nor limit any beneficiary's appearance in any capacity in the proceeding solely for the construction of either of said documents.

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**JUDGE OF PROBATE
YORK COUNTY, SC**

EXHIBIT D

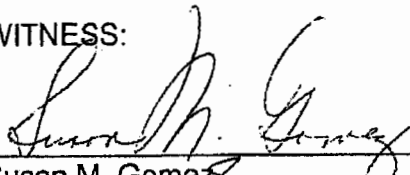
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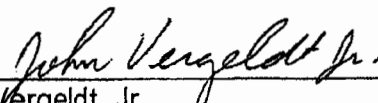
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JUDGE OF PROBATE
YORK COUNTY, SC

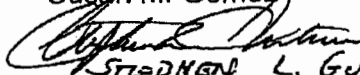
Pursuant to Paragraph THIRD C of a Trust Agreement dated September 27, 1978, as amended, between John Vergeldt, Jr., Settlor, and John Vergeldt, Jr., Trustee, the undersigned, as Settlor, hereby appoints John Edward Vergeldt to serve as Co-Trustee of the Trust created by the Trust Agreement during the undersigned's lifetime. According to Paragraph THIRD C, John Edward Vergeldt, as Co-Trustee, is vested with all of the powers, duties and obligations of the Trustee and the decisions of the Co-Trustee made during Settlor's lifetime shall be binding upon the Trust as if made by Settlor as Trustee. The undersigned reserves the right to revoke this appointment.

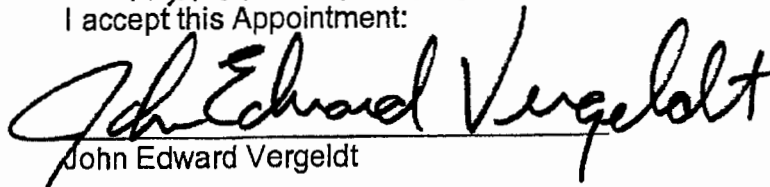
Dated: July 29, 2009

WITNESS:


Susan M. Gomez


John Vergeldt, Jr.


STEPHEN L. GUTMAN
I accept this Appointment:


John Edward Vergeldt

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2014 FEB 28 AM 10: 58

**JUDGE OF PROBATE
YORK COUNTY, SC**

EXHIBIT E

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LAST WILL AND TESTAMENT
2014 FEB 28 AM 10:58
OF JUDGE OF PROBATE
JOHN VERGELDT, JR. YORK COUNTY, SC

I, John Vergeldt, Jr., of the City of Dearborn, County of Wayne, and State of Michigan, being of sound mind and disposing memory, do hereby make, publish and declare this to be my Last Will and Testament, hereby expressly revoking any and all former Wills and Codicils by me made.

FIRST

I direct that all legally enforceable claims, the expenses of my last illness, funeral and burial expenses, and the expenses of administering my estate, together with all estate, inheritance, succession or similar taxes (other than taxes imposed by Chapter 13 of the Internal Revenue Code, additional estate taxes imposed by Section 2032A of the Internal Revenue Code, all transfer taxes attributable to a marital trust of which I am the surviving spouse, all transfer taxes attributable to the inclusion in my gross estate of property by reason of Section 2036 of the Internal Revenue Code, and all transfer taxes that arise as a result of the inclusion of property over which I have a power of appointment at my death) which shall become payable in respect of any property, or interest therein, which I may own at the time of my death, and which is properly includible in my gross estate for any such taxation purposes, shall be charged to and paid from my residuary estate; provided, however, that any provisions to the contrary

J.V.

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relating to the payment of said taxes in the Trust Agreement, described below, shall govern instead. Except to the extent of the tax exclusions described parenthetically in the preceding sentence, my personal representative shall not seek recovery or reimbursement from, or apportionment of taxes between or among the recipients of any such property or interest.

Any generation-skipping tax resulting from a transfer occurring under this Will or otherwise resulting from a transfer with respect to which I am the transferor for generation-skipping tax purposes, shall be charged to the property constituting the transfer in the manner provided by applicable law.

In the event that any property or interest in property passing under this Will or by operation of law or otherwise by reason of my death (other than as part of my residuary estate) is encumbered by any mortgage, lien, or security interest, or is pledged to secure any obligations (whether the property or interest in property so encumbered or pledged shall be owned by me jointly or individually), it is my intention that such indebtedness shall not be charged to or paid from my estate, but that the devisee, legatee, joint owner taking by survivorship, or beneficiary receiving such property or interest in property shall take said property or interest in property subject to all encumbrances existing at the time of my death.

United States Treasury Bonds redeemable at par in payment of federal estate taxes (whether held by the Successor Trustee under the Trust Agreement described below, or by my personal representative) shall be first used in payment of such taxes.

SECOND

It is my desire that my tangible personal possessions (other than any investment assets and other than any cash on hand or on deposit by me) located in my residence at Henry Ford Village be disposed of, as follows:

(a) Each of my children shall be given the opportunity to choose items that they would like to receive.

(b) After my children have each taken the items they desire if there are any remaining items, each of my grandchildren shall be given the opportunity to choose items they would like to receive.

(c) If there are any items remaining, my personal representative shall dispose of such items as my personal representative deems reasonable.

In the event a dispute over an item arises between the children or grandchildren, I desire that all disputes be settled by the flip of a coin.

THIRD

All the rest, residue and remainder of my estate of which I may die seized or possessed or to which I or my estate may then or thereafter be in any way entitled, real, personal or mixed, and wheresoever situated, (including all lapsed legacies and devises or other gifts made under this, my Last Will and Testament which fail for any reason and including any disclaimed property but excluding any property over which I may have at the time of my death a power of appointment exercisable by Will) after

allowance for or payment of the claims, expenses and taxes described in Paragraph FIRST, I give, devise and bequeath to the Successor Trustee(s) under Trust Agreement dated September 27, 1978, between myself as Settlor and Trustee, which Trust Agreement was executed and in effect prior to the execution of this Will, to be added by them to the trust estate created in such instrument and held, administered and distributed upon its terms, provisions and conditions as now existing or as subsequently amended.

FOURTH

If for any reason the gift in Paragraph THIRD to the Successor Trustee(s) under the Trust Agreement referred to in Paragraph THIRD does not take effect, then I give, devise and bequeath all said rest, residue and remainder of my estate, after allowance for or payment of all said claims, expenses and taxes, to the Successor Trustee(s) under the Trust Agreement referred to in Paragraph THIRD, to hold, administer and disburse as my Testamentary Trustee in accordance with the provisions contained in said Agreement at the date of the execution of this Will.

FIFTH

The principal of my estate and the income resulting therefrom while in the hands of my personal representative shall not be subject to any conveyance, transfer or assignment, or be pledged as security for any debt of any beneficiary thereof and shall not be subject to any claim of any creditor of any such beneficiary, through legal

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process or otherwise. Any attempted sale, anticipation, assignment or pledge of any of the principal or income held in the estate by such beneficiaries or any of them shall be null and void, and shall not be recognized by my personal representative. It is my intention to place the absolute title to the property held in my estate and the income therefrom in my personal representative, with power and authority to pay out the same only as authorized hereby.

SIXTH

(a) My personal representative shall have the following general powers:

(1) To enter upon and take possession of my estate, to collect the income and profits from the property, and to invest and reinvest the estate in real, personal or mixed assets (including common trust funds of a corporate fiduciary) in accordance with said personal representative's judgment, not being limited by any present or future investment law;

(2) To continue any business (other than a profession) in which I may be engaged at the time of my death so long as my personal representative shall deem it to be in the best interests of the beneficiaries and my personal representative shall exercise all powers with respect to such business which I could exercise if living, and to determine and participate in any business form in which to exploit my business, including

corporations, general partnerships, limited partnerships, limited liability companies, and joint ventures;

(3) To vote in person or by proxy with respect to any and all securities, and to carry in my personal representative's name or in the name of my personal representative's nominee or nominees, and with or without designation of fiduciary capacity, securities or other property requiring or permitting of registration;

(4) To retain all property in the form in which the same shall be received or acquired by my personal representative without liability for any loss that may be incurred thereby, and without regard to the proportion that any one asset or class of assets may bear to the whole;

(5) To allocate between income and principal all receipts and disbursements in accordance with sound fiduciary accounting principles;

(6) To sell real or personal property, or both, either for cash or part cash and part deferred payments and at public or private sale, and to option, convey, exchange, lease and re-lease for any length of time, mortgage, pledge, partition, plat, subdivide, improve, repair, surrender, abandon or otherwise deal with or dispose of all of my estate, or any part thereof, at such time or times and in such manner, either public or private, and upon such terms as in the discretion of my personal representative may seem expedient and proper;

(7) To borrow money, on the general credit of my estate or by pledge or mortgage of any of my estate as security for the repayment thereof, and to renew from time to time any indebtedness incurred by me or by my personal representative for my estate;

(8) To make, execute and deliver any and all such instruments in writing as shall be necessary or proper to carry out any disposition whatever of my estate;

(9) To prosecute and defend and, in the exercise of my personal representative's discretion, which shall be binding on all interested parties, to compromise, settle or abandon claims in favor of or against my estate or estate property;

(10) To employ attorneys, accountants and agents and pay their reasonable compensation and costs for services rendered and to pay all necessary costs of administering my estate, including reasonable compensation of the personal representative;

(11) To petition for the appointment of, or actually appoint, an ancillary estate fiduciary and pay the expense of ancillary administration;

(12) To enter into any transaction with my estate without the necessity of the consent or approval of any interested person or a court, and enter into any transaction with the trustee of any trust or the personal representative of any other estate in which any beneficiary or distributee

has any interest, even though the other trustee or personal representative is also personal representative of my estate;

(13) To allot different kinds or disproportionate portions or undivided interests in property among beneficiaries; and to determine the value of any allotted property, without compensating adjustment, even if the basis for federal income tax purposes of property allotted to any beneficiary is not fairly representative of all property available for distribution and to make any distribution or division of my estate in cash or in kind or both; and

(14) To exercise any powers which are set forth in MCLA Section 700.3715 of EPIC, but which are not set forth above and such additional powers shall be conferred upon my personal representative without regard to whether the administration is supervised or unsupervised.

(b) My personal representative shall have the following discretionary powers related to tax matters:

(1) To exclude from or include in my gross estate any asset, in the first instance, for federal estate tax purposes;

(2) To value any asset, in the first instance, for federal estate tax purposes;

(3) To elect date of death or alternative values for federal estate tax purposes;

(4) To elect to value qualified real property at its value for the use under which it qualifies and enter into any agreements required by such election;

(5) To elect to have gain or loss recognized on distribution of property in kind under Internal Revenue Code Section 643(e)(3);

(6) To allocate my unused generation-skipping tax exemption;

(7) To make, continue or revoke any election to be taxed under Subchapter S of the Internal Revenue Code with respect to any securities eligible for such an election;

(8) To elect, to the extent permitted by the Internal Revenue Code, to defer payment of all or part of my estate taxes;

(9) To elect to claim expenses or losses as either income or estate tax deductions; and

(10) To elect to exercise or not to exercise any other option or election afforded by the Internal Revenue Code unless I have specifically given directions with respect to such matter.

(c) In any case where the applicable provisions of the Internal Revenue Code (including any election available to my personal representative) or any power granted under this my Will, or any combination thereof, the exercise or nonexercise of which confers a benefit on one beneficiary or class of beneficiaries and imposes a detriment upon another beneficiary or class of beneficiaries, I direct that my personal representative shall not attempt to restore the interest to the position otherwise

contemplated by this Will through adjustment between income and principal, or otherwise.

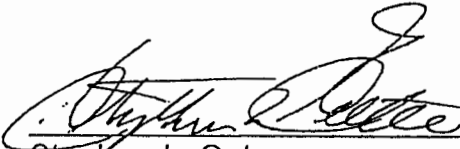
(d) My personal representative shall not be accountable or responsible to any person interested in my estate for the manner in which my personal representative shall exercise any discretionary authority or election afforded in Subparagraph (a) or (b) above so long as my personal representative acts in good faith and exercises said personal representative's best judgment and discretion for what said personal representative believes to be in the best interests of my estate and of the persons designated to benefit under this, my Last Will and Testament.

SEVENTH

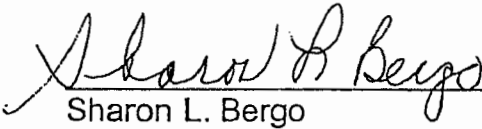
(a) I hereby nominate and appoint my son, John Edward Vergeldt, personal representative of this, my Last Will and Testament. In the event that my son, John Edward Vergeldt, is unable or unwilling to serve as personal representative of my estate under this instrument, I nominate and appoint my daughter, Vicki Lynn Vergeldt, personal representative of this, my Last Will and Testament with all of the powers above-mentioned.

(b) No personal representative shall give bond unless required by law or court rule.

We, Stephen L. Gutman and Sharon L. Bergo, the witnesses, sign our names to this document and have taken an oath, administered by the officer whose signature appears on this document, to swear that all of the following statements are true: the individual signing this document as the testator executes the document as his Will, signs it willingly, and executes it as his voluntary act for the purposes expressed in this Will; each of us, in the testator's presence, signs this Will as witness to the testator's signing; and, to the best of our knowledge, the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.


Stephen L. Gutman

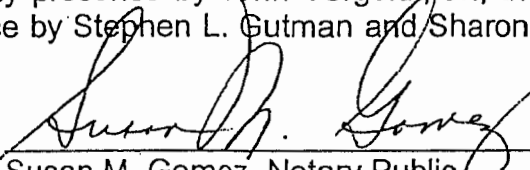
of 6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226


Sharon L. Bergo

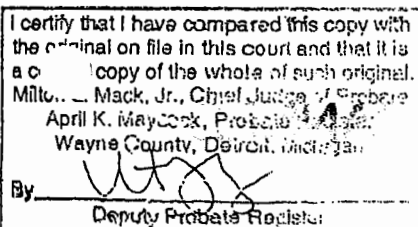
of 6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

Sworn to and signed in my presence by John Vergeldt, Jr., the testator,
and sworn to and signed in my presence by Stephen L. Gutman and Sharon L. Bergo,
witnesses on July 29, 2009.


Susan M. Gomez, Notary Public
Wayne County, Michigan acting in
Wayne County, Michigan
My commission expires: 11/11/2012

AUG 14 2013




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ROA 00183

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**JUDGE OF PROBATE
YORK COUNTY, SC**

EXHIBIT F

2076 Marquesas Avenue
Tega Cay, SC 29708

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JUDGE OF PROBATE
YORK COUNTY, SC

November 20, 2013

Vicki Vergeldt
829 Vinewood
Birmingham, MI 48009

Patti Vergeldt Downey
8647 Riverdale Street
Dearborn Heights, MI 48127

Dear Vicki & Patti:

Upon legal advice and based on the Trust Document, I have decided to make an additional distribution from the Trust funds and this will be the final distribution except, for possibly a very small one, after tax season is over. The current balance in the trust checking account is \$133,490.00.

I will be sending Vicki a check in the amount of \$40,068.00. This amount reflects a pro-rata share of \$39,496.00 plus \$2,250.00 (1/2 of what Patti owed the trust), minus \$1,678.00 (which is what Vicki owed the trust). This gives Vicki a total distribution from the trust of \$100,068.00.

I will be sending Patti a check in the amount of \$35,836.00. This amount reflects a pro-rata share of \$39,496.00 plus \$840.00 (1/2 of what Vicki owed the trust), minus \$4,500.00 (which is what Patti owed the trust). This gives Patti a total distribution from the trust of \$85,386.00.

I will be issuing myself a check in the amount of \$42,586.00. This amount reflects a pro-rata share of \$39,496.00 plus \$2,250.00 (1/2 of what Patti owed the trust), plus \$840.00 (1/2 of what Vicki owed the trust). This gives myself a total distribution from the trust of \$102,586.00.

The difference in the totals to each simply reflect an equal distribution minus what they individually owed the trust. If you take \$133,490.00 minus \$118,490.00 (which is what I will be distributing), it leaves the trust with \$15,000.00 to close out the remainder, using my best estimates, of the estate; i.e. doctor's bills, legal fees, State and Federal income tax, State and Federal Trust tax and Personal Representative fees. My plan is to begin the year with \$6,000.00 in the Trust checking account set aside for the operation of the cottage. This is a pro-rata share of \$2,000.00 from each of us. The \$50,000.00 for the Cottage Trust is invested in interest bearing bonds and dividend providing stocks and, I hope, to make roughly five percent (5%) per year. The investments that the trust holds can only be drawn on once annually unless there is an emergency, which is why I am keeping the \$6,000.00 in the trust checking account. This \$6,000.00 will pay for the cottage taxes, utility bills and any miscellaneous repairs and expenses that will arise. I will take enough money from the brokerage account, once per year, so that I can start the following fiscal year with \$6,000.00. Any funds left over after I close the estate and minus the \$6,000.00, will be equally distributed.

On advice of counsel - if you object to the above distribution, **you have thirty (30) days from the date of this letter to notify me in writing of your objection.** Failure to object within 30 days will be deemed a waiver of any objections, present and future.

Sincerely,

John E. Vergeldt
P.R. and Trustee for the Trust of John Vergeldt, Jr.

cc: Mr. Don Harper, Esq.

ROA 00185

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2014 FEB 28 AM 10: 58

**JUDGE OF PROBATE
YORK COUNTY, SC**

EXHIBIT G

MOSES & BRACKETT, PC

COPY

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ATTORNEYS AND COUNSELORS AT LAW

2014 FEB 28 AM 10:58
1333 Main Street, Suite 260 (29201)
Office Box 100261
Columbia, South Carolina 29202-3261

JUDGE OF PROBATE
YORK COUNTY, SC

Telephone: (803) 461-2300
Facsimile: (803) 461-2309

Anne Marie Crosswell, Esquire
Direct Dial: (803) 461-2328
Email: amcrosswell@mkb-law.com

December 3, 2013

Mr. John Edward Vergeldt
2076 Marquesas Avenue
Tega Cay, South Carolina 29708-8526

Re: Trust Agreement between John Vergeldt, Jr. as Settlor and John Vergeldt, Jr. as
Trustee, dated September 27, 1978 and thereafter amended
Our File No.: 012563.1

Dear Mr. Vergeldt:

I am writing on behalf of your sister, Vicki Vergeldt, as a named beneficiary of the Trust Agreement between John Vergeldt, Jr. as Settlor and John Vergeldt, Jr. as Trustee, dated September 27, 1978 and thereafter amended. Specifically, I am writing in response to your letter dated November 20, 2013, in which the proposed final distributions of the Trust are set forth.

Pursuant to the terms of the Trust, you have certain responsibilities as the named Successor Trustee. I would like to direct your attention to Eighth Amendment and Complete Reinstatement to Trust Agreement title Fourteenth A and Tenth Amendment to Trust Agreement title Fourteenth B. Without compliance with these provisions, Vicki is unable to ascertain whether the distributions outlined in your November 20, 2013 letter are accurate.

Pursuant to Fourteenth A, "[t]he Successor Trustee shall have the entire care and custody of all of the assets comprising principal of the trusts hereunder and shall keep the assets safe in accordance with the requirements of like fiduciaries and shall maintain full and accurate records of assets, receipts and disbursements and other financial transactions relative to each trust, *all of which shall be available for inspection at any reasonable time by any and all beneficiaries.*" (Emphasis added).

In relevant part, Fourteenth B states "[t]he Successor Trustee shall keep a trust account of the affairs of a trust. *At least annually and upon termination of a trust*, the Successor Trustee shall render a statement of account. A statement of account is a report by the Successor Trustee of *the trust property, liabilities, receipts, and disbursements, including the source and amount of the Successor Trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values.*" (Emphasis added).

ROA 00187

Also pursuant to the Trust terms, a shift from your role as Co-Trustee with your father, which began July 29, 2009, to Successor Trustee occurred upon your father's incapacity. Eighth Amendment and Complete Reinstatement to Trust Agreement title Third E states that "Successor Trustee shall succeed Settlor as Trustee in the event a guardian is appointed for Settlor by a court of competent jurisdiction or if Settlor's primary care physician renders the written opinion that Settlor, by reason of physical or mental infirmity, has become incapacitated to the extent the Settlor is unable to act in Settlor's own behalf."

It is apparent that your father was incapacitated prior to his death, and written doctor's statements, as required by Third E, that a mental infirmity prevented him from acting on his own behalf, exist. Due to your father's incapacity, your role switched from Co-Trustee to Successor Trustee during his lifetime. Therefore, the duties that accompany your role as Successor Trustee began at the date of incapacity which occurred no later than January of 2010.

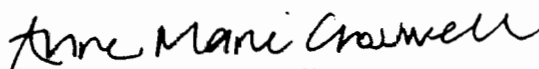
Based on the rights provided to her under the Trust agreement, Vicki would like to inspect the "full and accurate records of assets, receipts and disbursements and other financial transactions relative to each trust" from January 1, 2010, forward. This would include your father's tax returns and any tax filings related to the Trust, also from January 1, 2010, forward.

Additionally, Vicki would like to review the annual statement of accounts prepared during your time as Successor Trustee while your father was living, covering January 1, 2010 - December 31, 2010; January 1, 2011-December 31, 2011; January 1, 2012-December 31, 2012; and January 1, 2013-July 9, 2013. Last, Vicki would like to review the final statement of account that is required upon termination of the trust.

Because the statement of accounts have not been provided, as required by the Trust, and Vicki has not been able to validate the distribution amounts, she objects to the proposed final distribution. We ask that you provide the statement of accounts, with all that the Trust requires (trust property, liabilities, receipts, and disbursements, the source and amount of the Successor Trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values) in order for Vicki to verify the final distributions proposed in your letter. We request that all documentation be sent to this office by the end of the month and have enclosed a self-addressed return envelope for your convenience. Upon review of these documents, it will be determined if the objection to the proposed final distribution will be withdrawn.

We thank you in advance for your courtesy and cooperation.

Very truly yours,


Anne Marie Crosswell

AMC/Ita
cc: Vicki Vergeldt

EXHIBIT H

John Vergeldt
2076 Marquesas Avenue
Tega Cay, South Carolina 29708

February 1, 2014

SENT VIA U.S. MAIL

Anna Marie Crosswell
MOSES & BRACKETT, PC
1333 Main Street, Suite 260
Columbia, SC 29201

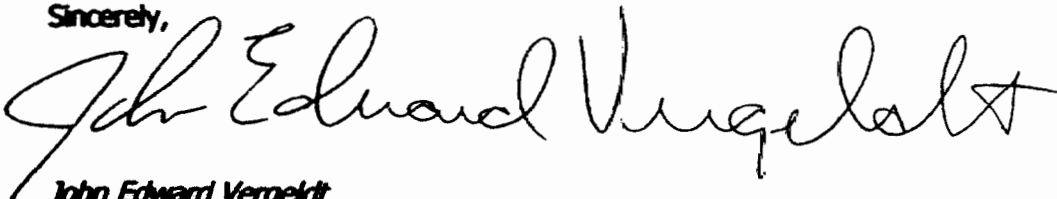
Dear Ms. Crosswell:

As stated in my January 13, 2014 letter to you, please find enclosed the RELEASE OF CLAIM to be signed by your client and returned to me for her final distribution check in the amount of \$15,907.45.

Please understand that on February 15, 2014, I will be disbursing final distribution checks to myself and my sister, Patti, reflecting the payment to Vicki.

Thank you for forwarding the RELEASE OF CLAIM to Vicki for her signature and I will look for it in the mail so that I can release the money to her.

Sincerely,



John Edward Vergeldt
Successor Trustee and P.R. for the
Estate of John Vergeldt, Jr.

Enclosure – Release of Claim for Vicki Vergeldt

Cc: Patti Vergeldt-Downey
Don Harper, Esq.

ROA 00190

IN THE MATTER OF THE JOHN VERGELDT, JR. REVOCABLE LIVING TRUST

The undersigned hereby acknowledges receipt from the Trustee of the John Vergeldt, Jr. Revocable Living Trust of the following:

In consideration of the distribution, the undersigned releases and forever discharges the Trustee and the Trust from any and all rights and claims, which the undersigned may have against the Trustee and the Trust.

Witness

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IN THE STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

VICKI LYNN VERGELDT.)

Plaintiff,)

vs.)

JOHN EDWARD VERGELDT,)
Individually and as former Co-Trustee and)
current Successor Trustee of the John)
Vergeldt, Jr. Revocable Living Trust dated)
September 27, 1978, as amended; and)
PATRICIA VERGELDT DOWNEY, as)
a Qualified Beneficiary of the John)
Vergeldt, Jr. Revocable Living Trust dated)
September 27, 1978, as amended,)

Defendants.)

IN THE PROBATE COURT
CASE NUMBER: 2014 GC 46 012

2014 CP46-1956

SUMMONS TO ANSWER
AMENDED COMPLAINT

FILED RECEIVED
2014 MAR -4 AM 8:13
JUDGE OF PROBATE
YORK COUNTY, SC

To: The Above-Named Defendants:

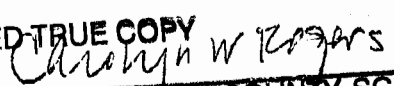
YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Amended Complaint upon the subscribers at their offices, 1333 Main Street, Sixth Floor, Post Office Box 100261, Columbia, South Carolina 29202-3261, within thirty (30) days after the service hereof upon you, exclusive of the day of such service; and if you fail to answer the Amended Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Amended Complaint.

MOSES & BRACKETT, PC

BY:


B. Michael Brackett #838
Post Office Box 100261
Columbia, South Carolina 29202-3261
803.461.2312
Attorney for Plaintiff

February 28, 2014

CERTIFIED TRUE COPY

ROA 00192 PROBATE JUDGE, YORK COUNTY, SC

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

VICKI LYNN VERGELDT.)
Plaintiff.)

vs.)

JOHN EDWARD VERGELDT,)
Individually and as former Co-Trustee and)
current Successor Trustee of the John)
Vergeldt, Jr. Revocable Living Trust dated)
September 27, 1978, as amended; and)
PATRICIA VERGELDT DOWNEY, as)
a Qualified Beneficiary of the John)
Vergeldt, Jr. Revocable Living Trust dated)
September 27, 1978, as amended,)
Defendants.)

IN THE PROBATE COURT
CASE NUMBER: 2014 GC 46 012

**AMENDED COMPLAINT
(Declaratory Judgment)**

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YORK COUNTY, SC

Plaintiff Vicki Lynn Vergeldt (hereinafter "Plaintiff") brings this action for a declaration of rights or legal relations involving John Edward Vergeldt, Individually and as former Co-Trustee and current Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978, as amended (hereinafter "Vergeldt") and Patricia Vergeldt-Downey (hereinafter "Downey"), as a Qualified Beneficiary of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978, as amended (hereinafter "Trust Agreement"), relating solely to the construction and interpretation of the Trust Agreement, as set forth below.

PARTIES

1. Plaintiff is a citizen and resident of Birmingham, Michigan and a Qualified Beneficiary of the Trust Agreement.

2. Defendant Vergeldt is a citizen and resident of York County, South Carolina, the former Co-Trustee of the Trust Agreement, the current Successor Trustee of the Trust Agreement, and a Qualified Beneficiary of the Trust Agreement.

3. Defendant Downey is a citizen and resident of Dearborn Heights, Michigan and a Qualified Beneficiary of the Trust Agreement.

JURISDICTION

4. This Court has subject-matter jurisdiction over this action pursuant to S.C. Code Ann. § 62-1-302(a) and § 62-7-201(a) (1987).

5. Pursuant to S.C. Code Ann. § 62-7-108 (1987) and Paragraph FOURTEENTH G the Trust Agreement's principal place of administration has been transferred from Michigan to York County, South Carolina which is the place of the Defendant Successor Trustee's residence where the records pertaining to the Trust Agreement are kept.

6. The Court has personal jurisdiction over Defendant Vergeldt because he is a resident of South Carolina, and, pursuant to S.C. Code Ann. § 62-7-202 (1987), he accepted the Successor Trusteeship of the Trust Agreement which has its principal place of administration in South Carolina.

7. The Court has personal jurisdiction over Defendant Downey because, pursuant to S.C. Code Ann. § 62-7-202 (1987), she is a Qualified Beneficiary of the Trust Agreement having its principal place of administration in South Carolina and has accepted distributions from such Trust Agreement

VENUE

8. Venue is proper in York County because the Trust Agreement's principal place of

administration is located in York County, South Carolina, where the Successor Trustee resides and keeps all documents pertaining to the Trust Agreement.

CHOICE OF LAW

By its terms, the Trust Agreement is to be administered and construed in accordance with the laws of the State of Michigan. S.C. Code Ann. § 62-7-107 recognizes Settlor's choice of law.

FACTS

9. **John Vergeldt, Jr. ("Decedent") was the Settlor and initial Trustee of the Trust Agreement and the father of Plaintiff, Defendant Vergeldt, and Defendant Downey.**

10. **Decedent executed the Trust Agreement on September 27, 1978.**

11. **Decedent executed the Eighth Amendment and Complete Restatement to the Trust Agreement on July 29, 2009 (Attached as **Exhibit A**).**

12. **Decedent executed the Ninth Amendment of the Trust Agreement on February 5, 2010, amending paragraph SIXTH B of the Eighth Amendment and Complete Restatement (Ninth Amendment of Trust Agreement Attached as **Exhibit B**).**

13. **Decedent executed the Tenth Amendment of the Trust Agreement on March 7, 2010, amending Eighth Amendment and Complete Restatement and Ninth Amendment. Specifically, paragraph SECOND C was amended; paragraph SECOND D was amended; paragraph SECOND Q was added; paragraph SECOND R was added; paragraph SIXTH B was amended; a paragraph was added to SEVENTH; paragraph FOURTEENTH B was amended; and paragraph EIGHTEENTH was amended (Tenth Amendment of Trust Agreement attached as **Exhibit C**).**

14. **On July 29, 2009, Pursuant to paragraph THIRD C of the Trust Agreement, Decedent appointed John Edward Vergeldt to serve as Co-Trustee of the Trust Agreement during Decedent's**

lifetime, was vested with all of the powers duties and obligation of the Trustee, and was given binding decision making authority upon the Trust Agreement, as if made by the Settlor as Trustee (Appointment of Co-Trustee attached as **Exhibit D**).

15. Upon information and belief, Defendant became the sole Successor Trustee of the Trust in 2012.

16. Decedent died on July 9, 2013, thereby triggering the termination of the Trust and the distribution of Trust assets.

17. Decedent's Last Will and Testament is currently being probated in the York County Probate Court under case number 2013-ES-46-00944.

18. Pursuant to Decedent's Last Will and Testament (Attached as **Exhibit E**), Defendant Vergeldt was appointed to serve as Personal Representative for the Estate of John Vergeldt, Jr. by Order of the Honorable Carolyn W. Rogers, Probate Judge for York County, signed on November 12, 2013.

19. Pursuant to Provision Third of the Decedent's Last Will and Testament, the rest, residue, and remainder of Decedent's estate was devised to the Successor Trustee of the Trust Agreement to be added to the trust estate created in such instrument and held, administered and distributed upon its terms, provisions and conditions.

20. Upon information and belief, Defendant Vergeldt has made reductions to the qualified beneficiaries shares under the Trust Agreement pursuant to Paragraph Fifth of the Trust Agreement, stating, in relevant part that

... to the extent that any child of Settlor shall receive from the Settlor on or after the date of his Eight Amendment and Complete Restatement cumulative gifts and/or advances (which have not been repaid) in excess of the cumulative gifts and/or advances (which have not been repaid) to the child of the Settlor who has received

the least amount of cumulative gifts and/or advances (which have not been repaid) from Settlor on or after the date of this Eighth Amendment and Complete Restatement, that excess shall reduce the devise or bequest that such child who received the excess is entitled to receive under this Trust Agreement or any amendments to this Trust Agreement. . . .

21. Plaintiff has asked Defendant Vergeldt to review “records of assets, receipts and disbursements and other financial transactions relative to each trust” as authorized pursuant to Paragraph Fourteenth A of the Trust Agreement, which states:

[t]he Successor Trustee shall have the entire care and custody of all of the assets comprising principal of the trusts hereunder and shall keep the assets safe in accordance with the requirements of like fiduciaries and shall maintain full and accurate records of assets, receipts and disbursements and other financial transactions relative to each trust, all of which shall be available for inspection at any reasonable time by any and all beneficiaries.

22. Defendant Vergeldt has not complied with Plaintiff’s request to review “records of assets, receipts and disbursements and other financial transactions relative to each trust” as authorized pursuant to Paragraph Fourteenth A of the Trust Agreement.

23. Plaintiff has asked Defendant Vergeldt to provide statement of accounts as are required to be produced annually and upon termination of the Trust Agreement by the Tenth Amendment to Trust Agreement, Paragraph Fourteenth B:

[t]he Successor Trustee shall keep a trust account of the affairs of a trust. At least annually and upon termination of a trust, the Successor Trustee shall render a statement of account. A statement of account is a report by the Successor Trustee of the trust property, liabilities, receipts, and disbursements, including the source and amount of the Successor Trustee’s compensation, a listing of the trust assets, and if feasible, their respective market values. No particular format or formality is required for a report unless a court specifies its content and presentation. The statement shall be delivered as soon as practicable after the close of the accounting period or upon termination of the trust

24. Defendant Vergeldt has not provided to Plaintiff a statement of account as required by Tenth Amendment to Trust Agreement, Paragraph Fourteenth B.

25. On November 20, 2013, Defendant Vergeldt sent a Proposal for Distribution for the third and final distribution for the Trust Agreement, notifying Plaintiff of her right to object within thirty days from the date of the Proposal for Distribution, in accordance with S.C. Code Ann. § 62-7-817 (1987) (Proposal for Distribution attached as **Exhibit F**).

26. By letter dated December 3, 2013, Counsel for Plaintiff notified Defendant Vergeldt of Plaintiff's objection to the Proposal for Distribution (Objection Letter attached as **Exhibit G**).

27. By letter dated February 1, 2014, Defendant Vergeldt sent Counsel for Plaintiff a Receipt and Release of Claim and informed Counsel for Plaintiff of his decision to proceed with making the final distributions from the Trust Agreement (Letter and Receipt and Release attached as **Exhibit H**).

28. Plaintiff has not withdrawn her objection to the Proposal for Distribution nor has she signed the Receipt and Release of Claim.

FOR A FIRST CAUSE OF ACTION

(Declaratory Judgment- Construction of Trust)

29. Plaintiff realleges each and every allegation set forth in the above paragraphs as though fully set forth verbatim herein.

30. The Trust Agreement was validly created by Decedent on September 27, 1978. Said Trust Agreement was thereafter restated on July 29, 2009 and amended on February 5, 2010 and March 7, 2010.

31. Defendant Vergeldt was appointed to serve as Co-Trustee of the Trust Agreement on July 29, 2009.

32. Defendant Vergeldt became the sole Successor Trustee of the Trust Agreement in 2012.

33. With respect to the Trust Agreement, Paragraph Fifth provides that,

... to the extent that any child of Settlor shall receive from the Settlor on or after the date of his Eighth Amendment and Complete Restatement cumulative gifts and/or advances (which have not been repaid) in excess of the cumulative gifts and/or advances (which have not been repaid) to the child of the Settlor who has received the least amount of cumulative gifts and/or advances (which have not been repaid) from Settlor on or after the date of this Eighth Amendment and Complete Restatement, that excess shall reduce the devise or bequest that such child who received the excess is entitled to receive under this Trust Agreement or any amendments to this Trust Agreement

34. Plaintiff is uncertain as to the proper interpretation and construction of Paragraph Fifth of the Trust Agreement, and therefore requests the advice and instruction of the Court as to the duties bestowed on Defendant Vergeldt by Paragraph Fifth of the Trust Agreement.

35. Paragraph Fourteenth A of the Trust Agreement provides that:

[t]he Successor Trustee shall have the entire care and custody of all of the assets comprising principal of the trusts hereunder and shall keep the assets safe in accordance with the requirements of like fiduciaries and shall maintain full and accurate records of assets, receipts and disbursements and other financial transactions relative to each trust, all of which shall be available for inspection at any reasonable time by any and all beneficiaries. (Paragraph Fourteenth A); and

36. Plaintiff is informed and believes that the proper interpretation and construction of Paragraph Fourteenth A of the Trust Agreement incorporates the statutory duty to administer the trust in good faith, in accordance with its terms, and in the interests of the beneficiaries (MCL § 700.7801); the statutory duty to keep adequate records of the

administration of the trust (MCL §700.7811); the statutory duty to report and to keep Plaintiff, as a qualified beneficiary, reasonably informed during active administration of the trust with information necessary to protect her interests (MCL §700.7814(1));and upon termination of the trust to provide to Plaintiff a written report of trust property that contains information necessary to protect Plaintiff's interests (MCL §700.7811(3)).

37. Prior to serving his Proposal for Distribution, the Defendant Trustee sought to threaten and intimidate the Plaintiff into not questioning or objecting to the Trustee's administration of the trust by threatening to "sell the cottage," telling the Plaintiff that if she has retained an attorney she must dismiss the attorney and swear under oath that she will not in the future challenge or object to the Defendant Trustee's handling of the estate, and that if an action is taken by Plaintiff against the Defendant Trustee he will "remove [Plaintiff] as a beneficiary."

38. Subsequently, the Defendant Trustee served a Proposal for distribution. Plaintiff objected in writing to the Trustee's Proposal for Distribution and requested records and reports of trust administration so that Plaintiff can determine and protect her rights. Defendant Vergeldt, as Trustee, has failed and refused to provide to Plaintiff a written report with information necessary for the Plaintiff to determine and protect her interests in trust assets.

39. In his response to Plaintiff's request for information, Defendant Vergeldt, as Trustee, has acted with utmost hostility and intimidation toward Plaintiff beneficiary. For example, the Defendant Trustee's response to Plaintiff includes the following: "I need not respond to your letter [requesting report/information] . . . in any manner, but am doing so

as a courtesy;” if Plaintiff files an action, “I [the Trustee] will instruct my attorney . . . ‘to release the kraken;” “I can . . . at my sole discretion and without a court order, remove [Plaintiff] as a beneficiary;” “I [Trustee] am under no legal or moral obligation to provide you or your client with ANY financial transactions that occurred prior to July 9, 2013” These erroneous and inflammatory statements regarding the Trustee’s duties to Plaintiff reflect an ignorance of the law governing trust administration; reflect unabashed hostility toward Plaintiff for her efforts to protect her rights; demonstrate a breach of the Trustee’s duties of loyalty, to keep and provide records and information to beneficiaries; and demonstrate a breach of the Trustee’s duty to act in good faith.

40. Plaintiff therefore requests the advice and instruction of the Court as to the duties imposed on Defendant Vergeldt and the rights owed to Plaintiff by Paragraph Fourteenth A of the Trust Agreement and by the Michigan Trust Code.

41. Paragraph Fourteenth B as set forth in the Tenth Amendment to Trust Agreement states that:

[t]he Successor Trustee shall keep a trust account of the affairs of a trust. At least annually and upon termination of a trust, the Successor Trustee shall render a statement of account. A statement of account is a report by the Successor Trustee of the trust property, liabilities, receipts, and disbursements, including the source and amount of the Successor Trustee’s compensation, a listing of the trust assets, and if feasible, their respective market values. No particular format or formality is required for a report unless a court specifies its content and presentation. The statement shall be delivered as soon as practicable after the close of the accounting period or upon termination of the trust. . . .

42. Plaintiff is uncertain as to the proper interpretation and construction of Paragraph Fourteenth B of the Trust Agreement, in light of the provisions of the Michigan Trust Code and the Defendant Trustee’s expressed understanding of his duties, and therefore Plaintiff requests the

advice and instruction of the Court as to the duties bestowed on Defendant Vergeldt and the rights owed to Plaintiff by such provision.

43. At the death of the Decedent, as instructed pursuant to Paragraph Sixth B of the Trust Agreement, Defendant Vergeldt distributed Six Thousand Dollars (\$6,000.00) from the trust, to each grandchild of the Decedent who survived him.

44. Also Pursuant to Paragraph Sixth B of the Trust Agreement, after distribution of \$6,000.00 to each grandchild surviving the Decedent, the Settlor directed that the balance of the assets of the Residuary Trust be divided by the Successor Trustee into equal shares, one (1) share for each of Settlor's children to be assigned, transferred, conveyed, and paid over to them free and discharged from the trust.

45. Decedent had three children living at the time of his death: Plaintiff, Defendant Vergeldt, and Defendant Downey.

46. Decedent's son David Leigh Vergeldt predeceased the Decedent on January 30, 2010.

47. Paragraph Sixth B states that the share of David Leigh Vergeldt shall be divided equally between the Settlor's then living children.

48. Pursuant to the Terms of Paragraph Sixth B, Plaintiff, Defendant Vergeldt, and Defendant Downey are the only remaining interested persons to this proceeding, and their full names and addresses are as follows: (1) James Edward Vergeldt 2076 Marquesas Avenue, Tega Cay, South Carolina 29708; (2) Patricia Vergeldt-Downey 8647 Riverdale Street, Dearborn Heights, Michigan 48127; and (3) Vicki Lynn Vergeldt 829 Vinewood Street, Birmingham, Michigan 48009.

49. The above named persons are all of sound-mind and full age, and are citizens of the United States.

50. There are no other persons other than those named above who have an interest in the Trust Agreement or in this proceeding.

FOR A SECOND CAUSE OF ACTION

(Probable Cause)

51. Paragraph Eighteenth A of the Trust, in the Tenth Amendment to Trust Agreement, is a "no contest" provision that purports to discourage challenges to the validity of the Trust and challenges to any action taken or proposed to be taken in good faith by the Successor Trustee.

52. However Paragraph Eighteenth D of the Trust, in the Tenth Amendment to Trust Agreement, provides that the terms of Eighteenth A do not apply if there is probable cause for asserting the challenge.

53. Plaintiff has probable cause to challenge the Defendant Trustee's actions as described hereinabove.

FOR A THIRD CAUSE OF ACTION

(Litigation Costs)

54. All allegations made hereinabove are repeated and realleged herein.

55. Plaintiff is informed and believes that she is entitled to an award from the trust, or from the Defendant Vergeldt's distribution, for the costs of this action, including reasonable attorney fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court issue its order

A. interpreting and construing Defendant Trustee Vergeldt's duties and Plaintiff's rights pursuant to (1) Paragraph Fifth of the Trust Agreement; (2) Paragraph Fourteenth A of the Trust

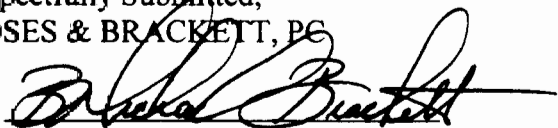
**Agreement; (3) Paragraph Fourteenth B as set forth in the Tenth Amendment to Trust Agreement;
and The Michigan Trust Code;**

**B. declaring that at the time of the institution of these proceedings, Plaintiff had probable cause
to question and to challenge the Defendant Trustee's actions;**

**C. awarding Plaintiff her litigation costs, including reasonable attorney fees, from trust assets
or from Defendant Vergeldt's final distribution; and**

D. granting any such other and further relief as the Court deems just and proper.

Respectfully Submitted,
MOSES & BRACKETT, PC

By: 
B. Michael Brackett #838
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(803) 461-2312

1333 Main Street, Suite 260
Post Office Box 100261 (29202-3261)
Columbia, South Carolina 29201
ATTORNEY FOR PLAINTIFF VICKI
LYNN VERGELDT

February 28, 2014

EXHIBIT A

EIGHTH AMENDMENT AND COMPLETE RESTATEMENT

TO TRUST AGREEMENT

between

JOHN VERGELDT, JR.

Settlor

and

JOHN VERGELDT, JR.

Trustee

Bodman LLP
6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226
(313) 259-7777

EIGHTH AMENDMENT AND COMPLETE RESTATEMENT

TO TRUST AGREEMENT

TABLE OF CONTENTS

<u>Paragraph</u>	<u>Title</u>	<u>Page No.</u>
FIRST	FUNDING.....	I-3
SECOND	DEFINITIONS	II-1
THIRD	SETTLOR'S RIGHTS AND SUCCESSION OF TRUSTEE	III-1
FOURTH	ADMINISTRATION OF SETTLOR'S ESTATE	IV-1
FIFTH	FORGIVENESS OF LOANS AND/OR ADVANCES AND ESTABLISHMENT OF RESIDUARY TRUST	V-1
SIXTH	ADMINISTRATION OF RESIDUARY TRUST AND TRUSTS RESULTING FROM THE RESIDUARY TRUST	VI-1
SEVENTH	SUCCESSOR TRUSTEES	VII-1
EIGHTH	TRUSTEE'S POWERS	VIII-1
NINTH	ALIENATION.....	IX-1
TENTH	RULE AGAINST PERPETUITIES	X-1
ELEVENTH	ALLOCATION OF ASSETS	XI-1

<u>Paragraph</u>	<u>Title</u>	<u>Page No.</u>
TWELFTH	RESIGNATION OF SUCCESSOR TRUSTEE	XII-1
THIRTEENTH	LIFE INSURANCE PROVISIONS	XIII-1
FOURTEENTH	GENERAL PROVISIONS.....	XIV-1
FIFTEENTH	DISCLAIMER.....	X-1
SIXTEENTH	CONSOLIDATION OF TRUSTS	XI-1
SEVENTEENTH	ENVIRONMENTAL MATTERS	XVII-1
EIGHTEENTH	FORFEITURE	XVIII-1
	SIGNATURE PAGE	XIX-1
	NOTARY	XIX-1

EIGHTH AMENDMENT AND COMPLETE RESTATEMENT

TO TRUST AGREEMENT

THIS EIGHTH AMENDMENT AND COMPLETE RESTATEMENT TO TRUST AGREEMENT dated September 27, 1978 is made this 29th day of July, A.D., 2009, between John Vergeldt, Jr., of the City of Dearborn, County of Wayne, and State of Michigan, hereinafter called the "Settlor"; and John Vergeldt, Jr., hereinafter called the "Trustee". This trust may sometimes be referred to as the "John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978".

W I T N E S S E T H:

WHEREAS, the Settlor desires to completely amend and restate the provisions of the aforesaid Trust Agreement signed by him on September 27, 1978, as amended by Second Amendment and Complete Restatement on June 27, 1990, Third Amendment dated December 23, 1998, Fourth Amendment dated February 22, 2001, Fifth Amendment dated December 10, 2003, Sixth Amendment dated April 26, 2006 and Seventh Amendment dated June 7, 2006, by deleting all of the provisions of said Trust Agreement and Amendments and by substituting the provisions hereinafter set forth; and

WHEREAS, the Trustee is agreeable to the amendments hereinafter set forth.

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Carolyn W Rogers
PROBATE JUDGE, YORK COUNTY, SC

NOW, THEREFORE, it is agreed that all of the provisions of the Trust Agreement dated September 27, 1978 and the Amendments thereto shall be deleted and the provisions set forth herein shall be substituted therefor:

FIRST

FUNDING

A. The Settlor has heretofore assigned, transferred, conveyed and delivered to the Trustee various property.

B. Other property which is acceptable to the Trustee may be transferred to the Trustee by Settlor or by others. Such transfers may be accomplished at any time by any instrument, including a Will.

END

SECOND

DEFINITIONS

A. The term "child", "grandchild", "issue", "heir", "descendant", "beneficiary" or other equivalent term shall be construed to include any adopted person and his or her descendants, whether natural or adopted. Provided, however, and notwithstanding anything contained in this Agreement to the contrary, David Leigh Vergeldt shall be treated as a child of Settlor and the biological children of David Leigh Vergeldt shall be treated as grandchildren of Settlor. Provided, further, and notwithstanding anything contained in this Agreement to the contrary, Devin T. Hodgman, stepson of John Edward Vergeldt, shall be treated as a grandchild of Settlor and a child of John Edward Vergeldt for all provisions of this Agreement.

B. Any reference to a "corporate" Successor Trustee shall mean a corporate banking institution, including a national banking association, or trust company engaged in trust administration.

C. The initial Successor Trustee is John Edward Vergeldt. The Settlor may change the Successor Trustee at any time during Settlor's lifetime. The Successor Trustee is referred to in the neuter gender. The Successor Trustee shall have all of the rights, duties and powers herein created and conferred upon the Trustee and/or Successor Trustee except those powers which this Agreement specifically limits to the Settlor acting as Trustee.

D. Wherever reference is made to the Internal Revenue Code or any section thereof, such reference shall be construed to mean the Internal Revenue Code

of 1986, as amended, or such section thereof, as the case may be, as heretofore or hereafter amended or supplemented, or as superseded by laws of similar effect.

E. The term "person" shall mean and include any individual, corporation and/or other legal or business entity.

F. The term "education" shall include all forms of education, including, but not limited to, public or private schools, primary or secondary, college, advanced college or post-college, commercial, technical, business or art education, or otherwise.

G. "EPIC" means the Estates and Protected Individuals Code of the State of Michigan.

H. Whenever this Trust Agreement provides a specific bequest or a devise to an individual, if the individual does not survive the Settlor's death, the bequest or devise shall lapse unless the bequest or devise specifically directs the bequest or devise to pass to the individual's descendants or an alternate taker.

I. If this Trust Agreement refers to "by representation" or "by right of representation", the descendants or issue of a deceased devisee shall receive their share "per stirpes".

J. In the event that any state is determined to be Settlor's heir any distribution that would have been made to the state, but for this provision, shall be added to and distributed as part of the shares being distributed to living individuals.

K. The terms "issue" and "descendants" of a person mean all the lineal descendants of that person of all generations.

L. Use of any gender in this Agreement includes the masculine, feminine, and neuter genders as appropriate. Use of the singular number includes the plural and vice versa unless the context clearly requires otherwise.

M. Use of the verb "shall" in this Agreement indicates a mandatory direction, and use of the verb "may" indicates authorization to take action.

N. Captions, headings, and sub-headings, as used herein, are for convenience only and have no legal or dispositive effect.

O. In the event that any property or interest in property passing under this Agreement (other than as part of the residue) is encumbered by any mortgage, lien, or security interest, or is pledged to secure any obligations, such encumbrance shall not be charged to the residue, but that the devisee or legatee or beneficiary receiving such property or interest in property shall take said property or interest in property subject to all encumbrances existing at the time of Settlor's death.

P. Any generation-skipping tax resulting from a transfer occurring under this Trust Agreement shall be charged to the property constituting the transfer in the manner provided by applicable law.

END

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THIRD

SETTLOR'S RIGHTS AND SUCCESSION OF TRUSTEE

A. Settlor reserves the right to use or to direct the payment of any part of or all of the net income and the principal of the trust for Settlor's own benefit during Settlor's entire lifetime. If the Successor Trustee succeeds Settlor as Trustee during Settlor's lifetime by reason of Settlor's mental or physical incapacity, the Successor Trustee shall have the power to apply so much of the net income and the principal of the trust as it shall determine to be necessary for Settlor's health, maintenance and support and the health, maintenance and support of those persons dependent upon Settlor.

B. While Settlor is Trustee, Settlor shall have all of the powers set forth in Paragraph EIGHTH A of this Agreement which Settlor may exercise completely for Settlor's own benefit, in any manner Settlor wishes, and without regard to any restrictions of law or "prudent man" rule which may pertain to investments or other actions of a fiduciary.

C. The Settlor, while acting as Trustee, shall have the exclusive power and authority: (i) to establish and maintain one or more accounts, which may be margin accounts, for the purpose of purchasing, investing in, or otherwise acquiring, selling (including short sales), possessing, transferring, exchanging, pledging, or otherwise disposing of, or turning to account of, or realizing upon, and generally dealing in and with (a) any and all forms of securities, including but not by way of limitation, shares, stocks, bonds, debentures, notes, scrip, participation certificates, rights to subscribe,

options, puts, calls, warrants, certificates of deposit, mortgages, choses in action, evidences of indebtedness, commercial paper, certificates of indebtedness and certificates of interest of any kind and nature whatsoever, secured or unsecured, whether represented by trust, participating and/or other certificates or otherwise; and (b) any and all commodities and/or contracts for the future delivery thereof, whether represented by trust, participating and/or other certificates or otherwise; (ii) to buy, sell and trade in securities of any nature, including short sales, on margin, and for such purposes may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased with such brokers as security for loans and advances made to the Trustee; (iii) to pledge or mortgage trust property as collateral for any personal or business loans of Settlor, or for the benefit of any other person or entity designated by Settlor and to guarantee the repayment of such loans; (iv) to employ investment counselors and investment advisors and to grant them complete discretion to invest for and on behalf of the trust without any restrictions; (v) to delegate to any agent of Settlor's choice by power of attorney or otherwise, the conducting of banking activities for Trustee, or the hiring, cancellation or use of entry of safe deposit box or other storage facilities in the name of Trustee; and (vi) to appoint (and remove or change) during Settlor's lifetime a Co-Trustee to serve during Settlor's lifetime with all of the powers, duties and obligations of the Trustee and the decisions of the Co-Trustee made during Settlor's lifetime shall be binding upon the trust as if made by Settlor as Trustee. Said power and authority shall be peculiar to Settlor while acting as Trustee

22

and shall not pass to Settlor's successors in trust, except to the extent such power and authority is set forth in other provisions of this Trust Agreement.

D. The Settlor reserves unto Settlor the right to revoke or amend this Agreement in whole or in part, at any time, upon written notification to that effect, duly executed by the Settlor and delivered to the Trustee; provided, that the duties, responsibilities, and liability of the Trustee hereunder shall not be increased without the Trustee's written consent. The right of revocation or amendment shall be personal to Settlor and may not be exercised by any other person acting for Settlor. This Trust Agreement shall become irrevocable upon Settlor's death.

E. The Successor Trustee shall succeed Settlor as Trustee in the event a guardian is appointed for Settlor by a court of competent jurisdiction or if Settlor's primary care physician renders the written opinion that Settlor, by reason of physical or mental infirmity, has become incapacitated to the extent that Settlor is unable to act in Settlor's own behalf. The Successor Trustee may at any time and for any reason determine that Settlor is no longer incapacitated and, upon such determination or upon the restoration of Settlor to full capacity by court order, Settlor shall again act as Trustee and shall have all of the powers Settlor possessed prior to the appointment of a guardian for Settlor or the determination of Settlor's incapacity, as the case may be.

F. Any Successor Trustee to Settlor shall not be liable or responsible in any way for its determinations as to Settlor's capacity or incapacity so long as it acts

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in good faith. The Successor Trustee shall always give first consideration to the needs of the Settlor.

END

FOURTH

ADMINISTRATION OF SETTLOR'S ESTATE

A. Upon the death of Settlor, the Successor Trustee, if not then in possession of the trust estate, shall succeed to such property and take possession thereof and shall hold, administer and dispose of the trust estate (together with any undistributed income and any accrued income not received at Settlor's death), as hereinafter set forth.

B. The Successor Trustee shall have the power to purchase any securities or other property belonging to the estate of the Settlor at the then fair market value, and to loan the personal representative of the Settlor's estate, in such amount as the Successor Trustee may deem necessary or advisable to protect and conserve the assets of the Settlor's estate, out of the principal of the trust, other than from: any assets or the proceeds thereof which are not included in Settlor's estate for federal estate tax purposes. Such loans may be secured or unsecured. The Successor Trustee shall not be liable for any losses suffered by the trust estate as a result of its exercise of the powers created in this Subparagraph.

C. To the extent that United States Treasury Bonds held in the trust are redeemable at par in payment of federal estate tax payable by reason of Settlor's death, the Successor Trustee shall apply the redemption proceeds of such bonds in payment of the federal estate tax, anything contained in this Agreement or Settlor's Will to the contrary notwithstanding. To the extent that other property from sources other than the trust is not available to provide the necessary funds, the Successor Trustee

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PROBATE JUDGE, YORK COUNTY, SC
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may, in its discretion, pay Settlor's funeral and burial expenses, any allowances by court order for those dependent upon Settlor, administration expenses of Settlor's estate, legally enforceable claims against Settlor or Settlor's estate, federal estate tax remaining after redemption proceeds of United States Treasury Bonds are applied and all inheritance, succession and estate taxes payable by reason of Settlor's death (except generation-skipping taxes and those other taxes which Settlor's personal representative is precluded from paying by reason of Settlor's Will), together with any interest thereon or other additions thereto; provided, however, no such payments shall be made from any assets or the proceeds thereof which are not included in Settlor's estate for federal estate tax purposes. No reimbursement shall be secured from any person for any payments so made. The Successor Trustee may make these payments directly or to Settlor's personal representative. The Successor Trustee may rely upon written statements of Settlor's personal representative as to all facts relating to these payments.

D. Upon Settlor's death, the Successor Trustee shall distribute Settlor's tangible personal possessions (other than any investment assets and other than any cash on hand or on deposit by Settlor) located in Settlor's residence at Henry Ford Village, as follows:

1. Each of Settlor's children shall be given the opportunity to choose items that they would like to receive.

2. After Settlor's children have each taken the items they desire if there are any remaining items, each of Settlor's grandchildren shall be given an opportunity to choose items they would like to receive.

3. If there are any items remaining, the Successor Trustee shall dispose of such items as the Successor Trustee deems reasonable.

In the event a dispute over an item arises between the children or grandchildren, Settlor desires that all disputes be settled by the flip of a coin.

END

FIFTH

FORGIVENESS OF LOANS AND/OR ADVANCES AND
ESTABLISHMENT OF RESIDUARY TRUST

A. Settlor hereby forgives any loans and/or advances (which have not been repaid) which Settlor has made prior to the date of this Eighth Amendment and Complete Restatement to any of Settlor's children and Settlor directs that the amount of such loans and/or advances (which have not been repaid) shall not reduce any devise or bequests that such child of Settlor is entitled to receive pursuant to this Trust Agreement or any amendments to this Trust Agreement. Provided, however, to the extent that any child of Settlor shall receive from Settlor on or after the date of his Eighth Amendment and Complete Restatement cumulative gifts and/or advances (which have not been repaid) in excess of the cumulative gifts and/or advances (which have not been repaid) to the child of Settlor who has received the least amount of cumulative gifts and/or advances (which have not been repaid) from Settlor on or after the date of this Eighth Amendment and Complete Restatement, that excess shall reduce the devise or bequest that such child who received the excess is entitled to receive under this Trust Agreement or any amendments to this Trust Agreement; provided further, the reduction shall only be to the extent there has not been a full reduction under Settlor's Will.

B. After the Settlor's death and subject to the foregoing, all of the rest, residue and remainder of the trust estate, including any lapsed or disclaimed legacies or

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Carolyn W Rogers
PROBATE JUDGE, YORK COUNTY, SC

devises, shall be held, administered and distributed from the Residuary Trust in accordance with the provisions of Paragraph SIXTH.

END

SIXTH

ADMINISTRATION OF RESIDUARY TRUST

AND TRUSTS RESULTING FROM THE RESIDUARY TRUST

A. After the death of Settlor, and if this trust at said time owns (or will own pursuant to Settlor's Will) real property described as Lots 3, 4, 5, 6, 7 and 8 of Block 5 of Wallace and Orr Park Subdivision, Town 19 North, Range 7 East, Sims Township, Arenac County, Michigan (hereinafter called the "Cottage") and any tangible personal property located in or about the Cottage, then:

1. The Successor Trustee shall allocate from the Residuary Trust to a separate trust, to be known as the "Cottage Trust", the Cottage together with the tangible personal property located in or about the Cottage at the date of Settlor's death and the sum of fifty thousand and 00/100 (\$50,000.00) dollars less any amount set aside with John Edward Vergeldt for the purpose of maintaining the Cottage. The income and principal of the Cottage Trust shall be used to pay all expenses that accrue in connection with the Cottage, including real estate taxes, fire and extended coverage and liability insurance, repairs, utilities and any other expenses related to the ownership and maintenance of the Cottage. The Cottage Trust shall continue until the death of the last surviving child of Settlor or until the Cottage is disposed of in accordance with the provisions of this Paragraph SIXTH A.

2. The Cottage shall be sold upon the occurrence of either of the two (2) following events:

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Carolyn W Rogers
PROBATE JUDGE, YORK COUNTY, SC

(a) There are no assets in this Trust to pay for the expenses described in 1 above and the individuals who are using the Cottage do not agree to pay said expenses; or

(b) Ten years after the creation of the Cottage Trust and a majority of Settlor's then living children elect to have the Cottage sold or if there is a deadlock between Settlor's children as to whether the Cottage should be sold. In all events John Edward Vergeldt shall have two (2) votes and the other children shall each have one (1) vote.

(c) In the event the decision is made to sell the Cottage, Settlor's children and grandchildren shall have the first option to purchase the Cottage. If none of Settlor's children or grandchildren desires to purchase the Cottage, then Linda Anne Zummer shall be given the option to purchase the Cottage. If Linda Anne Zummer does not wish to purchase the Cottage, then it shall be sold to any willing purchaser. In all events the Cottage is to be sold for fair market value.

3. The use of the Cottage shall be controlled by the Cottage Use Agreement dated August 13, 2008, as it may be amended from time to time. During Settlor's lifetime, Settlor shall have exclusive authority over all matters related to the Cottage. After Settlor's death, the Successor Trustee shall have exclusive authority to settle any disputes that may arise with respect to the Cottage, the maintenance of the Cottage and the use of the Cottage.

Upon the sale of the Cottage, the Cottage Trust shall terminate and the assets of the Cottage Trust shall be added to the Residuary Trust and held, administered and disposed of in accordance with Paragraph SIXTH B below but shall be divided in accordance with Paragraph SIXTH B as if the date of the sale was substituted for Settlor's death.

B. After the death of Settlor, the Successor Trustee shall distribute the sum of six thousand (\$6,000.00) dollars, free and discharged from the trust hereof, to each grandchild of Settlor who survives Settlor and shall divide the balance of the assets of the Residuary Trust into equal shares, one share for each of Settlor's children. If any child of Settlor shall predecease Settlor (other than Settlor's daughter, Patricia A. Vergeldt Downey), said child's share shall be distributed as follows: one-half (1/2) to Settlor's child's spouse, if then living, Settlor's child was married to him or her at the date of his or her death and there was no divorce proceeding pending at the date of his or her death, and the other one-half (1/2) (or all if there is no surviving spouse who meets said conditions) shall be divided equally between Settlor's then living children. If Settlor's daughter, Patricia A. Vergeldt Downey, shall not survive Settlor, then her share shall be distributed, as follows. The Successor Trustee shall distribute from the share of Settlor's daughter, Patricia A. Vergeldt Downey, the sum of ten thousand (\$10,000.00) dollars to Settlor's daughter's spouse, James Downey, if then living, if he was married to Settlor's daughter at the date of her death, there was no divorce proceeding pending at the date of her death and the assets of the residuary estate have a fair market value at the date of Settlor's death of at least five hundred thousand (\$500,000.00) dollars and

the balance shall be divided equally between Settlor's then living children. The part so set aside for Settlor's children and spouses of deceased children shall forthwith be assigned, transferred, conveyed and paid over to them free and discharged from the trust hereof. The part so set aside for the descendants of any of Settlor's children (other than the specific bequest of six thousand (\$6,000.00) dollars) shall, in the discretion of the Successor Trustee, either be distributed to a Uniform Transfers to Minors Act account to age twenty-one (21) or to a trust described in Paragraph SIXTH C, if the descendant has not attained age thirty (30), or otherwise shall forthwith be assigned, transferred, conveyed, and paid over to said descendants free and discharged from the trust hereof.

C. If at the time herein provided for the distribution of the principal of any trust created by or administered under this Paragraph SIXTH there shall be no beneficiary herein designated then living, the trust shall immediately terminate and the remaining trust estate shall be divided equally between Settlor's then living grandchildren and, subject to Paragraph SIXTH D, be distributed to them outright.

D. Unless the Successor Trustee elects the Uniform Transfers to Minors Act to age twenty-one (21), in the event the descendants of any of Settlor's children shall not have attained the age of thirty (30) years at the time he or she is entitled to participate in Settlor's estate, the Successor Trustee shall hold and administer the share of such person (other than the specific bequest of six thousand (\$6,000.00) dollars which shall be distributed outright to each of Settlor's grandchildren) until he or she shall have attained such age and during such period shall pay to or for

the benefit of such person so much of the income and principal of his or her share, as it, in its sole and uncontrolled discretion, shall determine in order to provide for his or her health, support, maintenance and education. Any unexpended portion of the annual net income of such share shall be retained as principal. When such person attains the age of thirty (30) years or upon his or her death, whichever first occurs, the entire share of such person and any accumulations of income shall be transferred and delivered over to him or her or to his or her estate without reservations of any kind.

E. After the death of Settlor, the Successor Trustee may assign, transfer, convey and pay over to the then income beneficiaries, in equal shares if there is more than one income beneficiary, the entire body or corpus of his or her trust estate free and discharged from the trust hereof, in which event any remaindermen shall not be considered as having a vested interest in the trust estate so conveyed to such income beneficiaries, thereby terminating the trust, when in the uncontrolled discretion of the Successor Trustee it might become expedient or advisable to do so for the following reasons or any other reason whatsoever which the Successor Trustee may deem sufficient: (1) changes in the political, economic, or social order in the United States, (2) legislation, regulation or court decisions detrimental to any trust or trusts hereunder, or any beneficiary thereof, (3) lack of availability of suitable trust investments for an extended period, (4) insufficient principal to justify the expense of continuing the trust's existence, or (5) other events which do or may tend to greatly impair the intent and purpose of this instrument.

END

SEVENTH

SUCCESSOR TRUSTEES

If John Edward Vergeldt shall die or resign or be unwilling or unable to act as a Successor Trustee, then the following persons shall be substituted in his place and stead in the following order: (1) Settlor's daughter, Vicki Lynn Vergeldt; and (2) Settlor's daughter, Patricia A. Vergeldt Downey.

END

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Carolyn W Rogers
PROBATE JUDGE, YORK COUNTY, SC

EIGHTH

TRUSTEE'S POWERS

A. The Trustee shall have the following general powers and is authorized to:

(1) Enter upon and take possession of the trust estate, to collect the income and profits therefrom, and to invest and reinvest the estate in real, personal or mixed assets in accordance with its judgment, including interests in any amounts in common trust funds maintained by the Trustee, without being limited by any present or future investment law;

(2) Vote in person or by proxy with respect to any and all securities, and carry in its name or in the name of its nominee or nominees, and with or without designation of fiduciary capacity, securities or other property requiring or permitting registration;

(3) Retain all property in the form in which the same shall be received or acquired by it without liability for any loss that may be incurred thereby, and without regard to the proportion that any one asset or class of assets may bear to the whole;

(4) Allocate between income and principal all receipts and disbursements in accordance with sound trust accounting principles;

(5) Sell real or personal property, or both, either for cash or part cash and part deferred payments and at public or private sale, and option, convey, exchange, lease and release for any length of time, mortgage, pledge, partition,

plat, sub-divide, improve, repair, surrender, abandon or otherwise deal with or dispose of all of the trust estate, or any part thereof, at such time or times and in such manner, either public or private, and upon such terms as in the discretion of the Trustee may seem expedient and proper;

(6) Borrow money on the general credit of any trust or trusts, or by pledge or mortgage of any of the trust property as security for the repayment thereof, and to renew from time to time any such indebtedness;

(7) Prosecute and defend and, in the exercise of its sole discretion, which shall be binding on all interested parties, to compromise, settle or abandon claims by or against the trust and the trust estate;

(8) Make, execute and deliver any and all such instruments in writing as shall be necessary and proper to carry out any disposition whatever of any trust property;

(9) Make any distributions of income or principal, whether before or after the beneficiary attains age eighteen (18), in the Trustee's discretion, (i) directly to the beneficiary, (ii) if the beneficiary is under a legal disability or if the Trustee determines that the beneficiary is unable to properly manage his or her affairs, to a person furnishing support, maintenance or education for the beneficiary or with whom the beneficiary is residing or to any person having legal or actual custody of the beneficiary, or to the guardian or conservator of the beneficiary, or to any trustee appointed by a court for the benefit of a beneficiary, or to any institution attended by the beneficiary, for expenditure on the

beneficiary's behalf, or (iii) if the beneficiary is a minor, to a custodian for the beneficiary as selected by the Trustee (who may be the Trustee) for the beneficiary under a Uniform Transfers (Gifts) to Minors Act until age twenty-one (21) or similar applicable law, or (iv) in any manner whereby it may reasonably be expected that the funds will be expended for the benefit of and on behalf of the beneficiary, and the Trustee shall be under no duty to audit the use of such funds.

(10) Allocate different kinds or disproportionate shares of property or undivided interests in property among the trusts herein or the beneficiaries thereof;

(11) Enter into any transaction with the personal representative of Settlor's estate without the necessity of the consent or approval of any interested person or a court, and enter into any transaction with the trustee of any trust or the personal representative of any other estate in which any beneficiary or distributee has any interest, even though the Trustee also is the other trustee or personal representative;

(12) Continue any business (other than a profession) of Settlor so long as it shall deem it to be in the best interests of the beneficiaries and exercise all powers with respect to such business which Settlor could exercise if living;

(13) Disclaim, in whole or in part, any disclaimable interest as defined in the applicable law; and

(14) Exercise all of the powers and authority provided by applicable law.

B. Certain elections afforded by the Internal Revenue Code may be exercised only by the person who is the "executor" within the meaning of the Internal Revenue Code. The Successor Trustee shall exercise those powers enumerated below, which under the applicable provisions of the Internal Revenue Code may be exercised only by the executor, only if the Successor Trustee is also the "executor" within the meaning of the Internal Revenue Code. Subject to the limitation expressed in the preceding sentences, the Successor Trustee shall have the power to: (1) elect to claim expenses or losses as either income or estate tax deductions; (2) elect, to the extent permitted by the Internal Revenue Code, to defer the payment of all or part of the Settlor's estate taxes; (3) exclude from or include in the Settlor's gross estate, any asset, in the first instance, for federal estate tax purposes; (4) value all assets, in the first instance, for federal estate tax purposes; using date of death or alternate values as the Successor Trustee shall elect; (5) elect to value qualified real property at its value for the use under which it qualifies and enter into any agreements required by such election; (6) elect to have gain or loss recognized on distribution of property in kind under Internal Revenue Code Section 643(e)(3); (7) elect to make, continue or revoke any election to be taxed under Subchapter S of the Internal Revenue Code with respect to any securities eligible for such an election; (8) elect to allocate the Settlor's unused generation-skipping tax exemption; and (9) elect to exercise or not to exercise any other option or election afforded by the Internal Revenue Code unless Settlor has specifically given directions with respect to such matter.

C. Notwithstanding any provision herein to the contrary, with respect to any trust administered under this Trust Agreement no Trustee or Successor Trustee (hereafter called the "Trustee") shall have the power to use or apply trust property (i) for the support and maintenance of anyone the Trustee is obligated to support and maintain, or (ii) for the purpose of directly or indirectly discharging the personal legal obligations of that Trustee or of any beneficiary with respect to any other person, nor shall any Trustee who is also a beneficiary of any trust administered under this Trust Agreement have the power, as Trustee, to make discretionary distributions to him or herself except (if expressly permitted by this instrument) to the extent necessary for such Trustee's health, education, support and maintenance as described under Internal Revenue Code Sections 2041 and 2514 (concerning powers of appointment and ascertainable standards), and such beneficiary-Trustee shall exercise its Trustee powers solely in a fiduciary capacity and shall possess no powers that would otherwise permit that beneficiary-Trustee to enlarge or shift any of the beneficial interests (except as an incidental consequence of the discharge of such fiduciary duties); and to the extent a beneficiary-Trustee has the authority to make discretionary distributions of income and/or principal to another beneficiary from a trust administered under this Trust Agreement that the beneficiary-Trustee is also a beneficiary thereof, such distributions shall be limited by an ascertainable standard related to the distributee beneficiary's health, education, support and maintenance. No beneficiary-Trustee shall possess any power or discretion that is "conclusive," "sole," "absolute" or "uncontrolled" with respect to the exercise or non-exercise of such power or discretion; and such beneficiary-

Trustee's power or discretion in that regard shall at all times be exercised or not exercised in a reasonable manner, be limited by a reasonably definite standard, and shall be subject to review and judicial scrutiny. Notwithstanding the foregoing, this provision shall not apply to Settlor while Settlor is serving as Trustee.

D. Notwithstanding any other provision of this Trust Agreement to the contrary, the following provisions under this Paragraph EIGHTH D shall apply upon the death of the Settlor:

1. If a trust held under this instrument would otherwise be partially exempt from generation-skipping tax ("GST") due to the intended allocation of a GST exemption to it (as used in this instrument, the "GST exemption" means the exemption from generation-skipping tax allowed under Section 2631 of the Internal Revenue Code), then, before such allocation and as of the relevant valuation date under Section 2642 of the Internal Revenue Code with respect to such allocation, the Successor Trustee may (but need not) divide that trust (the "original trust") into two separate trusts of equal or unequal value which shall be identical in all other respects to the original trust, so that the allocation of GST exemption can be made to one trust which will be entirely exempt from generation-skipping tax. The two trusts created under this Paragraph EIGHTH D 1 shall have the same name as the original trust except that the trust to which the GST exemption is allocated shall have the phrase "GST Election" added to its name.

2. If property which is held in, or is to be added or allocated to, a trust pursuant to this instrument is subject to different treatment for any reason for purposes of the generation-skipping tax under Chapter 13 of the Internal Revenue Code than other property being added or allocated to, or also held in, that trust, then the Successor Trustee may (but need not) hold such property instead as a separate trust that is appropriately designated to distinguish it from the trust to which the property otherwise would have been allocated, but that is identical in all other respects to that trust.

3. It is the Settlor's intent that the Successor Trustee shall not be required to administer a trust hereunder that is only partially exempt from generation-skipping taxes, or to commingle property subject to different treatment for generation-skipping tax purposes whether because the transferors with respect to the property are assigned to different generations or otherwise. The provisions of this Paragraph EIGHTH D are intended to enable the Successor Trustee to avoid such situations by empowering the Successor Trustee to segregate trust property (a) that is entirely exempt from generation-skipping tax from trust property that is not exempt, or (b) that is otherwise treated differently from other trust property for purposes of the generation-skipping tax, and the provisions of this Paragraph EIGHTH D shall be applied in a manner consistent with this intention.

4. To the extent it is consistent with the Successor Trustee's fiduciary obligations, the Successor Trustee, in making discretionary distributions of net

income and principal from the trusts referred to in this Paragraph EIGHTH D, shall take advantage of the opportunities provided by the creation of such trusts to avoid or delay generation-skipping tax when making discretionary distributions, and to maximize the amount of trust property that eventually may be distributed to the Settlor's grandchildren or more remote descendants without transfer tax of any kind at the termination of all trusts created under this Agreement.

5. For purposes of dividing trusts under this Paragraph EIGHTH D, the Successor Trustee shall select property in a manner that the assets of each trust will have an aggregate fair market value fairly representative of each trust's proportionate share of the appreciation or depreciation in the value (from the values as finally established for federal estate tax purposes) to the dates of allocation of all property then available for allocation.

6. Any person may add property to any trust hereunder, with the consent of the Successor Trustee, and such property shall thereafter be held by the Successor Trustee as a part thereof. However, no property shall be added to a trust if such addition would cause the inclusion ratio of such trust to become other than zero (0), and such property shall be held as a separate trust with terms identical to those of the trust to which the property would have been added.

7. For purposes of this Paragraph EIGHTH D, a separate share shall be treated as a separate trust.

E. Notwithstanding anything contained in this Trust Agreement to the contrary, upon Settlor's death, the Successor Trustee may appoint (and remove and substitute) Independent Investment Advisor(s) (herein collectively referred to as the "Advisor") under this Trust Agreement and if so appointed the Successor Trustee shall exercise investment powers only on the written direction of the Advisor to the trust. Provided, however, if at any time during the continuance of any such trust there shall be no Advisor of such trust, or if the Advisor of such trust shall fail to communicate in writing to the Successor Trustee the Advisor's direction as to the exercise of any of the aforesaid powers for which exercise the direction of such Advisor shall be necessary, within twenty (20) days after the Successor Trustee shall have sent to such Advisor, by certified mail, at the Advisor's last known address(es), a written request for such direction (notwithstanding that the Successor Trustee shall be under no obligation to request any such direction), then the Successor Trustee is hereby authorized and empowered to take such action in the premises as it, in its sole discretion, shall deem to be for the best interest of the beneficiaries of such trust, and shall be relieved of any and all liability for losses incurred thereby. The Advisor shall be reimbursed for out-of-pocket expenses and reasonable investment counsel fees. The Successor Trustee is relieved of any and all liability for losses incurred as a result of obeying the Advisor's investment directions.

F. The Trustee may register this trust in accordance with Section 700.7101 of EPIC.

G. The Successor Trustee is authorized (but not required) to make distributions from the trust estate to the Guardian(s) of any trust beneficiary, or to the person(s) acting in such capacity to any trust beneficiary (all such being collectively referred to as the "Custodian"), for the following purposes, taking into account the funds available in the trust estate:

1. Reimbursement of the Custodian for traveling to and from the place of the beneficiary's last residence and to the Custodian's place of residence for the purpose of making arrangements for and the actual transportation of the beneficiary to the Custodian's place of residence.

2. Allowance to the Custodian in such amount as the Successor Trustee deems advisable after consultation with the Custodian for the added expenses occasioned by the beneficiary's residence with the Custodian.

3. If the Custodian's residence is inadequate to handle the addition of the beneficiary, the Successor Trustee may, in its sole discretion, disburse and/or loan to the Custodian upon such terms of repayment as the Successor Trustee deems appropriate, money to assist the Custodian in remodeling or expanding the Custodian's then present residence or to purchase a more suitable residence.

4. If the Custodian's family car/van is not adequate in size to accommodate the addition of any beneficiary, the Successor Trustee may, in its sole discretion, disburse and/or loan to the Custodian money to assist the Custodian in purchasing a new and larger car/van.

5. The Successor Trustee may advance to the Custodian the cost of any educational expense committed to on behalf of any beneficiary hereunder. These expenses shall include tuition, room and board, books, related expenses, extracurricular seminars and other expenditures which in the opinion of the Successor Trustee would further and broaden the educational opportunities available to the trust beneficiary.

H. Notwithstanding anything else contained in this Agreement to the contrary, if there is capital stock of a "small business corporation", as defined in Section 1361(b) of the Internal Revenue Code, allocable to or comprising a part of the principal of any trust created under this Trust Agreement, then, if such "small business corporation" is an "S corporation" as defined under Section 1361(a)(1) of the Internal Revenue Code, because an election had previously been made under Section 1362(a) of the Internal Revenue Code, there is only one current income beneficiary and the current income beneficiary indicates his or her willingness in writing to consent to such election, the Successor Trustee shall allocate all the capital stock of such "small business corporation" to a separate trust for the benefit of such beneficiary, or prior to making an election under said Section 1362(a) the Successor Trustee, if it has determined to make such an election and the current income beneficiary indicates his or her willingness in writing to consent to such an election, shall either allocate or sever the capital stock of such "small business corporation" from such trust and allocate the capital stock to a separate trust for the benefit of such beneficiary. The trust created hereunder shall be known as the "Qualified Subchapter S Trust FBO" said beneficiary.

The following terms and conditions of such trust shall supplement or override, if to the contrary, any other terms and conditions contained elsewhere in this Trust Agreement to the trust for the benefit of the then current income beneficiary.

1. All income, within the meaning of Section 643(b) of the Internal Revenue Code, of the trust shall be distributed to the current income beneficiary while the small business corporation is an "S corporation";

2. During the lifetime of the current income beneficiary, the income and principal of the trust may be distributed only to the current income beneficiary or, while the current income beneficiary is under any legal disability, may be paid by the Successor Trustee to any court appointed guardian or similar appointee with respect to such legally disabled current income beneficiary;

3. The income interest of the current income beneficiary shall terminate on the earlier of the beneficiary's death or the termination of the trust;

4. Upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary; and

5. The trust's terms and conditions, not to the contrary that would otherwise apply if this trust was not created, shall control the administration and disposition of any trust created hereunder.

1. Notwithstanding anything else contained in this Agreement to the contrary, if there is capital stock of a "small business corporation", as defined in Section 1361(b) of the Internal Revenue Code, allocable to or comprising a part of the principal

of any trust created under this Trust Agreement, then, if such "small business corporation" is an "S corporation" as defined under Section 1361(a)(1) of the Internal Revenue Code, because an election had previously been made under Section 1362(a) of the Internal Revenue Code, and there are two or more current income beneficiaries or the sole current income beneficiary indicates his or her unwillingness to consent to such election, or the trust does not otherwise qualify for qualified subchapter S tax treatment, the Successor Trustee may allocate all the capital stock of such "small business corporation" to a separate trust for the benefit of such beneficiary, or prior to making an election under said Section 1362(a) the Successor Trustee, if it has determined to make such an election and there are two or more current income beneficiaries or the current income beneficiary indicates his or her unwillingness to consent to such an election, or the trust does not otherwise qualify for qualified subchapter S tax treatment, may either allocate or sever the capital stock of such "small business corporation" from such trust and allocate the capital stock to a separate trust for the benefit of such beneficiary. The trust created hereunder shall be known as the "Electing Small Business Trust FBO" said beneficiary(ies). At any time while there shall be in place a valid election to administer the trust as an Electing Small Business Trust ("ESBT"), the Successor Trustee shall not be permitted to take any action, other than an express revocation of the trust's ESBT election, which would result in the trust failing to qualify as an ESBT pursuant to Section 1361(e) of the Internal Revenue Code and the Regulations promulgated thereunder, and in furtherance thereof the following shall be observed:

1. The trust shall not have as a current beneficiary any person other than an individual, an estate, or an organization described in paragraphs (2), (3), (4) or (5) of Section 170(c) of the Internal Revenue Code.

2. No interest in the trust shall be acquired by purchase.

3. An election under Section 1361(e)(3) of the Internal Revenue Code shall be made by the Successor Trustee and shall be in effect for the trust.

4. The trust shall not have a number of "potential current beneficiaries", as defined in Section 1361(e)(2) of the Internal Revenue Code, which would cause the corporation(s) whose stock is owned by the trust, to exceed the numerical shareholder limitation imposed upon such corporation(s) at any time by Section 1361(b) of the Internal Revenue Code.

J. Notwithstanding any provisions to the contrary contained in this Trust Agreement, the Successor Trustee shall be subject to the following restrictions, duties and obligations for any beneficiary of any trust receiving or entitled to receive government assistance or aid:

1. The Successor Trustee shall, in its sole and absolute discretion, expend principal or income for the needs of the beneficiary not otherwise provided for by government financial assistance and benefits or by the providers of the services. Such needs include, by way of description and not by way of limitation, additional food, clothing, health services not provided, radios, record players, television sets, camping, vacations, athletic contests, movies or trips; provided, however, that the Successor Trustee is under no obligation to expend

ELEVENTH

ALLOCATION OF ASSETS

The Successor Trustee may make any division or allocation in cash or in kind, and as to any property incapable of exact division, it shall not be necessary for the Successor Trustee to divide the same physically into parts to which each trust shall be entitled, but individual parts thereof may, by appropriate book entries, be allocated among the trusts. In any case where exact division of property or allocation of undivided interests therein between or among the other trusts hereunder is not practical or expedient, the Successor Trustee may select assets to be appropriated in whole or in part to any of said trusts.

END

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Charlyn W Rogers
PROBATE JUDGE, YORK COUNTY/SC

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TWELFTH

RESIGNATION OF SUCCESSOR TRUSTEE

A. The Successor Trustee of a trust may resign by written notice **setting forth the effective date thereof delivered personally or sent by registered mail, at least thirty (30) days prior to said effective date, to each of the ascertained and then living beneficiaries of the trust to or for whom income may currently be paid or used, or their guardians, addressed to the last known address of such person as disclosed by the resigning Successor Trustee's records.**

B. Except as otherwise provided in Paragraph SEVENTH, within **twenty (20) days after the delivery or mailing of such notice of resignation, a majority of such adult beneficiaries, or a majority of the guardians of minor beneficiaries, if there are no adult beneficiaries, shall select a corporate successor to the resigning Successor Trustee and shall in writing, signed by a majority of the beneficiaries or their guardians, whichever is applicable, inform the resigning Successor Trustee of the identity of the selected corporate successor to the resigning Successor Trustee. If the beneficiaries shall fail to select a corporate successor to the resigning Successor Trustee within the twenty (20) day period or if there are no adult beneficiaries and a majority of the minor beneficiaries do not have guardians, then the resigning Successor Trustee shall select a corporate successor.**

C. The resigning Successor Trustee, upon the effective date of its **resignation, shall deliver to its successor and to each such beneficiary of the trust a statement of all receipts and disbursements of the trust together with an inventory of the**

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PROBATE JUDGE, YORK COUNTY, SC

assets belonging to the trust. When the successor shall deliver its receipt for the assets of each of the trusts to the Successor Trustee so resigning, the latter shall stand and be discharged of all of its duties and obligations hereunder.

D. Each and every successor to the original Successor Trustee shall **have the identical powers, rights, duties and obligations of the original Successor Trustee named in this Agreement unless otherwise provided herein.**

END

THIRTEENTH

LIFE INSURANCE PROVISIONS

A. The Settlor shall pay all premiums or assessments on any life insurance policies on Settlor's life made payable to this trust. The Trustee shall be under no obligation to see that said premiums or assessments are paid or to pay the same, and shall be under no obligation in respect to the policies deposited hereunder other than for their safekeeping, except to the extent expressly provided herein. Nothing herein contained shall be deemed to impose any obligation on the Settlor to maintain any or all of said policies in force. If, at any time, and so long as, the only assets held by the Trustee are insurance contracts or beneficiary designations under employee benefit plans and cash of nominal amount, the Trustee shall be under no duty or obligation to invest and/or keep invested such cash of nominal amount.

B. The Settlor reserves unto Settlor during Settlor's lifetime, all incidents of ownership, payments, dividends, surrender values and benefits of any kind which may accrue on account of any of the policies of life insurance on Settlor's life made payable to this trust, under this Agreement, and the right at any time to assign, pledge or use said policies or any of them or to change the beneficiary thereof, and to borrow money thereon; and the Settlor shall have the right and power at any time to withdraw from the possession of the Trustee any and all policies of life insurance deposited with the Trustee hereunder, upon the execution and delivery to said Trustee of a proper receipt therefor.

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PROBATE JUDGE, YORK COUNTY, SC

C. No insurance company who shall make payment of insurance proceeds to this trust shall be required to inquire into or take notice of any of the provisions of this Agreement or to see to the application or disposition of the proceeds of said policies, and the receipt of the Successor Trustee to any such insurance company shall be effectual to release and discharge them for any payment so made and shall be binding upon every beneficiary of the trusts hereby created.

D. The Successor Trustee shall use its best efforts to collect the proceeds of any life insurance policies that are payable to this trust, or may, at its option, exercise any of the options of settlement that may at that time be available to the Successor Trustee under the terms of any of said policies. The Successor Trustee may institute any proceedings at law or in equity in order to enforce the payment thereof, it being distinctly understood, however, that the Successor Trustee shall not, except at its option, enter into or maintain any litigation to enforce the payment of said policies until it has been indemnified to its satisfaction against all expenses and liabilities to which it may, in its judgment, be subjected by any such action on its part. The Successor Trustee is authorized to compromise and adjust claims arising out of the insurance policies or any of them, upon such terms and conditions as it may deem just, and the decision of the Successor Trustee shall be binding and conclusive upon all persons and corporations interested therein. The Successor Trustee shall be responsible for the proceeds of the insurance only when, as and if collected or paid to it, and the Successor Trustee shall not be liable to anyone if for any reason the policies shall lapse or be otherwise uncollectible in whole or in part.

E. An instrument in writing completely terminating the trust shall, **without more**, upon delivery to the Trustee, completely terminate all of this trust's right, **title and interest** to insurance proceeds otherwise payable to it. The Settlor assumes full **responsibility** for changing the insurance beneficiary designations to reflect Settlor's **intent with respect** to such policies.

F. Anything contained in this Trust Agreement to the contrary **notwithstanding**, the Trustees (and Successor Trustees) of each trust hereunder, other **than any individual** Trustee or individual Successor Trustee (except Settlor) whose life **may be insured** under the life insurance policy in question, shall have and, in their sole **discretion**, may exercise all of the incidents of ownership in each and every policy of life **insurance which** may at any time be owned or purchased by such trust. The term **"incidents of ownership"** with respect to a policy shall include, by way of illustration and **not limitation**, the right to collect, receive, and retain all payments, dividends, surrender **values**, sickness, accident, disability, retirement, or other benefits, including all death **benefits, maturing** on such policy during the insured's lifetime and thereafter, as well as **the right to** at any time transfer, assign, sell, pledge, hypothecate, borrow on, surrender, **prepay, convert, divide, change the beneficiary of, and/or exercise or select any options, elections, and waivers** with respect to such policy. All other provisions of this Trust Agreement to the contrary notwithstanding, any individual Trustee or individual Successor Trustee (except Settlor) whose life is insured under a trust owned policy shall **under no circumstances** be entitled to partake in any way in decisions relating to such **policy or** in the exercise of any of the foregoing powers or discretions with respect to

such policy (and in the absence of another then acting Trustee or Successor Trustee no incidents of ownership as to such policy shall be exercised).

1. The payment of premiums on each policy owned by any trust hereunder shall be charged against the principal of that trust unless the Trustees or Successor Trustees of such trust (other than any (except Settlor) who might be financially affected thereby), in the exercise of reasonable discretion, shall determine to charge such premiums against the income of such trust on the basis of that being in the best interests of the present and future beneficiaries of such trust.

2. Furthermore and also notwithstanding all other provisions of this Trust Agreement, if any insurance on the life of a beneficiary of a trust hereunder is an asset of such trust, such insurance and all proceeds thereof, unless held by the original trust hereunder, shall be excluded from the assets which might otherwise be subject to any use, enjoyment, withdrawal, or appointment by that beneficiary (and on such beneficiary's death such proceeds shall be disposed of as though any power of appointment held by such beneficiary had not been exercised).

END

FOURTEENTH

GENERAL PROVISIONS

A. The Successor Trustee shall have the entire care and custody of all of the assets comprising principal of the trusts hereunder and shall keep the assets safe in accordance with the requirements of like fiduciaries and shall maintain full and accurate records of assets, receipts and disbursements and other financial transactions relative to each trust, all of which shall be available for inspection at any reasonable time by any and all beneficiaries.

B. The Successor Trustee shall furnish at least annually, to the beneficiary or beneficiaries to whom income is currently payable or for whose benefit it may currently be expended, a complete inventory of the assets held in the trust for such beneficiary and shall furnish at least annually, or at such other periodic intervals as may be agreed upon between the Successor Trustee and such beneficiary, or beneficiaries, a statement of all receipts and disbursements.

C. The Successor Trustee shall pay all necessary and proper disbursements, expenses and liabilities in the administration of the trusts hereunder, including reasonable compensation of the Successor Trustee or its successor.

D. In cases where the Internal Revenue Code affords the Successor Trustee any election or option, the Successor Trustee shall exercise such election or option for what it believes to be the best interest of the trust and the beneficiaries thereof. The Successor Trustee shall not make any adjustment between income and principal because of a benefit conferred or a detriment imposed upon any trust or any of

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the beneficiaries thereof by reason of the applicable provisions of the Internal Revenue Code, including elections or options.

E. The trusts herein provided shall be administered and this Agreement shall be construed in accordance with the laws of the State of Michigan.

F. In any proceeding involving the construction, operation or modification of this Agreement, the then living beneficiary or beneficiaries to whom income is currently payable or for whose benefit it may currently be expended shall represent any unknown and undetermined beneficiaries, and any order, judgment or decree rendered in such proceeding shall be binding not only upon such known persons but also upon all unknown and undetermined beneficiaries.

G. The Successor Trustee shall have the power to maintain the situs of the property of any trust created under this Agreement in any jurisdiction, in the Successor Trustee's absolute discretion, and thereafter transfer the situs at any time or times to any jurisdiction selected by the Successor Trustee. Upon any such transfer of situs, the trust estate may thereafter, at the election of the Successor Trustee, be administered exclusively under the laws of (and subject, as required, to the exclusive supervision of the courts of) the jurisdiction to which it has been transferred. If the Successor Trustee of any trust created hereunder elects to change the situs of any such trust, the Successor Trustee is hereby relieved of any requirement of having to qualify in any other jurisdiction and of any requirement of having to account in any court of such other jurisdiction.

END

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FIFTEENTH

DISCLAIMER

The acceptance to serve as Successor Trustee shall be construed as no more than acceptance of the terms of this Agreement as they apply to the rights, powers, duties and obligations of the Successor Trustee during its tenure as trustee and shall in no way be construed to mean acceptance, ratification or approval of any of the acts, omissions, or defaults of the individual Trustee nor any undertaking by the Successor Trustee to audit or verify the records of the individual Trustee. The Successor Trustee shall be entitled to rely upon any statements and records (which may come into the Successor Trustee's possession after a reasonable search) of the individual Trustee as to the assets of this trust and shall have no responsibility or liability hereunder to any person for the assets of this trust until reduced to the possession of the Successor Trustee.

END

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Carolyn W Rogers
PROBATE JUDGE, YORK COUNTY, SC

SIXTEENTH

CONSOLIDATION OF TRUSTS

After the death of Settlor, if the provisions under the trust or trusts created herein shall become substantially the same as the provisions under any trust or trusts established by the Settlor or by any other person for the irrevocable benefit of the same beneficiary or beneficiaries, the Successor Trustee may, in its complete discretion, terminate such trust or trusts created hereunder and distribute all of the assets thereof to the trustee of said similar trust or trusts, or may accept from the trustee of said similar trust or trusts, all of the assets thereof, and the assets so distributed or received shall be treated as an addition to said similar trust or trusts or to this trust or trusts, as the case may be, and shall be held, treated and disposed of as a part thereof or hereof, and if distributed to a similar trust or trusts, the trust or trusts created hereunder shall thereupon terminate. The purpose of this Paragraph is to eliminate the necessity of maintaining two or more separate trusts with similar provisions for the same beneficiary. However, the Successor Trustee shall not combine any trust having an inclusion ratio, as defined in Section 2642 of the Code, of other than zero (0) with a trust having an inclusion ratio of zero (0).

END

CERTIFIED TRUE COPY *Charmyn W Rogers*
PROBATE JUDGE, YORK COUNTY, SC

ROA00254
XVI

SEVENTEENTH
ENVIRONMENTAL MATTERS

A. For purposes of this Paragraph, the following terms have the meanings set forth below:

1. "Assets held in the trust estate" include interests in sole proprietorships, partnerships, corporations, limited liability companies and other business entities and the assets owned by such business entities.

2. "Environmental law" means any federal, state, or local statute, rule, regulation or ordinance relating to protection of the environment or human health.

3. "Hazardous substance" means any substance defined as hazardous or toxic in or otherwise regulated by any environmental law.

4. "Environmental concerns" means, as determined by the Successor Trustee in its sole discretion, (a) any condition of, or activity conducted on or with, any property or assets held in the trust estate that violates, or may cause violation of any environmental law; (b) the presence of or any actual or threatened release of any hazardous substance from, to, at, under, or upon any property or assets held in the trust estate; and (c) any actual or threatened spill, leak, discharge, disposal, emission, dispersal, leaching, or migrating of any hazardous substance from, to, at, under, or upon any property or assets held in the trust estate.

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Carolyn W. Rogers
PROBATE JUDGE, YORK COUNTY, SC

5. "Governmental body" means any unit of federal, state, or local government, and any agency, department, board, commission, or subdivision thereof, and any quasi-governmental agency thereof and any court or quasi-judicial entity.

B. The Successor Trustee shall have the powers, in addition to those powers provided by applicable law:

1. To inspect, assess, and evaluate any property or assets held in the trust estate or proposed to be donated or transferred to the trust estate, and any records related thereto, for the purpose of determining if any environmental concerns exist with respect to such property or assets.

2. To respond to any actual or suspected environmental concerns relating to property or assets held by the Successor Trustee in the trust estate.

3. To take, on behalf of the trust estate, any action necessary to prevent, abate, or otherwise remedy any environmental concerns relating to property or assets held by the Successor Trustee in the trust estate, either before or after the initiation of an enforcement action by any governmental body.

4. To refuse to accept property or assets in trust if the Successor Trustee determines or suspects that environmental concerns are present at, affect or relate to any property or assets to be donated or transferred to the trust which the Successor Trustee believes could result

in liability to the trust or the Successor Trustee, or otherwise impair the value of the property or assets held therein.

5. To settle or compromise at any time any and all claims or lawsuits against the trust estate or against the Successor Trustee which may be asserted by any governmental body or private party involving any alleged environmental concern relating to property or assets held in the trust estate.

6. To disclaim any power granted by any document, statute or rule of law which, in the sole discretion of the Successor Trustee, may cause the Successor Trustee to incur personal liability under any environmental law or under the common law.

7. To decline to serve as Successor Trustee if the Successor Trustee reasonably believes that there is or may be a conflict of interest between the Successor Trustee in its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust estate because of any environmental concerns that relate to property or assets held in the trust estate.

8. To disclaim, in whole or in part, any interests in property or assets for any reason including, but not limited to, a concern that holding such property or assets in the trust estate could result in liability to the trust or the Successor Trustee as a result of any environmental concerns.

9. To use and expend the trust income and principal to: (i) conduct environmental assessments, audits, and site monitoring to determine if any environmental concerns are present at or affect any property or assets held in the trust estate; (ii) take all appropriate remedial action to contain, remedy, cleanup, or respond to environmental concerns that relate to property or assets held in the trust estate, either on its own accord or in response to an actual or threatened claim by any governmental body or private party; (iii) institute legal proceedings concerning any environmental concerns that relate to property or assets held in the trust estate or contest or settle legal proceedings brought by any governmental body or by any private person or entity regarding environmental concerns that relate to any property or assets held in the trust estate; (iv) comply with any order of any governmental body directing an assessment, investigation, remedial action, response action, abatement or cleanup of any environmental concerns relating to property or assets held in the trust estate; (v) to take any action or do anything permitted in the above paragraph, or as otherwise permitted by law; and (vi) employ agents, consultants and legal counsel to assist or perform the above undertakings or actions. Any expenses incurred by the Successor Trustee under this paragraph may be charged against income or principal as the Successor Trustee shall determine.

C. The Successor Trustee shall not be personally liable to any beneficiary or other person or entity for any decrease in value of property or assets held in the trust estate by reason of the Successor Trustee's compliance with any environmental law, specifically including any reporting requirement under such law. Neither the acceptance by the Successor Trustee of property nor a failure by the Successor Trustee to inspect property or assets shall be deemed to create any inference as to whether there is or may be any liability under any environmental law with respect to such property or assets.

D. No Successor Trustee shall be liable for any loss or depreciation in value sustained by the trust as a result of the Successor Trustee retaining any property or assets upon which there is later discovered to be environmental concerns requiring remedial action pursuant to any environmental law, unless the Successor Trustee contributed to the loss or depreciation in value through willful default, willful misconduct, or gross negligence.

E. Settlor's estate shall indemnify, defend, protect, and hold harmless the Successor Trustee, and each of the Successor Trustee's successors, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses (including without limitation, diminution in the value of the trust property or assets, damages for the loss of or restriction on the use of rentable or usable space or of any amenity of the trust property), costs, or expenses (including attorneys' fees, consultants' fees, and experts' fees) arising from or caused in whole or in part, directly or indirectly, by any environmental concerns relating to property or assets held in the trust estate,

regardless of the cause of such environmental concerns. Settlor's obligations under this indemnification shall include, without limitation, whether foreseeable or unforeseeable, any and all costs incurred in connection with any investigation or testing of site conditions, and any and all costs of any required or necessary repair, remedial action, response action, cleanup, detoxification, or decontamination of the trust property (including, without limitation, the soil and ground water on, under or about the trust property), and the preparation and implementation of any closure, remedial action, or other required plans in connection therewith. Settlor's obligation under this indemnification shall survive the expiration or earlier termination of the Successor Trustee's term as fiduciary under the Trust Agreement. For purposes of the release and indemnity provisions, hereof, any acts or omissions of Settlor, or by employees, agents, assignees, contractors, or subcontractors of Settlor, or by others acting for or on behalf of Settlor (whether or not they are negligent, intentional, willful, or unlawful), shall be strictly attributable to Settlor.

END

EIGHTEENTH

FORFEITURE

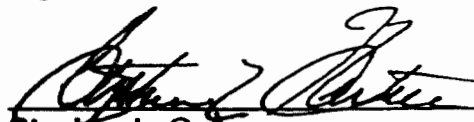
The beneficial provisions of this Trust Agreement and of Settlor's Last Will and Testament are intended to be in lieu of any other rights, claims or interests, whether statutory or otherwise, except bona fide pre-death debts, which any beneficiary hereunder may have against or in Settlor's estate or the assets held under this Trust Agreement. Therefore, if any beneficiary shall assert any claim, statutory election or other right or interest against or in the Settlor's estate, either pursuant to Settlor's Last Will and Testament, this Trust Agreement (as it may be amended) or otherwise, or directly or indirectly contest the Settlor's Last Will and Testament or this Trust Agreement (as it may be amended), or attack or seek to impair or invalidate any of the provisions thereof, or conspire with or voluntarily assist anyone attempting to do any of those things, then (a) all beneficial interest, powers and rights of every kind and nature which such beneficiary might otherwise have had under this Trust Agreement shall be forfeited and such forfeited interest shall augment proportionately the shares of the beneficiaries designated in Paragraph SIXTH B who shall not have participated in such acts or proceedings, (b) all of the provisions of this Trust Agreement, to the extent that they confer any benefits, powers or rights whatsoever upon such beneficiary, shall thereupon become absolutely void and revoked, and (c) such beneficiary, if then acting as a Successor Trustee hereunder, shall automatically cease to be a Successor Trustee and shall thereafter be ineligible either to select, remove or become a Successor Trustee hereunder. The foregoing shall not be construed, however, to limit the

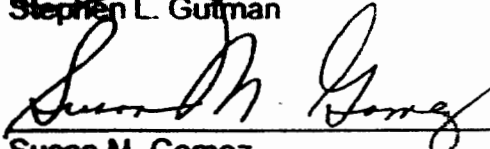
appearance of any beneficiary as a witness in any proceeding involving the Settlor's Last Will and Testament or this Trust Agreement nor limit any beneficiary's appearance in any capacity in the proceeding solely for the construction of either of said documents.

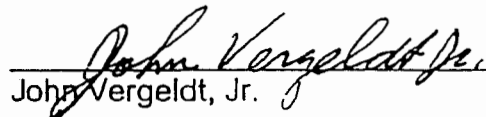
END

IN WITNESS WHEREOF, the parties hereto have executed this Eighth Amendment and Complete Restatement as of the day and date first above written and by so doing the Trustee herein named accepts all of the duties and conditions imposed.

Signed in the presence of:

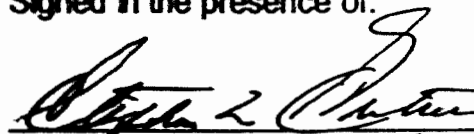

Stephen L. Gutman


Susan M. Gomez

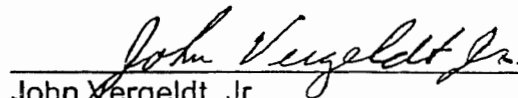

John Vergeldt, Jr.

"Settlor"

Signed in the presence of:


Stephen L. Gutman

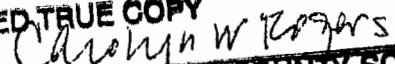

Susan M. Gomez


John Vergeldt, Jr.

"Trustee"

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

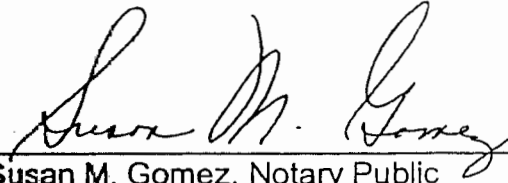
On this 29th day of July, 2009, before me personally appeared John Vergeldt, Jr., to me known to be the person described in and who executed the

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PROBATE JUDGE, YORK COUNTY, SC

RCX-00263

Detroit 934699 1

foregoing instrument and acknowledged that he executed the same as his free act and deed.

A handwritten signature in cursive script, appearing to read "Susan M. Gomez", written over a horizontal line.

Susan M. Gomez, Notary Public
Wayne County, Michigan acting in
Wayne County, Michigan
My Commission expires: 11/11/2012

EXHIBIT B

NINTH AMENDMENT TO TRUST AGREEMENT

THIS NINTH AMENDMENT TO TRUST AGREEMENT dated September 27, 1978, is made this 5th day of February, A.D., 2010, between John Vergeldt, Jr., of the City of Dearborn, County of Wayne, and State of Michigan, hereinafter called the "Settlor," and John Vergeldt, Jr., hereinafter called the "Trustee." This Trust is sometimes referred to as the "John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978."

W I T N E S S E T H

WHEREAS, on July 29, 2009 the Settlor completed amended and restated the provisions of the aforesaid Trust Agreement signed by him on September 27, 1978, by deleting all of the provisions of said Trust Agreement and Amendments and by substituting the provisions set forth in the Eighth Amendment and Complete Restatement;

WHEREAS, the Settlor desires to amend the Eighth Amendment and Complete Restatement; and

WHEREAS, the Trustee is agreeable to the amendments hereinafter set forth.

NOW, THEREFORE, it is agreed that the Eighth Amendment and Complete Restatement shall be amended as follows:

CERTIFIED TRUE COPY W Rogers
PROBATE JUDGE, YORK COUNTY, SC

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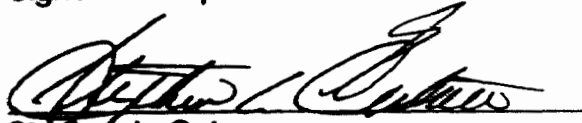
Paragraph SIXTH B of the Eighth Amendment and Complete Restatement

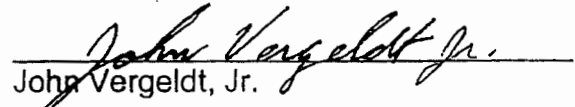
shall be deleted and the following Paragraph SIXTH B shall be substituted therefor:

B. After the death of Settlor, the Successor Trustee shall distribute the sum of six thousand (\$6,000.00) dollars, free and discharged from the trust hereof, to each grandchild of Settlor who survives Settlor and shall divide the balance of the assets of the Residuary Trust into equal shares, one (1) share for each of Settlor's children. If any child of Settlor shall predecease Settlor (other than Patricia A. Vergeldt Downey and other than David Leigh Vergeldt who died on January 30, 2010), said child's share shall be distributed as follows: one-half (1/2) to Settlor's child's spouse, if then living, Settlor's child was married to him or her at the date of his or her death, and there was no divorce proceeding pending at the date of his or her death, and the other one-half (1/2) (or all if there is no surviving spouse who meets said conditions) shall be divided equally between Settlor's then living children. If Patricia A. Vergeldt Downey shall not survive Settlor, then her share shall be divided equally between Settlor's then living children. The Successor Trustee shall distribute from the share of David Leigh Vergeldt the sum of twenty thousand (\$20,000.00) dollars to his surviving spouse, Bonnie Graham Vergeldt, if and only if she survives Settlor and if the assets of the residuary estate have a fair market value at the date of Settlor's death of at least five hundred thousand (\$500,000.00) dollars, and the balance (or all if these conditions are not satisfied) shall be divided equally between Settlor's then living children. The part so set aside for Settlor's children and spouses of deceased children shall forthwith be assigned, transferred, conveyed and paid over to them free and discharged from the trust hereof. The part so set aside for the descendants of any of Settlor's children (other than the specific bequest of six thousand (\$6,000.00) dollars) shall, in the discretion of the Successor Trustee, either be distributed to a Uniform Transfers to Minors Act account to age twenty-one (21) or to a trust described in Paragraph SIXTH C, if the descendant has not attained age thirty (30), or otherwise shall forthwith be assigned, transferred, conveyed, and paid over to said descendants free and discharged from the trust hereof.

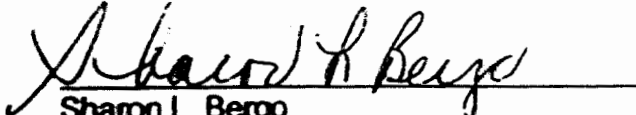
IN WITNESS WHEREOF, the parties hereto have executed this Ninth Amendment as of the date and date first above written and by so doing the Trustee herein named accepts all of the duties and conditions imposed.

Signed in the presence of:

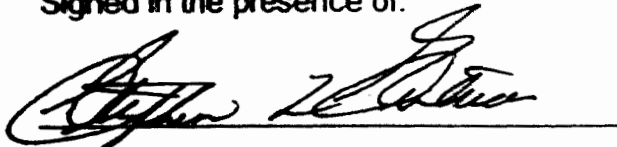

Stephen L. Gutman

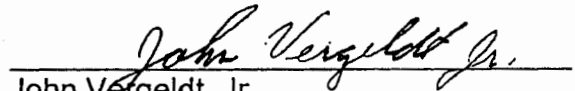

John Vergeldt, Jr.

"Settlor"

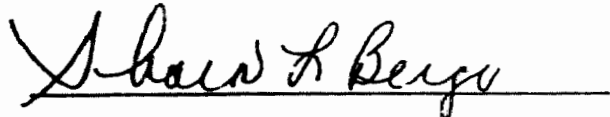

Sharon L. Bergo

Signed in the presence of:


Stephen L. Gutman


John Vergeldt, Jr.

"Trustee"


Sharon L. Bergo

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

On this 5th day of February, 2010, before me personally appeared John Vergeldt, Jr., to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.

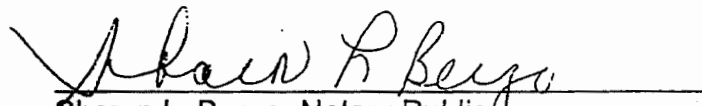

Sharon L. Bergo, Notary Public
Oakland County, Michigan acting in
Wayne County, Michigan
My Commission expires: 09/14/2012

EXHIBIT C

TENTH AMENDMENT TO TRUST AGREEMENT

THIS TENTH AMENDMENT TO TRUST AGREEMENT dated September 27, 1978, is made this 7th day of March, A.D., 2011, between John Vergeldt, Jr., of the City of Birmingham, County of Oakland, and State of Michigan, hereinafter called the "Settlor," and John Vergeldt, Jr., hereinafter called the "Trustee." This Trust is sometimes referred to as the "John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978."

WITNESSETH

WHEREAS, on July 29, 2009 the Settlor completely amended and restated the provisions of the aforesaid Trust Agreement signed by him on September 27, 1978, by deleting all of the provisions of said Trust Agreement and Amendments and by substituting the provisions set forth in the Eighth Amendment and Complete Restatement;

WHEREAS, on February 5, 2010 the Settlor amended the Eighth Amendment and Complete Restatement by the Ninth Amendment;

WHEREAS, the Settlor desires to amend the Eighth Amendment and Complete Restatement and Ninth Amendment; and

WHEREAS, the Trustee is agreeable to the amendments hereinafter set forth.

CERTIFIED TRUE COPY
Carolyn W. Rogers
PROBATE JUDGE, YORK COUNTY, SC

NOW, THEREFORE, it is agreed that the Eighth Amendment and Complete Restatement and Ninth Amendment shall be amended as follows:

1. Paragraph SECOND C as set forth in said Trust Agreement shall be deleted and the following Paragraph SECOND C substituted therefor:

C. The initial Successor Trustee is John Edward Vergeldt. The Settlor may change the Successor Trustee at any time during Settlor's lifetime. The Successor Trustee and each Trustee is referred to in the neuter gender. The Successor Trustee and each Trustee of each trust created pursuant to this Trust Agreement shall have all of the rights, duties and powers herein created and conferred upon the Trustee and/or Successor Trustee except those powers which this Agreement specifically limits to either the Settlor acting as Trustee or to the Successor Trustee. The Successor Trustee's duties relate to the trust while Settlor is alive, the trust after Settlor's death and during the post-death administration period and before its division for the beneficiaries' shares and each and every trust created pursuant to this Trust Agreement after Settlor's death unless this Agreement specifies a different Trustee for one or more of such trusts.

2. Paragraph SECOND D as set forth in said Trust Agreement shall be deleted and the following Paragraph SECOND D substituted therefor:

D. All tax-related terms, provisions and sections mean the same in this Agreement as they mean in the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder, and any successor provisions of either. Notwithstanding, if at any time a federal tax including, but not limited to, estate, gift or generation-skipping transfer tax, is not applicable and there is no term, provision or section of the federal tax law that corresponds to any term, provision or section contained in this Agreement, then such term, provision or section contained in this Agreement shall nevertheless be interpreted with reference to the term, provision or section that was in effect at the time of the execution of this Agreement or the term, provision or section that was in effect immediately before such tax law became inapplicable, as the case may be.

3. The following Paragraphs SECOND Q and SECOND R shall be added to the end of Paragraph SECOND:

Q. The term "mental incapacity" shall mean the court appointment of a guardian or conservator for a person or if that person's primary care physician renders such an opinion.

R. The term "current trust beneficiary" means each beneficiary who currently either has a right to receive all or a portion of the income of a trust or is eligible to receive a mandatory or discretionary distribution of income or principal of a trust.

4. Paragraph SIXTH B as set forth in said Trust Agreement shall be ~~deleted~~ and the following Paragraph SIXTH B shall be substituted therefor:

B. After the death of Settlor, the Successor Trustee shall distribute the sum of six thousand (\$6,000.00) dollars, free and discharged from the trust hereof, to each grandchild of Settlor who survives Settlor and shall divide the balance of the assets of the Residuary Trust into equal shares, one (1) share for each of Settlor's children. If any child of Settlor shall predecease Settlor (other than Patricia A. Vergeldt Downey and other than David Leigh Vergeldt who died on January 30, 2010), said child's share shall be distributed as follows: one-half (1/2) to Settlor's child's spouse, if then living, Settlor's child was married to him or her at the date of his or her death, and there was no divorce proceeding pending at the date of his or her death, and the other one-half (1/2) (or all if there is no surviving spouse who meets said conditions) shall be divided equally between Settlor's then living children. If Patricia A. Vergeldt Downey shall not survive Settlor, then her share shall be divided equally between Settlor's then living children. The share of David Leigh Vergeldt shall be divided equally between Settlor's then living children. The part so set aside for Settlor's children and spouses of deceased children shall forthwith be assigned, transferred, conveyed and paid over to them free and discharged from the trust hereof. The part so set aside for the descendants of any of Settlor's children (other than the specific bequest of six thousand (\$6,000.00) dollars) shall, in the discretion of the Successor Trustee, either be distributed to a Uniform Transfers to Minors Act account to age twenty-one (21) or to a trust described in Paragraph SIXTH C, if the descendant has not attained age thirty (30), or otherwise shall forthwith be assigned, transferred, conveyed, and paid over to said descendants free and discharged from the trust hereof.

5. The following paragraph shall be added to the end of Paragraph SEVENTH:

An individual Successor Trustee's liability is limited to an act or omission committed in bad faith or with reckless indifference to the purposes of the trust or

the interests of the trust beneficiaries. The individual Successor Trustee shall be indemnified from the applicable trust estate for reasonable legal expenses in defending any claim or action filed by a trust beneficiary, except for a claim or action based upon an act or omission by the Successor Trustee to have been committed in bad faith or with reckless indifference to the purposes of the trust but only if the beneficiary prevails in such litigation.

6. Paragraph FOURTEENTH B as set forth in said Trust Agreement shall be deleted and the following Paragraph FOURTEENTH B shall be substituted therefor:

B. The Successor Trustee shall keep a trust account of the affairs of a trust. At least annually and upon termination of a trust, the Successor Trustee shall render a statement of account. A statement of account is a report by the Successor Trustee of the trust property, liabilities, receipts, and disbursements, including the source and amount of the Successor Trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values. No particular format or formality is required for a report unless a court specifies its content and presentation. The statement shall be delivered as soon as practicable after the close of the accounting period or upon termination of the trust. The Successor Trustee need not render account statements so long as Settlor is a Trustee. If Settlor is living but is not a Trustee, the Successor Trustee shall account only to Settlor or, if Settlor is deemed mentally incapacitated, to Settlor's spouse, and to each current trust beneficiary, but shall not provide any account statements or information about the trust to any other beneficiary. If a current trust beneficiary is another trust, accounts statements shall be delivered to the trustee of the other trust. Except as provided above, if any current trust beneficiary is a minor or otherwise disabled, delivery shall be made to his or her designated agent, to the conservator of his or her estate, or, if none, then to his or her parent, nearest of kin, or an adult with whom he or she is living.

8. Paragraph EIGHTEENTH as set forth in said Trust Agreement shall be deleted and the following Paragraph EIGHTEENTH substituted therefor:

EIGHTEENTH

CONTEST

A. The beneficial provisions of this Trust Agreement and of Settlor's Last Will and Testament are intended to be in lieu of any other rights, claims or interests, whether statutory or otherwise, except bona fide pre-death debts,

which any beneficiary hereunder may have against or in Settlor's estate or the assets held under this Trust Agreement. Except as provided in subsection (D) below, every share, interest, or power conferred by this trust is made on the condition precedent that the recipient acquiesce in all aspects of Settlor's estate planning and not engage in any activity described in clauses (i) through (x) set forth below. If any beneficiary of this trust, singly or in conjunction with any other person or persons, directly or indirectly, (i) contests in any court the validity of this trust or, in any manner, attacks or seeks to impair or invalidate any of its provisions; (ii) contests in any court the validity of the Settlor's Last Will in any manner, or attacks or seeks to impair or invalidate any of its provisions; (iii) seeks to obtain an adjudication in any proceeding in any court that this trust or any of its provisions or that Settlor's Will or any of its provisions is void; (iv) claims entitlement by way of any written or oral contract to any portion of the Settlor's estate, whether in probate or under this instrument; (v) unsuccessfully challenges the appointment of any person named as Successor Trustee of this trust, or as personal representative or successor personal representative of the Settlor's Will; (vi) objects in any manner to any action taken or proposed to be taken in good faith by the Successor Trustee or the personal representative of the Settlor's Will, or other agent, whether said personal representative is acting under court order, advice of legal counsel, or otherwise; (vii) objects to any construction or interpretation of this Trust, or any provision of it, that is adopted or is proposed in good faith by the acting Successor Trustee; (viii) unsuccessfully seeks the removal of any person acting as Successor Trustee of any Trust created under this instrument, or of the personal representative of the Settlor's Will; (ix) files any creditor's claim in Settlor's estate (without regard to its validity), whether the claim arose before or after the date of this instrument, except for claims for cash advanced or paid for expenses of last illness or funeral by said claimant; or (x) contests or seeks to invalidate any of the following: any trust which Settlor has created or may create during Settlor's lifetime, or any provision thereof, any gift which Settlor has made or will make during Settlor's lifetime, whether before or after the date of this instrument, any exercise of a power of appointment possessed by the Settlor, or any other transaction by which Settlor sold any assets (whether to a relative of Settlor's or otherwise), then that person's right to take any interest given to him or her by this trust shall be determined as it would have been determined if the person had predeceased the execution of this Trust Agreement. Further, such beneficiary, if then acting as a Successor Trustee hereunder, shall automatically cease to be a Successor Trustee and shall thereafter be ineligible either to select, remove or become a Successor Trustee hereunder. The provisions of this paragraph shall not apply to any disclaimer by any person of any benefit under this trust or under any Will. The foregoing shall not be construed, however, to limit the appearance of any beneficiary as a witness in any proceeding involving the Settlor's Last Will and Testament or this Trust Agreement nor limit any beneficiary's appearance in any capacity in the proceeding solely for the construction of either of said documents.

B. The Successor Trustee is authorized to enforce this provision and to defend, at the expense of the trust, any contest or other attack of any nature on the trust or any of its provisions.

C. In the event that any provision of this paragraph is held to be invalid, void or legal, the same shall be deemed severable from the remainder of the provisions in this paragraph, and shall, in no way, affect, impair or invalidate any other provision in this paragraph.

D. Both Settlor and the law recognize that facts or circumstances could give rise to probable cause to challenge this Agreement or some of its provisions. Therefore, the precondition of subparagraph (A) above shall not apply to a challenge or contest if there is probable cause for asserting the challenge or contest. As used in this subparagraph, probable cause shall exist if at the time of instituting the proceeding, there was evidence that would lead a reasonable person, properly informed and advised, to conclude that there was a substantial likelihood that the challenge would be successful.

IN WITNESS WHEREOF, the parties hereto have executed this Tenth Amendment as of the date and date first above written and by so doing the Trustee herein named accepts all of the duties and conditions imposed.

* John Vergeldt, Jr.
John Vergeldt, Jr.

"Settlor"

* John Vergeldt, Jr.
John Vergeldt, Jr.

"Trustee"

We sign below as witnesses. This Amendment was signed in our presence by the Settlor and the current Trustee. To the best of our knowledge, John Vergeldt, Jr. signed this Amendment willingly; signed it as his voluntary act for the purposes set forth in this Amendment; and at the time of execution of this Amendment

was 18 years of age or older, was under no constraint or undue influence, and had sufficient mental capacity to make this Amendment.


Stephen L. Gutman

of 6th Floor at Ford Field

1901 St. Antoine Street

Detroit, Michigan 48226


Susan M. Gomez

of 30496 Minton Street

Livonia, Michigan 48150

EXHIBIT D

7/29/09

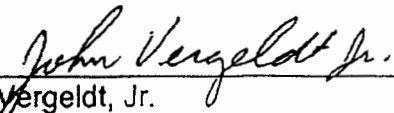
APPOINTMENT

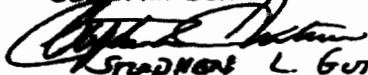
Pursuant to Paragraph THIRD C of a Trust Agreement dated September 27, 1978, as amended, between John Vergeldt, Jr., Settlor, and John Vergeldt, Jr., Trustee, the undersigned, as Settlor, hereby appoints John Edward Vergeldt to serve as Co-Trustee of the Trust created by the Trust Agreement during the undersigned's lifetime. According to Paragraph THIRD C, John Edward Vergeldt, as Co-Trustee, is vested with all of the powers, duties and obligations of the Trustee and the decisions of the Co-Trustee made during Settlor's lifetime shall be binding upon the Trust as if made by Settlor as Trustee. The undersigned reserves the right to revoke this appointment.

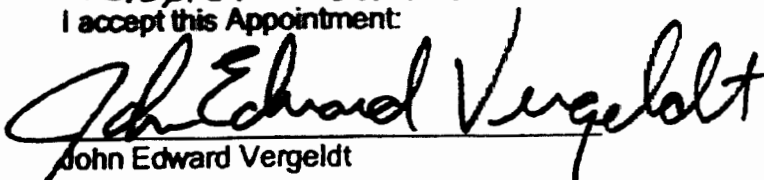
Dated: July 29, 2009

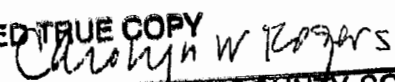
WITNESS:


Susan M. Gomez


John Vergeldt, Jr.


STEPHEN L. GORMAN
I accept this Appointment:


John Edward Vergeldt

CERTIFIED TRUE COPY

PROBATE JUDGE, YORK COUNTY, SC

Detroit_943199_1

ROA 00278

EXHIBIT E

LAST WILL AND TESTAMENT

OF

JOHN VERGELDT, JR.

I, John Vergeldt, Jr., of the City of Dearborn, County of Wayne, and State of Michigan, being of sound mind and disposing memory, do hereby make, publish and declare this to be my Last Will and Testament, hereby expressly revoking any and all former Wills and Codicils by me made.

FIRST

I direct that all legally enforceable claims, the expenses of my last illness, funeral and burial expenses, and the expenses of administering my estate, together with all estate, inheritance, succession or similar taxes (other than taxes imposed by Chapter 13 of the Internal Revenue Code, additional estate taxes imposed by Section 2032A of the Internal Revenue Code, all transfer taxes attributable to a marital trust of which I am the surviving spouse, all transfer taxes attributable to the inclusion in my gross estate of property by reason of Section 2036 of the Internal Revenue Code, and all transfer taxes that arise as a result of the inclusion of property over which I have a power of appointment at my death) which shall become payable in respect of any property, or interest therein, which I may own at the time of my death, and which is properly includible in my gross estate for any such taxation purposes, shall be charged to and paid from my residuary estate; provided, however, that any provisions to the contrary.

CERTIFIED TRUE COPY *W Rogers*
PROBATE JUDGE, YORK COUNTY, SC

J.V.
Detroit_934580_1

ROA 00280

relating to the payment of said taxes in the Trust Agreement, described below, shall govern instead. Except to the extent of the tax exclusions described parenthetically in the preceding sentence, my personal representative shall not seek recovery or reimbursement from, or apportionment of taxes between or among the recipients of any such property or interest.

Any generation-skipping tax resulting from a transfer occurring under this Will or otherwise resulting from a transfer with respect to which I am the transferor for generation-skipping tax purposes, shall be charged to the property constituting the transfer in the manner provided by applicable law.

In the event that any property or interest in property passing under this Will or by operation of law or otherwise by reason of my death (other than as part of my residuary estate) is encumbered by any mortgage, lien, or security interest, or is pledged to secure any obligations (whether the property or interest in property so encumbered or pledged shall be owned by me jointly or individually), it is my intention that such indebtedness shall not be charged to or paid from my estate, but that the devisee, legatee, joint owner taking by survivorship, or beneficiary receiving such property or interest in property shall take said property or interest in property subject to all encumbrances existing at the time of my death.

United States Treasury Bonds redeemable at par in payment of federal estate taxes (whether held by the Successor Trustee under the Trust Agreement described below, or by my personal representative) shall be first used in payment of such taxes.

SECOND

It is my desire that my tangible personal possessions (other than any investment assets and other than any cash on hand or on deposit by me) located in my residence at Henry Ford Village be disposed of, as follows:

(a) Each of my children shall be given the opportunity to choose items that they would like to receive.

(b) After my children have each taken the items they desire if there are any remaining items, each of my grandchildren shall be given the opportunity to choose items they would like to receive.

(c) If there are any items remaining, my personal representative shall dispose of such items as my personal representative deems reasonable.

In the event a dispute over an item arises between the children or grandchildren, I desire that all disputes be settled by the flip of a coin.

THIRD

All the rest, residue and remainder of my estate of which I may die seized or possessed or to which I or my estate may then or thereafter be in any way entitled, real, personal or mixed, and wheresoever situated, (including all lapsed legacies and devises or other gifts made under this, my Last Will and Testament which fail for any reason and including any disclaimed property but excluding any property over which I may have at the time of my death a power of appointment exercisable by Will) after

allowance for or payment of the claims, expenses and taxes described in Paragraph FIRST, I give, devise and bequeath to the Successor Trustee(s) under Trust Agreement dated September 27, 1978, between myself as Settlor and Trustee, which Trust Agreement was executed and in effect prior to the execution of this Will, to be added by them to the trust estate created in such instrument and held, administered and distributed upon its terms, provisions and conditions as now existing or as subsequently amended.

FOURTH

If for any reason the gift in Paragraph THIRD to the Successor Trustee(s) under the Trust Agreement referred to in Paragraph THIRD does not take effect, then I give, devise and bequeath all said rest, residue and remainder of my estate, after allowance for or payment of all said claims, expenses and taxes, to the Successor Trustee(s) under the Trust Agreement referred to in Paragraph THIRD, to hold, administer and disburse as my Testamentary Trustee in accordance with the provisions contained in said Agreement at the date of the execution of this Will.

FIFTH

The principal of my estate and the income resulting therefrom while in the hands of my personal representative shall not be subject to any conveyance, transfer or assignment, or be pledged as security for any debt of any beneficiary thereof and shall not be subject to any claim of any creditor of any such beneficiary, through legal

process or otherwise. Any attempted sale, anticipation, assignment or pledge of any of the principal or income held in the estate by such beneficiaries or any of them shall be null and void, and shall not be recognized by my personal representative. It is my intention to place the absolute title to the property held in my estate and the income therefrom in my personal representative, with power and authority to pay out the same only as authorized hereby.

SIXTH

(a) My personal representative shall have the following general powers:

(1) To enter upon and take possession of my estate, to collect the income and profits from the property, and to invest and reinvest the estate in real, personal or mixed assets (including common trust funds of a corporate fiduciary) in accordance with said personal representative's judgment, not being limited by any present or future investment law;

(2) To continue any business (other than a profession) in which I may be engaged at the time of my death so long as my personal representative shall deem it to be in the best interests of the beneficiaries and my personal representative shall exercise all powers with respect to such business which I could exercise if living, and to determine and participate in any business form in which to exploit my business, including

corporations, general partnerships, limited partnerships, limited liability companies, and joint ventures;

(3) To vote in person or by proxy with respect to any and all securities, and to carry in my personal representative's name or in the name of my personal representative's nominee or nominees, and with or without designation of fiduciary capacity, securities or other property requiring or permitting of registration;

(4) To retain all property in the form in which the same shall be received or acquired by my personal representative without liability for any loss that may be incurred thereby, and without regard to the proportion that any one asset or class of assets may bear to the whole;

(5) To allocate between income and principal all receipts and disbursements in accordance with sound fiduciary accounting principles;

(6) To sell real or personal property, or both, either for cash or part cash and part deferred payments and at public or private sale, and to option, convey, exchange, lease and re-lease for any length of time, mortgage, pledge, partition, plat, subdivide, improve, repair, surrender, abandon or otherwise deal with or dispose of all of my estate, or any part thereof, at such time or times and in such manner, either public or private, and upon such terms as in the discretion of my personal representative may seem expedient and proper;

(7) To borrow money, on the general credit of my estate or by pledge or mortgage of any of my estate as security for the repayment thereof, and to renew from time to time any indebtedness incurred by me or by my personal representative for my estate;

(8) To make, execute and deliver any and all such instruments in writing as shall be necessary or proper to carry out any disposition whatever of my estate;

(9) To prosecute and defend and, in the exercise of my personal representative's discretion, which shall be binding on all interested parties, to compromise, settle or abandon claims in favor of or against my estate or estate property;

(10) To employ attorneys, accountants and agents and pay their reasonable compensation and costs for services rendered and to pay all necessary costs of administering my estate, including reasonable compensation of the personal representative;

(11) To petition for the appointment of, or actually appoint, an ancillary estate fiduciary and pay the expense of ancillary administration;

(12) To enter into any transaction with my estate without the necessity of the consent or approval of any interested person or a court, and enter into any transaction with the trustee of any trust or the personal representative of any other estate in which any beneficiary or distributee

has any interest, even though the other trustee or personal representative is also personal representative of my estate;

(13) To allot different kinds or disproportionate portions or undivided interests in property among beneficiaries; and to determine the value of any allotted property, without compensating adjustment, even if the basis for federal income tax purposes of property allotted to any beneficiary is not fairly representative of all property available for distribution and to make any distribution or division of my estate in cash or in kind or both; and

(14) To exercise any powers which are set forth in MCLA Section 700.3715 of EPIC, but which are not set forth above and such additional powers shall be conferred upon my personal representative without regard to whether the administration is supervised or unsupervised.

(b) My personal representative shall have the following discretionary powers related to tax matters:

(1) To exclude from or include in my gross estate any asset, in the first instance, for federal estate tax purposes;

(2) To value any asset, in the first instance, for federal estate tax purposes;

(3) To elect date of death or alternative values for federal estate tax purposes;

(4) To elect to value qualified property under which it qualifies and enter into such election;

(5) To elect to have gain recognized on the sale of property in kind under Internal Revenue Code;

(6) To allocate my unused unified credit;

(7) To make, continue or modify an election under Subchapter S of the Internal Revenue Code which is eligible for such an election;

(8) To elect, to the extent permitted by the Internal Revenue Code, to defer payment of all or part of the tax on my estate;

(9) To elect to claim expenses for the production of my estate tax deductions; and

(10) To elect to exercise or not exercise an election afforded by the Internal Revenue Code in the given directions with respect to such election.

(c) In any case where the applicable provisions of the Internal Revenue Code (including any election available to me) do not require the exercise of a power granted under this my Will, or any exercise or nonexercise of which confers a benefit on one beneficiary and imposes a detriment upon another beneficiary or my personal representative shall not attempt to restore or

contemplated by this Will through adjustment between income and principal, or otherwise.

(d) My personal representative shall not be accountable or responsible to any person interested in my estate for the manner in which my personal representative shall exercise any discretionary authority or election afforded in Subparagraph (a) or (b) above so long as my personal representative acts in good faith and exercises said personal representative's best judgment and discretion for what said personal representative believes to be in the best interests of my estate and of the persons designated to benefit under this, my Last Will and Testament.

SEVENTH

(a) I hereby nominate and appoint my son, John Edward Vergeldt, personal representative of this, my Last Will and Testament. In the event that my son, John Edward Vergeldt, is unable or unwilling to serve as personal representative of my estate under this instrument, I nominate and appoint my daughter, Vicki Lynn Vergeldt, personal representative of this, my Last Will and Testament with all of the powers above-mentioned.

(b) No personal representative shall give bond unless required by law or court rule.

EIGHTH

(a) For the purposes of this, my Last Will and Testament, the words "child", "children", "grandchild", "issue", "heir", "descendant", "beneficiary" or other equivalent term shall be construed to include any adopted person and his or her descendants whether natural or adopted. Provided, however, and notwithstanding anything contained in this Will to the contrary, for purposes of this, my Last Will and Testament, David Leigh Vergeldt shall be treated as a child of mine and the biological children of David Leigh Vergeldt shall be treated as my grandchildren. Provided, further, and notwithstanding anything contained in this Will to the contrary, for purposes of this, my Last Will and Testament, Devin T. Hodgman, stepson of John Edward Vergeldt, shall be treated as John Edward Vergeldt's child and my grandchild.

(b) "EPIC" means the Estates and Protected Individuals Code of the State of Michigan.

NINTH

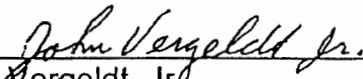
I hereby forgive any loans and/or advances (which have not been repaid) which I have made prior to the date of this Will to any of my children and I direct that the amount of such loans and/or advances (which have not been repaid) shall not reduce any devises or bequests that such child is entitled to receive pursuant to this Will or any codicils to this Will. Provided, however, to the extent that any of my children shall receive from me on or after the date of this Will cumulative gifts and/or advances (which have not been repaid) in excess of the cumulative gifts and/or advances (which have

not been repaid) to my child who has received the least amount of cumulative gifts and/or advances (which have not been repaid) from me on or after the date of this Will, that excess shall reduce the devise or bequest that such child who received the excess is entitled to receive under this Will or any codicils to this Will.

TENTH

If any person who, if I died intestate, would be entitled to any part of my estate, shall either directly or indirectly, alone or in conjunction with any other person, claim in spite of my Will an intestate share of my estate, I give that person one (\$1.00) dollar, and no more, in lieu of any other share or interest.

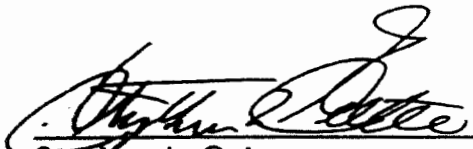
IN WITNESS WHEREOF, I, John Vergeldt, Jr., the testator, have set my hand to this document this Twenty-ninth day of July, in the year Two Thousand Nine. I have taken an oath, administered by the officer whose signature appears on this document, swearing that the statements in this document are true. I declare to that officer that this document is my Will; that I sign it willingly; that I execute it as my voluntary act for the purposes expressed in this Will; and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.



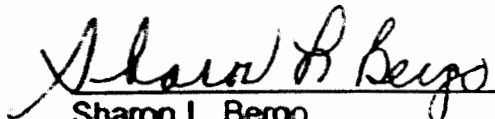
John Vergeldt, Jr.

201

We, Stephen L. Gutman and Sharon L. Bergo, the witnesses, sign our names to this document and have taken an oath, administered by the officer whose signature appears on this document, to swear that all of the following statements are true: the individual signing this document as the testator executes the document as his Will, signs it willingly, and executes it as his voluntary act for the purposes expressed in this Will; each of us, in the testator's presence, signs this Will as witness to the testator's signing; and, to the best of our knowledge, the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.


Stephen L. Gutman

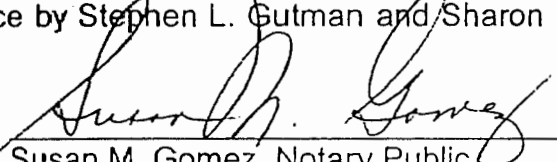
of 6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226


Sharon L. Bergo

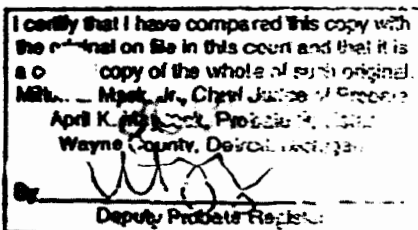
of 6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

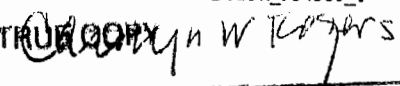
Sworn to and signed in my presence by John Vergeldt, Jr., the testator, and sworn to and signed in my presence by Stephen L. Gutman and Sharon L. Bergo, witnesses on July 29, 2009.


Susan M. Gomez, Notary Public
Wayne County, Michigan acting in
Wayne County, Michigan
My commission expires: 11/11/2012

AUG 14 2013



d.v.
Detroit_934580_1

CERTIFIED TRUE COPY 

ROA 00292 PROBATE JUDGE, YORK COUNTY, SC

EXHIBIT F

Q.

2076 Marquesas Avenue
Tega Cay, SC 29708

November 20, 2013

Vicki Vergeldt
829 Vinewood
Birmingham, MI 48009

Patti Vergeldt Downey
8647 Riverdale Street
Dearborn Heights, MI 48127

Dear Vicki & Patti:

Upon legal advice and based on the Trust Document, I have decided to make an additional distribution from the Trust funds and this will be the final distribution except, for possibly a very small one, after tax season is over. The current balance in the trust checking account is \$133,490.00.

I will be sending Vicki a check in the amount of \$40,068.00. This amount reflects a pro-rata share of \$39,496.00 plus \$2,250.00 (1/2 of what Patti owed the trust), minus \$1,678.00 (which is what Vicki owed the trust). This gives Vicki a total distribution from the trust of \$100,068.00.

I will be sending Patti a check in the amount of \$35,836.00. This amount reflects a pro-rata share of \$39,496.00 plus \$840.00 (1/2 of what Vicki owed the trust), minus \$4,500.00 (which is what Patti owed the trust). This gives Patti a total distribution from the trust of \$85,386.00.

I will be issuing myself a check in the amount of \$42,586.00. This amount reflects a pro-rata share of \$39,496.00 plus \$2,250.00 (1/2 of what Patti owed the trust), plus \$840.00 (1/2 of what Vicki owed the trust). This gives myself a total distribution from the trust of \$102,586.00.

The difference in the totals to each simply reflect an equal distribution minus what they individually owed the trust. If you take \$133,490.00 minus \$118,490.00 (which is what I will be distributing), it leaves the trust with \$15,000.00 to close out the remainder, using my best estimates, of the estate; i.e. doctor's bills, legal fees, State and Federal income tax, State and Federal Trust tax and Personal Representative fees. My plan is to begin the year with \$6,000.00 in the Trust checking account set aside for the operation of the cottage. This is a pro-rata share of \$2,000.00 from each of us. The \$50,000.00 for the Cottage Trust is invested in interest bearing bonds and dividend providing stocks and, I hope, to make roughly five percent (5%) per year. The investments that the trust holds can only be drawn on once annually unless there is an emergency, which is why I am keeping the \$6,000.00 in the trust checking account. This \$6,000.00 will pay for the cottage taxes, utility bills and any miscellaneous repairs and expenses that will arise. I will take enough money from the brokerage account, once per year, so that I can start the following fiscal year with \$6,000.00. Any funds left over after I close the estate and minus the \$6,000.00, will be equally distributed.

On advice of counsel - if you object to the above distribution, **you have thirty (30) days from the date of this letter to notify me in writing of your objection.** Failure to object within 30 days will be deemed a waiver of any objections, present and future.

Sincerely,

John E. Vergeldt
P.R. and Trustee for the Trust of John Vergeldt, Jr.

cc: Mr. Don Harper, Esq.

CERTIFIED TRUE COPY
Carolyn W Rogers
PROBATE JUDGE, YORK COUNTY, SC

ROA 00294

EXHIBIT G

MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

1333 Main Street, Suite 260 (29201)
Post Office Box 100261
Columbia, South Carolina 29202-3261

Telephone: (803) 461-2300
Facsimile: (803) 461-2309

Anne Marie Crosswell, Esquire
Direct Dial: (803) 461-2328
Email: amcrosswell@mkb-law.com

COPY

December 3, 2013

Mr. John Edward Vergeldt
2076 Marquesas Avenue
Tega Cay, South Carolina 29708-8526

Re: Trust Agreement between John Vergeldt, Jr. as Settlor and John Vergeldt, Jr. as Trustee, dated September 27, 1978 and thereafter amended
Our File No.: 012563.1

Dear Mr. Vergeldt:

I am writing on behalf of your sister, Vicki Vergeldt, as a named beneficiary of the Trust Agreement between John Vergeldt, Jr. as Settlor and John Vergeldt, Jr. as Trustee, dated September 27, 1978 and thereafter amended. Specifically, I am writing in response to your letter dated November 20, 2013, in which the proposed final distributions of the Trust are set forth.

Pursuant to the terms of the Trust, you have certain responsibilities as the named Successor Trustee. I would like to direct your attention to Eighth Amendment and Complete Reinstatement to Trust Agreement title Fourteenth A and Tenth Amendment to Trust Agreement title Fourteenth B. Without compliance with these provisions, Vicki is unable to ascertain whether the distributions outlined in your November 20, 2013 letter are accurate.

Pursuant to Fourteenth A, "[t]he Successor Trustee shall have the entire care and custody of all of the assets comprising principal of the trusts hereunder and shall keep the assets safe in accordance with the requirements of like fiduciaries and shall maintain full and accurate records of assets, receipts and disbursements and other financial transactions relative to each trust, *all of which shall be available for inspection at any reasonable time by any and all beneficiaries.*" (Emphasis added).

In relevant part, Fourteenth B states "[t]he Successor Trustee shall keep a trust account of the affairs of a trust. *At least annually and upon termination of a trust, the Successor Trustee shall render a statement of account. A statement of account is a report by the Successor Trustee of the trust property, liabilities, receipts, and disbursements, including the source and amount of the Successor Trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values.*" (Emphasis added).

CERTIFIED TRUE COPY
Charolyn W. Rogers
PROBATE JUDGE, YORK COUNTY, SC

ROA 00296

Also pursuant to the Trust terms, a shift from your role as Co-Trustee with your father, which began July 29, 2009, to Successor Trustee occurred upon your father's incapacity. Eighth Amendment and Complete Reinstatement to Trust Agreement title Third E states that "Successor Trustee shall succeed Settlor as Trustee in the event a guardian is appointed for Settlor by a court of competent jurisdiction or if Settlor's primary care physician renders the written opinion that Settlor, by reason of physical or mental infirmity, has become incapacitated to the extent the Settlor is unable to act in Settlor's own behalf."

It is apparent that your father was incapacitated prior to his death, and written doctor's statements, as required by Third E, that a mental infirmity prevented him from acting on his own behalf, exist. Due to your father's incapacity, your role switched from Co-Trustee to Successor Trustee during his lifetime. Therefore, the duties that accompany your role as Successor Trustee began at the date of incapacity which occurred no later than January of 2010.

Based on the rights provided to her under the Trust agreement, Vicki would like to inspect the "full and accurate records of assets, receipts and disbursements and other financial transactions relative to each trust" from January 1, 2010, forward. This would include your father's tax returns and any tax filings related to the Trust, also from January 1, 2010, forward.

Additionally, Vicki would like to review the annual statement of accounts prepared during your time as Successor Trustee while your father was living, covering January 1, 2010 - December 31, 2010; January 1, 2011-December 31, 2011; January 1, 2012-December 31, 2012; and January 1, 2013-July 9, 2013. Last, Vicki would like to review the final statement of account that is required upon termination of the trust.

Because the statement of accounts have not been provided, as required by the Trust, and Vicki has not been able to validate the distribution amounts, she objects to the proposed final distribution. We ask that you provide the statement of accounts, with all that the Trust requires (trust property, liabilities, receipts, and disbursements, the source and amount of the Successor Trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values) in order for Vicki to verify the final distributions proposed in your letter. We request that all documentation be sent to this office by the end of the month and have enclosed a self-addressed return envelope for your convenience. Upon review of these documents, it will be determined if the objection to the proposed final distribution will be withdrawn.

We thank you in advance for your courtesy and cooperation.

Very truly yours,


Anne Marie Crosswell

AMC/Ita

cc: Vicki Vergeldt

RECEIVED

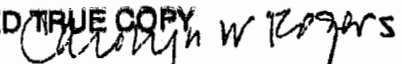
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PROBATE JUDGE, YORK COUNTY, SC

EXHIBIT H

John Vergeldt
2076 Marquesas Avenue
Tega Cay, South Carolina 29708

February 1, 2014

SENT VIA U.S. MAIL

Anna Marie Crosswell
MOSES & BRACKETT, PC
1333 Main Street, Suite 260
Columbia, SC 29201

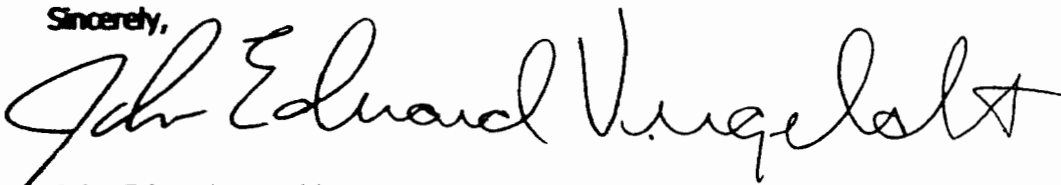
Dear Ms. Crosswell:

As stated in my January 13, 2014 letter to you, please find enclosed the RELEASE OF CLAIM to be signed by your client and returned to me for her final distribution check in the amount of \$15,907.45.

Please understand that on February 15, 2014, I will be disbursing final distribution checks to myself and my sister, Patti, reflecting the payment to Vicki.

Thank you for forwarding the RELEASE OF CLAIM to Vicki for her signature and I will look for it in the mail so that I can release the money to her.

Sincerely,



John Edward Vergeldt
Successor Trustee and P.R. for the
Estate of John Vergeldt, Jr.

Enclosure – Release of Claim for Vicki Vergeldt

Cc: Patti Vergeldt-Downey
Don Harper, Esq.

CERTIFIED TRUE COPY
Carolyn W Rogers
PROBATE JUDGE, YORK COUNTY, SC

ROA 00299

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE MATTER OF THE JOHN VERGELDT, JR. REVOCABLE LIVING TRUST

RECEIPT AND RELEASE

The undersigned hereby acknowledges receipt from the Trustee of the John Vergeldt, Jr. Revocable Living Trust of the following:

Final disbursement check to Vicki L. Vergeldt in the amount of \$15,907.45 (Fifteen thousand nine hundred seven dollars and forty five cents).

In consideration of the distribution, the undersigned releases and forever discharges the Trustee and the Trust from any and all rights and claims, which the undersigned may have against the Trustee and the Trust.

Executed this ____ day of _____, 2014.

Witness:

Beneficiary:

2014 04 04

CERTIFIED TRUE COPY
Cathryn W Rogers
PROBATE JUDGE, YORK COUNTY, SC

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
VICKI LYNN VERGELDT,

Petitioner,

vs.

JOHN EDWARD VERGELDT,
Individually and as Successor Trustee of the
John Vergeldt, Jr. Revocable Living Trust
dated September 27, 1978, as amended.

Respondent.

FILED RECEIVED
2016 FEB -1 PM 2:39
JUDGE OF PROBATE
YORK COUNTY, SC
IN THE PROBATE COURT
CASE NO. 2016-GC-46-00018

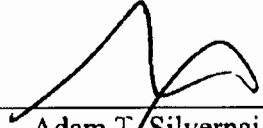
SUMMONS

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2016 MAR 16 AM 8:05
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

To: The Above-Named Defendant:

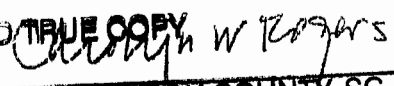
YOU ARE HEREBY SUMMONED and required to answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint upon the subscribers at their offices, 1333 Main Street, Sixth Floor, Post Office Box 100261, Columbia. South Carolina 29202-3261, within thirty (30) days after the service hereof upon you, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

MOSES & BRACKETT, PC

BY: 

Adam T. Silvernail #80219
B. Michael Brackett #838
Post Office Box 100261
Columbia, South Carolina 29202-3261
803.461.2312
Attorneys for Petitioner

January 21, 2016

CERTIFIED TRUE COPY

PROBATE JUDGE, YORK COUNTY, SC

ROA 00301

IN THE STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

VICKI LYNN VERGELDT,)

Petitioner,)

vs.)

JOHN EDWARD VERGELDT,)
Individually and as Successor Trustee of the)
John Vergeldt, Jr. Revocable Living Trust)
dated September 27, 1978, as amended.)

Respondent.)

FILED RECEIVED

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IN THE PROBATE COURT

CASE NO. 2016-GC-46-00018

COUNTY OF YORK
YORK COUNTY, SC

2016 CP46-830

**PETITION FOR REMOVAL OF TRUSTEE
AND RELATED RELIEF**

FILED-RECEIVED
2016 MAR 16 AM 8:05
DAVID M. HANSTON
C.C.C.P. & GS
YORK COUNTY, SC

Petitioner Vicki Lynn Vergeldt (hereinafter "Petitioner") brings this action for removal of John Edward Vergeldt as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust (the "Trust") dated September 27, 1978, as amended (hereinafter "Vergeldt"); for additional or alternative injunctive relief related to Vergeldt's failure to provide access to the records of the Trust in the face of significant 1) reporting inconsistencies, 2) financial irregularities, and 3) factual contradictions; and for attorneys' fees and costs against John Edward Vergeldt, individually, or, in the alternative, from the corpus of the Trust.

PARTIES

1. Petitioner is a citizen and resident of Birmingham, Michigan and a Qualified Beneficiary of the Trust Agreement.

2. Respondent Vergeldt is a citizen and resident of York County, South Carolina, the former Co-Trustee of the Trust Agreement, the current Successor Trustee of the Trust Agreement, and a Qualified Beneficiary of the Trust Agreement. Vergeldt was also the Settlor's Agent under a Durable Power of Attorney and served as the Settlor's Personal Representative. In

Carolyn W. Rogers

light of the circumstances that have unfolded, Petitioner has a concern that Vergeldt's multiple roles raise the potential for, and perhaps even the likelihood of, a conflict of interest. As a result of Vergeldt's multiple fiduciary appointments, there was no third-party to check his actions.

JURISDICTION

3. This Court has subject-matter jurisdiction over this action pursuant to S.C. Code Ann. § 62-1-302(a) and § 62-7-201(a) (1987).

4. Pursuant to S.C. Code Ann. § 62-7-108 (1987) and Paragraph FOURTEENTH G the Trust Agreement's principal place of administration has been transferred from Michigan to York County, South Carolina which is the place of the Respondent Successor Trustee's residence where the records pertaining to the Trust Agreement are, on information and belief, kept.

5. The Court has personal jurisdiction over Vergeldt because he is a resident of South Carolina, and, pursuant to S.C. Code Ann. § 62-7-202 (1987), he accepted the Successor Trusteeship of the Trust Agreement which has its principal place of administration in South Carolina.

VENUE

6. Venue is proper in York County because the Trust Agreement's principal place of administration is located in York County, South Carolina, where the Successor Trustee resides and keeps all documents pertaining to the Trust Agreement.

CHOICE OF LAW

7. By its terms, the Trust Agreement is to be administered and construed in accordance with the laws of the State of Michigan. S.C. Code Ann. § 62-7-107 recognizes Settlor's choice of law.

FACTS

8. John Vergeldt, Jr. ("Decedent") was the Settlor and initial Trustee of the Trust Agreement and the father of Petitioner, Respondent Vergeldt, and their sister, Patricia Downey, who is the third residual beneficiary of the Trust.

9. Decedent executed the Trust Agreement on September 27, 1978

10. Decedent executed the Eighth Amendment and Complete Restatement to the Trust Agreement on July 29, 2009 (Attached as **Exhibit A**).

11. Decedent executed the Ninth Amendment of the Trust Agreement on February 5, 2010, amending paragraph SIXTH B of the Eighth Amendment and Complete Restatement (Ninth Amendment of Trust Agreement Attached as **Exhibit B**).

12. Decedent executed the Tenth Amendment of the Trust Agreement on March 7, 2011, amending Eighth Amendment and Complete Restatement and Ninth Amendment. Specifically, paragraph SECOND C was amended; paragraph SECOND D was amended; paragraph SECOND Q was added; paragraph SECOND R was added; paragraph SIXTH B was amended; a paragraph was added to SEVENTH; paragraph FOURTEENTH B was amended; and paragraph EIGHTEENTH was amended (Tenth Amendment of Trust Agreement attached as **Exhibit C**).

13. On July 29, 2009, Pursuant to paragraph THIRD C of the Trust Agreement, Decedent appointed Vergeldt to serve as Co-Trustee of the Trust Agreement during Decedent's lifetime, vesting him with all of the powers, duties and obligations of the Trustee, and giving him binding decision making authority upon the Trust Agreement, as if made by the Settlor as Trustee (Appointment of Co-Trustee attached as **Exhibit D**).

14. Decedent died on July 9, 2013, thereby triggering the termination of the Trust and the distribution of Trust assets.

15. Upon information and belief, Vergeldt has made reductions to the qualified beneficiaries' shares under the Trust Agreement pursuant to Paragraph Fifth of the Trust Agreement, stating in relevant part that

. . . to the extent that any child of Settlor shall receive from the Settlor on or after the date of this Eighth Amendment and Complete Restatement cumulative gifts and/or advances (which have not been repaid) in excess of the cumulative gifts and/or advances (which have not been repaid) to the child of the Settlor who has received the least amount of cumulative gifts and/or advances (which have not been repaid) from Settlor on or after the date of this Eighth Amendment and Complete Restatement, that excess shall reduce the devise or bequest that such child who received the excess is entitled to receive under this Trust Agreement or any amendments to this Trust Agreement. . . .

16. Upon information and belief, both Patricia Downey and Vergeldt received prior gifts and/or advances from the Trust; Petitioner did not. Thus, in an effort to understand unilateral reductions Vergeldt made to Petitioner's inheritance (and to confirm that the other beneficiaries' shares were also properly reduced for all applicable gifts and/or advances), Petitioner sought documentation and information from Vergeldt.

17. In response, Vergeldt demanded that Petitioner sign a release agreement many months prior to providing any final Trust accounting and waiving any future claims. Petitioner objected in writing. Vergeldt then threatened to unilaterally enforce the Trust's *in terrorem* clause by disinheriting Petitioner.

18. Petitioner repeatedly asked Vergeldt to review "records of assets, receipts and disbursements and other financial transactions relative to each trust" as authorized pursuant to Paragraph Fourteenth A of the Trust Agreement, which states:

[t]he Successor Trustee shall have the entire care and custody of all of the assets comprising principal of the trusts hereunder and shall keep the assets safe in accordance with the requirements of like fiduciaries and shall maintain full and accurate records of assets, receipts and disbursements and other financial transactions relative to each trust, all of which shall be available for inspection at any reasonable time by any and all beneficiaries.

19. Vergeldt responded to Petitioner's requests with extreme hostility, including repeated verbal abuse, multiple unreasonable and unsubstantiated reductions in the tens of thousands of dollars to Petitioner's inheritance apparently punitive in nature, repeated threats of unilaterally disposing of a family cottage held in the Trust, and continued threats of disinheritance, while denying the requested access to Trust records.

20. As a result, Petitioner sought and obtained a declaratory judgment from the York County Circuit Court (the Honorable S. Jackson Kimball) confirming that Vergeldt has a duty and must provide Petitioner with "any records that describe or affect the Trust beneficiary's interest and relevant information about the Trust property without limitation as to time." (Order, p. 9).

21. Regardless of the clear provisions of the Trust, the applicable law, Judge Kimball's ruling, and repeated requests by Petitioner, Vergeldt has steadfastly refused to cooperate by answering questions that have arisen and/or allowing a review of the Trust's records, despite admitting in his answer to the declaratory judgment complaint that he has not provided Petitioner with enough information to protect her interests.

22. At the trial before Judge Kimball, Vergeldt heatedly testified that he believes he has no duty of loyalty to Petitioner, who is a qualified beneficiary of the Trust and entitled to one-third (1/3) of the Trust's assets. Moreover, Vergeldt has repeatedly demonstrated a failure to conduct himself impartially in his dealings among the three qualified beneficiaries, such that,

upon information and belief, Vergeldt has distributed exceedingly unequal trust shares, favoring himself and Patricia Downey while harming Petitioner.

23. It is axiomatic that Vergeldt does have a duty of loyalty, among his other fiduciary duties, to Petitioner, but his actions in administering the Trust have failed to meet these duties.

24. A review of the Trust's records is necessary to Petitioner's ability to adequately protect her interest in the Trust.

25. Petitioner has asked Vergeldt to provide statements of accounts as are required to be produced annually and upon termination of the Trust Agreement by the Tenth Amendment to Trust Agreement, Paragraph Fourteenth B:

[t]he Successor Trustee shall keep a trust account of the affairs of a trust. At least annually and upon termination of a trust, the Successor Trustee shall render a statement of account. A statement of account is a report by the Successor Trustee of the trust property, liabilities, receipts, and disbursements, including the source and amount of the Successor Trustee's compensation, a listing of the trust assets, and if feasible, their respective market values. No particular format or formality is required for a report unless a court specifies its content and presentation. The statement shall be delivered as soon as practicable after the close of the accounting period or upon termination of the trust

26. Since Decedent's death, Vergeldt has provided only minimal reports which inconsistently and incompletely summarize the Trust's assets, income and expenditures, do not reconcile (sometimes internally and sometimes from one accounting to the next), and lack documentation. As Vergeldt acknowledged in his answer to the declaratory judgment complaint, these reports are inadequate to allow Petitioner to protect her interest in the Trust.

27. In addition, according to his own written but undocumented claims against Petitioner for his legal fees (deductions from Petitioner's inheritance which Vergeldt both claimed and denied were for his legal fees), Vergeldt has spent more than \$55,000 in defending

the previous action, which resulted in the ruling that he has a duty and must provide access to the Trust's books and records, which duty Vergeldt has refused to meet before and after the final Order issued in the previous litigation.

28. Besides Vergeldt's hostility, disloyalty, and failure to conduct himself with impartiality toward Petitioner, documents obtained in the previous litigation show substantial and unexplained irregularities in Trust assets, giving rise to further questions. Petitioner remains, however, unable to fully determine the existence, nature and extent of Vergeldt's breaches of duty due to his refusal to provide adequate reports and allow inspection of the Trust's books and records.

29. As a result of Vergeldt's refusal to give adequate reports and/or allow access to the Trust's books and records, Petitioner cannot ascertain sufficient information regarding Trust assets and actions by Vergeldt to protect her interest in the Trust. Vergeldt acknowledged this in his answer to the declaratory judgment complaint, in which he admitted that he has not provided Petitioner with enough information to protect her interests.

30. Petitioner is named as the next Successor Trustee under the Trust, and she stands willing and able to serve in that capacity if Vergeldt is removed.

FOR A FIRST CAUSE OF ACTION
(Removal of Trustee for Cause)

31. All allegations above are incorporated where relevant.

32. Vergeldt has failed to administer the Trust in accordance with its terms, in particular (although not limited to) by failing to provide properly detailed and supported Trust accountings, refusing to allow inspection of the Trust's records, and failing to meet his duties of loyalty and impartiality to the Petitioner.

33. Vergeldt has not responded to reasonable requests by Petitioner and/or her counsel, which refusal has inexplicably continued after the York County Circuit Court confirmed that Vergeldt has a duty and must allow Petitioner access to all Trust documents without limitation as to time.

34. Vergeldt's repeated failure to allow Petitioner access to Trust documents and/or to properly supplement his inadequate reports of Trust activity, as well as his repeated and abusive hostility toward Petitioner, demonstrate his unfitness to serve and/or his unwillingness to honor the terms of the Trust and the duties imposed upon him by law.

35. Under S.C. Code Ann. §62-7-706, Petitioner, as a beneficiary of the Trust, has the right to seek removal of Vergeldt as Trustee, and this Court is empowered to remove him for his repeated failures to properly administer the Trust and provide adequate information to Petitioner.

36. For these reasons, Petitioner asks that the Court immediately remove Respondent Vergeldt as Trustee of the Trust and appoint Petitioner, the next named Successor Trustee, in his stead.

FOR A SECOND CAUSE OF ACTION
(Alternative Injunctive Relief – Requiring Release of Trust Records)

37. All allegations above are incorporated where relevant.

38. Although Petitioner believes that immediate removal of Respondent Vergeldt as Trustee is justified in the best interest of upholding the Trust's purpose, and most protective of any remaining Trust assets, she alternatively requests that – if Vergeldt is not immediately removed – the Court order him to immediately make available all Trust records, without limitation as to time, to Petitioner. However, in reaching its decision, Petitioner asks that the Court consider that for more than two years, Vergeldt has conducted himself in these matters with the utmost lack of cooperation and respect, repeatedly providing no information (e.g., he

has refused to even acknowledge multiple requests), misinformation (e.g., he has removed transaction pages from even the minimal bank records he has provided), and contradictory information (e.g., he has repeatedly contradicted his own claims of total Trust assets, which are further contradicted in the haphazard and incomplete records he has provided). Moreover, Vergeldt has done so in such an irregular, inconsistent, and delayed manner as to appear to be designed to confound rather than to clarify. As a result, Petitioner has no faith in Vergeldt and fears any ongoing reliance on him to provide Trust records will only continue to mislead and thwart efforts to resolve the issues of concern.

39. As set out above, the terms of the Trust; the applicable law; and Judge Kimball's Order all dictate that Vergeldt has a duty and must provide Petitioner access to the Trust's records.

40. Vergeldt has unreasonably refused to meet that duty, and, if he is not immediately removed, Petitioner asks that this Court order Vergeldt's immediate and complete compliance with his duty to provide information and documentation, including all Trust records, without limitation as to time.

FOR A THIRD CAUSE OF ACTION
(Alternative Injunctive Relief – Accounting)

44. All allegations above are incorporated where relevant.

42. Petitioner is a qualified beneficiary of the Trust, as defined in the South Carolina and Michigan Trust Codes, and she is entitled to a report from the Trustee at least annually.

43. Since Decedent's death, Vergeldt has provided inadequate reports which fail to disclose sufficient information about the Trust's assets and transactions.

44. Vergeldt has refused to properly supplement his reports or to provide documentation which would clarify them, despite Petitioner's requests.

45. Pursuant to Paragraph Fourteenth B of the Trust, Petitioner asks that, if Vergeldt is not immediately removed, this Court order Vergeldt to provide a complete accounting which shows all assets, income, disbursements and other transactions of the Trust in detail, with related receipts and other appropriate third-party documentation so that Petitioner and the other beneficiaries can adequately protect their interest in the Trust. However, in reaching its decision, Petitioner asks that the Court consider that for more than two years, Vergeldt has conducted himself in these matters with the utmost lack of cooperation and respect, repeatedly providing no information (e.g., he has refused to even acknowledge multiple requests), misinformation (e.g., he has removed transaction pages from even the minimal bank records he has provided), and contradictory information (e.g., he has repeatedly contradicted his own claims of total Trust assets, which are further contradicted in the haphazard and incomplete records he has provided). Moreover, Vergeldt has done so in such an irregular, inconsistent, and delayed manner as to appear to be designed to confound rather than to clarify. As a result, Petitioner has no faith in Vergeldt and fears any ongoing reliance on him to provide a complete, accurate, and properly documented Trust accounting will only continue to mislead and thwart efforts to resolve the issues of concern.

FOR A FOURTH CAUSE OF ACTION
(Litigation Costs)

46. All allegations above are incorporated where relevant.

47. Under S.C. Code Ann. § 62-7-1004, the Court is empowered to award the costs of litigation which involves the administration of a trust to any party. Petitioner has been forced to pursue this action as a result of Respondent Vergeldt's repeated and deliberate failure to carry out his duties with regard to the Trust, as well as his extreme conduct and unjustified threats to unilaterally rewrite the distributive provisions of the Trust Agreement.

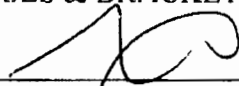
48. Petitioner is informed and believes that she is entitled to an award from Respondent Vergeldt, individually, from the Respondent Vergeldt's distributive share of the Trust, and/or from the Trust's assets, for the costs of this action, including reasonable attorney fees.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that the Court issue its order

- A. immediately removing Respondent Vergeldt as Trustee of the Trust;
- B. appointing Petitioner, as named Successor Trustee, to serve in his stead;
- C. alternatively, ordering that Respondent Vergeldt immediately comply with his duties by allowing Petitioner's review of all Trust documents without limitation as to time and ordering Respondent Vergeldt to provide adequate accountings in a specific form;
- D. awarding Petitioner her litigation costs, including reasonable attorney fees, from Respondent Vergeldt, individually; from Respondent Vergeldt's final distribution; and/or from the assets of the Trust; and
- E. granting any such other and further relief as the Court deems just and proper.

[Signature block appears on following page.]

Respectfully Submitted,
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VICKI LYNN VERGELDT

January 21, 2016

FILED RECEIVED
2016 FEB -1 PM 2:40
JUDGE OF PROBATE
YORK COUNTY, SC

EXHIBIT A

FILED RECEIVED
2016 FEB -1 PM 2:40
JUDGE ST. HUBBARD
YORK COUNTY, SC

EIGHTH AMENDMENT AND COMPLETE RESTATEMENT

TO TRUST AGREEMENT

between

JOHN VERGELDT, JR.

Settlor

and

JOHN VERGELDT, JR.

Trustee

**Bodman LLP
6th Floor at Ford Field
1901 St. Antoine Street
Detroit, Michigan 48226
(313) 259-7777**

Detroit_936183_1

ROA 00315

EIGHTH AMENDMENT AND COMPLETE RESTATEMENT

TO TRUST AGREEMENT

TABLE OF CONTENTS

<u>Paragraph</u>	<u>Title</u>	<u>Page No.</u>
FIRST	FUNDING.....	I-3
SECOND	DEFINITIONS	II-1
THIRD	SETTLOR'S RIGHTS AND SUCCESSION OF TRUSTEE	III-1
FOURTH	ADMINISTRATION OF SETTLOR'S ESTATE.....	IV-1
FIFTH	FORGIVENESS OF LOANS AND/OR ADVANCES AND ESTABLISHMENT OF RESIDUARY TRUST	V-1
SIXTH	ADMINISTRATION OF RESIDUARY TRUST AND TRUSTS RESULTING FROM THE RESIDUARY TRUST	VI-1
SEVENTH	SUCCESSOR TRUSTEES	VII-1
EIGHTH	TRUSTEE'S POWERS	VIII-1
NINTH	ALIENATION.....	IX-1
TENTH	RULE AGAINST PERPETUITIES.....	X-1
ELEVENTH	ALLOCATION OF ASSETS	XI-1

<u>Paragraph</u>	<u>Title</u>	<u>Page No.</u>
TWELFTH	RESIGNATION OF SUCCESSOR TRUSTEE	XII-1
THIRTEENTH	LIFE INSURANCE PROVISIONS	XIII-1
FOURTEENTH	GENERAL PROVISIONS.....	XIV-1
FIFTEENTH	DISCLAIMER.....	X-1
SIXTEENTH	CONSOLIDATION OF TRUSTS	XI-1
SEVENTEENTH	ENVIRONMENTAL MATTERS	XVII-1
EIGHTEENTH	FORFEITURE	XVIII-1
	SIGNATURE PAGE	XIX-1
	NOTARY	XIX-1

EIGHTH AMENDMENT AND COMPLETE RESTATEMENT
TO TRUST AGREEMENT

THIS EIGHTH AMENDMENT AND COMPLETE RESTATEMENT TO TRUST AGREEMENT dated September 27, 1978 is made this 29th day of July, A.D., 2009, between John Vergeldt, Jr., of the City of Dearborn, County of Wayne, and State of Michigan, hereinafter called the "Settlor"; and John Vergeldt, Jr., hereinafter called the "Trustee". This trust may sometimes be referred to as the "John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978".

W I T N E S S E T H :

WHEREAS, the Settlor desires to completely amend and restate the provisions of the aforesaid Trust Agreement signed by him on September 27, 1978, as amended by Second Amendment and Complete Restatement on June 27, 1990, Third Amendment dated December 23, 1998, Fourth Amendment dated February 22, 2001, Fifth Amendment dated December 10, 2003, Sixth Amendment dated April 26, 2006 and Seventh Amendment dated June 7, 2006, by deleting all of the provisions of said Trust Agreement and Amendments and by substituting the provisions hereinafter set forth; and

WHEREAS, the Trustee is agreeable to the amendments hereinafter set forth.

NOW, THEREFORE, it is agreed that all of the provisions of the Trust Agreement dated September 27, 1978 and the Amendments thereto shall be deleted and the provisions set forth herein shall be substituted therefor:

FIRST

FUNDING

A. The Settlor has heretofore assigned, transferred, conveyed and delivered to the Trustee various property.

B. Other property which is acceptable to the Trustee may be transferred to the Trustee by Settlor or by others. Such transfers may be accomplished at any time by any instrument, including a Will.

END

SECOND

DEFINITIONS

A. The term "child", "grandchild", "issue", "heir", "descendant", "beneficiary" or other equivalent term shall be construed to include any adopted person and his or her descendants, whether natural or adopted. Provided, however, and notwithstanding anything contained in this Agreement to the contrary, David Leigh Vergeldt shall be treated as a child of Settlor and the biological children of David Leigh Vergeldt shall be treated as grandchildren of Settlor. Provided, further, and notwithstanding anything contained in this Agreement to the contrary, Devin T. Hodgman, stepson of John Edward Vergeldt, shall be treated as a grandchild of Settlor and a child of John Edward Vergeldt for all provisions of this Agreement.

B. Any reference to a "corporate" Successor Trustee shall mean a corporate banking institution, including a national banking association, or trust company engaged in trust administration.

C. The initial Successor Trustee is John Edward Vergeldt. The Settlor may change the Successor Trustee at any time during Settlor's lifetime. The Successor Trustee is referred to in the neuter gender. The Successor Trustee shall have all of the rights, duties and powers herein created and conferred upon the Trustee and/or Successor Trustee except those powers which this Agreement specifically limits to the Settlor acting as Trustee.

D. Wherever reference is made to the Internal Revenue Code or any section thereof, such reference shall be construed to mean the Internal Revenue Code

of 1986, as amended, or such section thereof, as the case may be, as heretofore or hereafter amended or supplemented, or as superseded by laws of similar effect.

E. The term "person" shall mean and include any individual, corporation and/or other legal or business entity.

F. The term "education" shall include all forms of education, including, but not limited to, public or private schools, primary or secondary, college, advanced college or post-college, commercial, technical, business or art education, or otherwise.

G. "EPIC" means the Estates and Protected Individuals Code of the State of Michigan.

H. Whenever this Trust Agreement provides a specific bequest or a devise to an individual, if the individual does not survive the Settlor's death, the bequest or devise shall lapse unless the bequest or devise specifically directs the bequest or devise to pass to the individual's descendants or an alternate taker.

I. If this Trust Agreement refers to "by representation" or "by right of representation", the descendants or issue of a deceased devisee shall receive their share "per stirpes".

J. In the event that any state is determined to be Settlor's heir any distribution that would have been made to the state, but for this provision, shall be added to and distributed as part of the shares being distributed to living individuals.

K. The terms "issue" and "descendants" of a person mean all the lineal descendants of that person of all generations.

L. Use of any gender in this Agreement includes the masculine, feminine, and neuter genders as appropriate. Use of the singular number includes the plural and vice versa unless the context clearly requires otherwise.

M. Use of the verb "shall" in this Agreement indicates a mandatory direction, and use of the verb "may" indicates authorization to take action.

N. Captions, headings, and sub-headings, as used herein, are for convenience only and have no legal or dispositive effect.

O In the event that any property or interest in property passing under this Agreement (other than as part of the residue) is encumbered by any mortgage, lien, or security interest, or is pledged to secure any obligations, such encumbrance shall not be charged to the residue, but that the devisee or legatee or beneficiary receiving such property or interest in property shall take said property or interest in property subject to all encumbrances existing at the time of Settlor's death.

P. Any generation-skipping tax resulting from a transfer occurring under this Trust Agreement shall be charged to the property constituting the transfer in the manner provided by applicable law.

END

THIRD

SETTLOR'S RIGHTS AND SUCCESSION OF TRUSTEE

A. Settlor reserves the right to use or to direct the payment of any part of or all of the net income and the principal of the trust for Settlor's own benefit during Settlor's entire lifetime. If the Successor Trustee succeeds Settlor as Trustee during Settlor's lifetime by reason of Settlor's mental or physical incapacity, the Successor Trustee shall have the power to apply so much of the net income and the principal of the trust as it shall determine to be necessary for Settlor's health, maintenance and support and the health, maintenance and support of those persons dependent upon Settlor.

B While Settlor is Trustee, Settlor shall have all of the powers set forth in Paragraph EIGHTH A of this Agreement which Settlor may exercise completely for Settlor's own benefit, in any manner Settlor wishes, and without regard to any restrictions of law or "prudent man" rule which may pertain to investments or other actions of a fiduciary.

C. The Settlor, while acting as Trustee, shall have the exclusive power and authority: (i) to establish and maintain one or more accounts, which may be margin accounts, for the purpose of purchasing, investing in, or otherwise acquiring, selling (including short sales), possessing, transferring, exchanging, pledging, or otherwise disposing of, or turning to account of, or realizing upon, and generally dealing in and with (a) any and all forms of securities, including but not by way of limitation, shares, stocks, bonds debentures, notes, scrip, participation certificates, rights to subscribe,

options, puts, calls, warrants, certificates of deposit, mortgages, choses in action, evidences of indebtedness, commercial paper, certificates of indebtedness and certificates of interest of any kind and nature whatsoever, secured or unsecured, whether represented by trust, participating and/or other certificates or otherwise; and (b) any and all commodities and/or contracts for the future delivery thereof, whether represented by trust, participating and/or other certificates or otherwise; (ii) to buy, sell and trade in securities of any nature, including short sales, on margin, and for such purposes may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased with such brokers as security for loans and advances made to the Trustee; (iii) to pledge or mortgage trust property as collateral for any personal or business loans of Settlor, or for the benefit of any other person or entity designated by Settlor and to guarantee the repayment of such loans; (iv) to employ investment counselors and investment advisors and to grant them complete discretion to invest for and on behalf of the trust without any restrictions; (v) to delegate to any agent of Settlor's choice by power of attorney or otherwise, the conducting of banking activities for Trustee, or the hiring, cancellation or use of entry of safe deposit box or other storage facilities in the name of Trustee; and (vi) to appoint (and remove or change) during Settlor's lifetime a Co-Trustee to serve during Settlor's lifetime with all of the powers, duties and obligations of the Trustee and the decisions of the Co-Trustee made during Settlor's lifetime shall be binding upon the trust as if made by Settlor as Trustee. Said power and authority shall be peculiar to Settlor while acting as Trustee

and shall not pass to Settlor's successors in trust, except to the extent such power and authority is set forth in other provisions of this Trust Agreement.

D. The Settlor reserves unto Settlor the right to revoke or amend this Agreement in whole or in part, at any time, upon written notification to that effect, duly executed by the Settlor and delivered to the Trustee; provided, that the duties, responsibilities, and liability of the Trustee hereunder shall not be increased without the Trustee's written consent. The right of revocation or amendment shall be personal to Settlor and may not be exercised by any other person acting for Settlor. This Trust Agreement shall become irrevocable upon Settlor's death.

E. The Successor Trustee shall succeed Settlor as Trustee in the event a guardian is appointed for Settlor by a court of competent jurisdiction or if Settlor's primary care physician renders the written opinion that Settlor, by reason of physical or mental infirmity, has become incapacitated to the extent that Settlor is unable to act in Settlor's own behalf. The Successor Trustee may at any time and for any reason determine that Settlor is no longer incapacitated and, upon such determination or upon the restoration of Settlor to full capacity by court order, Settlor shall again act as Trustee and shall have all of the powers Settlor possessed prior to the appointment of a guardian for Settlor or the determination of Settlor's incapacity, as the case may be.

F. Any Successor Trustee to Settlor shall not be liable or responsible in any way for its determinations as to Settlor's capacity or incapacity so long as it acts

in good faith. The Successor Trustee shall always give first consideration to the needs of the Settlor.

END

FOURTH

ADMINISTRATION OF SETTLOR'S ESTATE

A. Upon the death of Settlor, the Successor Trustee, if not then in possession of the trust estate, shall succeed to such property and take possession thereof and shall hold, administer and dispose of the trust estate (together with any undistributed income and any accrued income not received at Settlor's death), as hereinafter set forth.

B. The Successor Trustee shall have the power to purchase any securities or other property belonging to the estate of the Settlor at the then fair market value, and to loan the personal representative of the Settlor's estate, in such amount as the Successor Trustee may deem necessary or advisable to protect and conserve the assets of the Settlor's estate, out of the principal of the trust, other than from: any assets or the proceeds thereof which are not included in Settlor's estate for federal estate tax purposes. Such loans may be secured or unsecured. The Successor Trustee shall not be liable for any losses suffered by the trust estate as a result of its exercise of the powers created in this Subparagraph.

C. To the extent that United States Treasury Bonds held in the trust are redeemable at par in payment of federal estate tax payable by reason of Settlor's death, the Successor Trustee shall apply the redemption proceeds of such bonds in payment of the federal estate tax, anything contained in this Agreement or Settlor's Will to the contrary notwithstanding. To the extent that other property from sources other than the trust is not available to provide the necessary funds, the Successor Trustee

may, in its discretion, pay Settlor's funeral and burial expenses, any allowances by court order for those dependent upon Settlor, administration expenses of Settlor's estate, legally enforceable claims against Settlor or Settlor's estate, federal estate tax remaining after redemption proceeds of United States Treasury Bonds are applied and all inheritance, succession and estate taxes payable by reason of Settlor's death (except generation-skipping taxes and those other taxes which Settlor's personal representative is precluded from paying by reason of Settlor's Will), together with any interest thereon or other additions thereto; provided, however, no such payments shall be made from any assets or the proceeds thereof which are not included in Settlor's estate for federal estate tax purposes. No reimbursement shall be secured from any person for any payments so made. The Successor Trustee may make these payments directly or to Settlor's personal representative. The Successor Trustee may rely upon written statements of Settlor's personal representative as to all facts relating to these payments.

D. Upon Settlor's death, the Successor Trustee shall distribute Settlor's tangible personal possessions (other than any investment assets and other than any cash on hand or on deposit by Settlor) located in Settlor's residence at Henry Ford Village, as follows:

1. Each of Settlor's children shall be given the opportunity to choose items that they would like to receive.

2 After Settlor's children have each taken the items they desire if there are any remaining items, each of Settlor's grandchildren shall be given an opportunity to choose items they would like to receive.

3. If there are any items remaining, the Successor Trustee shall dispose of such items as the Successor Trustee deems reasonable.

In the event a dispute over an item arises between the children or grandchildren, Settlor desires that all disputes be settled by the flip of a coin.

END

FIFTH
FORGIVENESS OF LOANS AND/OR ADVANCES AND
ESTABLISHMENT OF RESIDUARY TRUST

A. Settlor hereby forgives any loans and/or advances (which have not been repaid) which Settlor has made prior to the date of this Eighth Amendment and Complete Restatement to any of Settlor's children and Settlor directs that the amount of such loans and/or advances (which have not been repaid) shall not reduce any devise or bequests that such child of Settlor is entitled to receive pursuant to this Trust Agreement or any amendments to this Trust Agreement. Provided, however, to the extent that any child of Settlor shall receive from Settlor on or after the date of his Eighth Amendment and Complete Restatement cumulative gifts and/or advances (which have not been repaid) in excess of the cumulative gifts and/or advances (which have not been repaid) to the child of Settlor who has received the least amount of cumulative gifts and/or advances (which have not been repaid) from Settlor on or after the date of this Eighth Amendment and Complete Restatement, that excess shall reduce the devise or bequest that such child who received the excess is entitled to receive under this Trust Agreement or any amendments to this Trust Agreement; provided further, the reduction shall only be to the extent there has not been a full reduction under Settlor's Will.

B. After the Settlor's death and subject to the foregoing, all of the rest, residue and remainder of the trust estate, including any lapsed or disclaimed legacies or

devises, shall be held, administered and distributed from the Residuary Trust in accordance with the provisions of Paragraph SIXTH.

END

SIXTH

ADMINISTRATION OF RESIDUARY TRUST

AND TRUSTS RESULTING FROM THE RESIDUARY TRUST

A. After the death of Settlor, and if this trust at said time owns (or will own pursuant to Settlor's Will) real property described as Lots 3, 4, 5, 6, 7 and 8 of Block 5 of Wallace and Orr Park Subdivision, Town 19 North, Range 7 East, Sims Township, Arenac County, Michigan (hereinafter called the "Cottage") and any tangible personal property located in or about the Cottage, then:

1. The Successor Trustee shall allocate from the Residuary Trust to a separate trust, to be known as the "Cottage Trust", the Cottage together with the tangible personal property located in or about the Cottage at the date of Settlor's death and the sum of fifty thousand and 00/100 (\$50,000.00) dollars less any amount set aside with John Edward Vergeldt for the purpose of maintaining the Cottage. The income and principal of the Cottage Trust shall be used to pay all expenses that accrue in connection with the Cottage, including real estate taxes, fire and extended coverage and liability insurance, repairs, utilities and any other expenses related to the ownership and maintenance of the Cottage. The Cottage Trust shall continue until the death of the last surviving child of Settlor or until the Cottage is disposed of in accordance with the provisions of this Paragraph SIXTH A.

2. The Cottage shall be sold upon the occurrence of either of the two (2) following events:

(a) There are no assets in this Trust to pay for the expenses described in 1 above and the individuals who are using the Cottage do not agree to pay said expenses; or

(b) Ten years after the creation of the Cottage Trust and a majority of Settlor's then living children elect to have the Cottage sold or if there is a deadlock between Settlor's children as to whether the Cottage should be sold. In all events John Edward Vergeldt shall have two (2) votes and the other children shall each have one (1) vote.

(c) In the event the decision is made to sell the Cottage, Settlor's children and grandchildren shall have the first option to purchase the Cottage. If none of Settlor's children or grandchildren desires to purchase the Cottage, then Linda Anne Zummer shall be given the option to purchase the Cottage. If Linda Anne Zummer does not wish to purchase the Cottage, then it shall be sold to any willing purchaser. In all events the Cottage is to be sold for fair market value.

3. The use of the Cottage shall be controlled by the Cottage Use Agreement dated August 13, 2008, as it may be amended from time to time. During Settlor's lifetime, Settlor shall have exclusive authority over all matters related to the Cottage. After Settlor's death, the Successor Trustee shall have exclusive authority to settle any disputes that may arise with respect to the Cottage, the maintenance of the Cottage and the use of the Cottage.

Upon the sale of the Cottage, the Cottage Trust shall terminate and the assets of the Cottage Trust shall be added to the Residuary Trust and held, administered and disposed of in accordance with Paragraph SIXTH B below but shall be divided in accordance with Paragraph SIXTH B as if the date of the sale was substituted for Settlor's death.

B. After the death of Settlor, the Successor Trustee shall distribute the sum of six thousand (\$6,000.00) dollars, free and discharged from the trust hereof, to each grandchild of Settlor who survives Settlor and shall divide the balance of the assets of the Residuary Trust into equal shares, one share for each of Settlor's children. If any child of Settlor shall predecease Settlor (other than Settlor's daughter, Patricia A. Vergeldt Downey), said child's share shall be distributed as follows: one-half (1/2) to Settlor's child's spouse, if then living, Settlor's child was married to him or her at the date of his or her death and there was no divorce proceeding pending at the date of his or her death, and the other one-half (1/2) (or all if there is no surviving spouse who meets said conditions) shall be divided equally between Settlor's then living children. If Settlor's daughter, Patricia A. Vergeldt Downey, shall not survive Settlor, then her share shall be distributed, as follows. The Successor Trustee shall distribute from the share of Settlor's daughter, Patricia A. Vergeldt Downey, the sum of ten thousand (\$10,000.00) dollars to Settlor's daughter's spouse, James Downey, if then living, if he was married to Settlor's daughter at the date of her death, there was no divorce proceeding pending at the date of her death and the assets of the residuary estate have a fair market value at the date of Settlor's death of at least five hundred thousand (\$500,000.00) dollars and

the balance shall be divided equally between Settlor's then living children. The part so set aside for Settlor's children and spouses of deceased children shall forthwith be assigned, transferred, conveyed and paid over to them free and discharged from the trust hereof. The part so set aside for the descendants of any of Settlor's children (other than the specific bequest of six thousand (\$6,000.00) dollars) shall, in the discretion of the Successor Trustee, either be distributed to a Uniform Transfers to Minors Act account to age twenty-one (21) or to a trust described in Paragraph SIXTH C, if the descendant has not attained age thirty (30), or otherwise shall forthwith be assigned, transferred, conveyed, and paid over to said descendants free and discharged from the trust hereof.

C. If at the time herein provided for the distribution of the principal of any trust created by or administered under this Paragraph SIXTH there shall be no beneficiary herein designated then living, the trust shall immediately terminate and the remaining trust estate shall be divided equally between Settlor's then living grandchildren and, subject to Paragraph SIXTH D, be distributed to them outright.

D. Unless the Successor Trustee elects the Uniform Transfers to Minors Act to age twenty-one (21), in the event the descendants of any of Settlor's children shall not have attained the age of thirty (30) years at the time he or she is entitled to participate in Settlor's estate, the Successor Trustee shall hold and administer the share of such person (other than the specific bequest of six thousand (\$6,000.00) dollars which shall be distributed outright to each of Settlor's grandchildren) until he or she shall have attained such age and during such period shall pay to or for

the benefit of such person so much of the income and principal of his or her share, as it, in its sole and uncontrolled discretion, shall determine in order to provide for his or her health, support, maintenance and education. Any unexpended portion of the annual net income of such share shall be retained as principal. When such person attains the age of thirty (30) years or upon his or her death, whichever first occurs, the entire share of such person and any accumulations of income shall be transferred and delivered over to him or her or to his or her estate without reservations of any kind.

E. After the death of Settlor, the Successor Trustee may assign, transfer, convey and pay over to the then income beneficiaries, in equal shares if there is more than one income beneficiary, the entire body or corpus of his or her trust estate free and discharged from the trust hereof, in which event any remaindermen shall not be considered as having a vested interest in the trust estate so conveyed to such income beneficiaries, thereby terminating the trust, when in the uncontrolled discretion of the Successor Trustee it might become expedient or advisable to do so for the following reasons or any other reason whatsoever which the Successor Trustee may deem sufficient: (1) changes in the political, economic, or social order in the United States, (2) legislation, regulation or court decisions detrimental to any trust or trusts hereunder, or any beneficiary thereof, (3) lack of availability of suitable trust investments for an extended period, (4) insufficient principal to justify the expense of continuing the trust's existence, or (5) other events which do or may tend to greatly impair the intent and purpose of this instrument.

END

SEVENTH

SUCCESSOR TRUSTEES

If John Edward Vergeldt shall die or resign or be unwilling or unable to act as a Successor Trustee, then the following persons shall be substituted in his place and stead in the following order: (1) Settlor's daughter, Vicki Lynn Vergeldt; and (2) Settlor's daughter, Patricia A. Vergeldt Downey.

END

EIGHTH
TRUSTEE'S POWERS

A. The Trustee shall have the following general powers and is authorized to:

(1) Enter upon and take possession of the trust estate, to collect the income and profits therefrom, and to invest and reinvest the estate in real, personal or mixed assets in accordance with its judgment, including interests in any amounts in common trust funds maintained by the Trustee, without being limited by any present or future investment law;

(2) Vote in person or by proxy with respect to any and all securities, and carry in its name or in the name of its nominee or nominees, and with or without designation of fiduciary capacity, securities or other property requiring or permitting registration;

(3) Retain all property in the form in which the same shall be received or acquired by it without liability for any loss that may be incurred thereby, and without regard to the proportion that any one asset or class of assets may bear to the whole;

(4) Allocate between income and principal all receipts and disbursements in accordance with sound trust accounting principles;

(5) Sell real or personal property, or both, either for cash or part cash and part deferred payments and at public or private sale, and option, convey, exchange, lease and release for any length of time, mortgage, pledge, partition,

plat, sub-divide, improve, repair, surrender, abandon or otherwise deal with or dispose of all of the trust estate, or any part thereof, at such time or times and in such manner, either public or private, and upon such terms as in the discretion of the Trustee may seem expedient and proper;

(6) Borrow money on the general credit of any trust or trusts, or by pledge or mortgage of any of the trust property as security for the repayment thereof, and to renew from time to time any such indebtedness;

(7) Prosecute and defend and, in the exercise of its sole discretion, which shall be binding on all interested parties, to compromise, settle or abandon claims by or against the trust and the trust estate;

(8) Make, execute and deliver any and all such instruments in writing as shall be necessary and proper to carry out any disposition whatever of any trust property;

(9) Make any distributions of income or principal, whether before or after the beneficiary attains age eighteen (18), in the Trustee's discretion, (i) directly to the beneficiary, (ii) if the beneficiary is under a legal disability or if the Trustee determines that the beneficiary is unable to properly manage his or her affairs, to a person furnishing support, maintenance or education for the beneficiary or with whom the beneficiary is residing or to any person having legal or actual custody of the beneficiary, or to the guardian or conservator of the beneficiary, or to any trustee appointed by a court for the benefit of a beneficiary, or to any institution attended by the beneficiary, for expenditure on the

beneficiary's behalf, or (iii) if the beneficiary is a minor, to a custodian for the beneficiary as selected by the Trustee (who may be the Trustee) for the beneficiary under a Uniform Transfers (Gifts) to Minors Act until age twenty-one (21) or similar applicable law, or (iv) in any manner whereby it may reasonably be expected that the funds will be expended for the benefit of and on behalf of the beneficiary, and the Trustee shall be under no duty to audit the use of such funds.

(10) Allocate different kinds or disproportionate shares of property or undivided interests in property among the trusts herein or the beneficiaries thereof;

(11) Enter into any transaction with the personal representative of Settlor's estate without the necessity of the consent or approval of any interested person or a court, and enter into any transaction with the trustee of any trust or the personal representative of any other estate in which any beneficiary or distributee has any interest, even though the Trustee also is the other trustee or personal representative;

(12) Continue any business (other than a profession) of Settlor so long as it shall deem it to be in the best interests of the beneficiaries and exercise all powers with respect to such business which Settlor could exercise if living;

(13) Disclaim, in whole or in part, any disclaimable interest as defined in the applicable law; and

(14) Exercise all of the powers and authority provided by applicable law.

B. Certain elections afforded by the Internal Revenue Code may be exercised only by the person who is the "executor" within the meaning of the Internal Revenue Code. The Successor Trustee shall exercise those powers enumerated below, which under the applicable provisions of the Internal Revenue Code may be exercised only by the executor, only if the Successor Trustee is also the "executor" within the meaning of the Internal Revenue Code. Subject to the limitation expressed in the preceding sentences, the Successor Trustee shall have the power to: (1) elect to claim expenses or losses as either income or estate tax deductions; (2) elect, to the extent permitted by the Internal Revenue Code, to defer the payment of all or part of the Settlor's estate taxes; (3) exclude from or include in the Settlor's gross estate, any asset, in the first instance, for federal estate tax purposes; (4) value all assets, in the first instance, for federal estate tax purposes, using date of death or alternate values as the Successor Trustee shall elect; (5) elect to value qualified real property at its value for the use under which it qualifies and enter into any agreements required by such election; (6) elect to have gain or loss recognized on distribution of property in kind under Internal Revenue Code Section 643(e)(3); (7) elect to make, continue or revoke any election to be taxed under Subchapter S of the Internal Revenue Code with respect to any securities eligible for such an election; (8) elect to allocate the Settlor's unused generation-skipping tax exemption; and (9) elect to exercise or not to exercise any other option or election afforded by the Internal Revenue Code unless Settlor has specifically given directions with respect to such matter.

C. Notwithstanding any provision herein to the contrary, with respect to any trust administered under this Trust Agreement no Trustee or Successor Trustee (hereafter called the "Trustee") shall have the power to use or apply trust property (i) for the support and maintenance of anyone the Trustee is obligated to support and maintain, or (ii) for the purpose of directly or indirectly discharging the personal legal obligations of that Trustee or of any beneficiary with respect to any other person, nor shall any Trustee who is also a beneficiary of any trust administered under this Trust Agreement have the power, as Trustee, to make discretionary distributions to him or herself except (if expressly permitted by this instrument) to the extent necessary for such Trustee's health, education, support and maintenance as described under Internal Revenue Code Sections 2041 and 2514 (concerning powers of appointment and ascertainable standards), and such beneficiary-Trustee shall exercise its Trustee powers solely in a fiduciary capacity and shall possess no powers that would otherwise permit that beneficiary-Trustee to enlarge or shift any of the beneficial interests (except as an incidental consequence of the discharge of such fiduciary duties); and to the extent a beneficiary-Trustee has the authority to make discretionary distributions of income and/or principal to another beneficiary from a trust administered under this Trust Agreement that the beneficiary-Trustee is also a beneficiary thereof, such distributions shall be limited by an ascertainable standard related to the distributee beneficiary's health, education, support and maintenance. No beneficiary-Trustee shall possess any power or discretion that is "conclusive," "sole," "absolute" or "uncontrolled" with respect to the exercise or non-exercise of such power or discretion; and such beneficiary-

Trustee's power or discretion in that regard shall at all times be exercised or not exercised in a reasonable manner, be limited by a reasonably definite standard, and shall be subject to review and judicial scrutiny. Notwithstanding the foregoing, this provision shall not apply to Settlor while Settlor is serving as Trustee.

D. Notwithstanding any other provision of this Trust Agreement to the contrary, the following provisions under this Paragraph EIGHTH D shall apply upon the death of the Settlor:

1. If a trust held under this instrument would otherwise be partially exempt from generation-skipping tax ("GST") due to the intended allocation of a GST exemption to it (as used in this instrument, the "GST exemption" means the exemption from generation-skipping tax allowed under Section 2631 of the Internal Revenue Code), then, before such allocation and as of the relevant valuation date under Section 2642 of the Internal Revenue Code with respect to such allocation, the Successor Trustee may (but need not) divide that trust (the "original trust") into two separate trusts of equal or unequal value which shall be identical in all other respects to the original trust, so that the allocation of GST exemption can be made to one trust which will be entirely exempt from generation-skipping tax. The two trusts created under this Paragraph EIGHTH D 1 shall have the same name as the original trust except that the trust to which the GST exemption is allocated shall have the phrase "GST Election" added to its name.

2. If property which is held in, or is to be added or allocated to, a trust pursuant to this instrument is subject to different treatment for any reason for purposes of the generation-skipping tax under Chapter 13 of the Internal Revenue Code than other property being added or allocated to, or also held in, that trust, then the Successor Trustee may (but need not) hold such property instead as a separate trust that is appropriately designated to distinguish it from the trust to which the property otherwise would have been allocated, but that is identical in all other respects to that trust.

3. It is the Settlor's intent that the Successor Trustee shall not be required to administer a trust hereunder that is only partially exempt from generation-skipping taxes, or to commingle property subject to different treatment for generation-skipping tax purposes whether because the transferors with respect to the property are assigned to different generations or otherwise. The provisions of this Paragraph EIGHTH D are intended to enable the Successor Trustee to avoid such situations by empowering the Successor Trustee to segregate trust property (a) that is entirely exempt from generation-skipping tax from trust property that is not exempt, or (b) that is otherwise treated differently from other trust property for purposes of the generation-skipping tax, and the provisions of this Paragraph EIGHTH D shall be applied in a manner consistent with this intention.

4 To the extent it is consistent with the Successor Trustee's fiduciary obligations, the Successor Trustee, in making discretionary distributions of net

income and principal from the trusts referred to in this Paragraph EIGHTH D, shall take advantage of the opportunities provided by the creation of such trusts to avoid or delay generation-skipping tax when making discretionary distributions, and to maximize the amount of trust property that eventually may be distributed to the Settlor's grandchildren or more remote descendants without transfer tax of any kind at the termination of all trusts created under this Agreement.

5 For purposes of dividing trusts under this Paragraph EIGHTH D, the Successor Trustee shall select property in a manner that the assets of each trust will have an aggregate fair market value fairly representative of each trust's proportionate share of the appreciation or depreciation in the value (from the values as finally established for federal estate tax purposes) to the dates of allocation of all property then available for allocation.

6. Any person may add property to any trust hereunder, with the consent of the Successor Trustee, and such property shall thereafter be held by the Successor Trustee as a part thereof. However, no property shall be added to a trust if such addition would cause the inclusion ratio of such trust to become other than zero (0), and such property shall be held as a separate trust with terms identical to those of the trust to which the property would have been added.

7. For purposes of this Paragraph EIGHTH D, a separate share shall be treated as a separate trust.

E. Notwithstanding anything contained in this Trust Agreement to the contrary, upon Settlor's death, the Successor Trustee may appoint (and remove and substitute) Independent Investment Advisor(s) (herein collectively referred to as the "Advisor") under this Trust Agreement and if so appointed the Successor Trustee shall exercise investment powers only on the written direction of the Advisor to the trust. Provided, however, if at any time during the continuance of any such trust there shall be no Advisor of such trust, or if the Advisor of such trust shall fail to communicate in writing to the Successor Trustee the Advisor's direction as to the exercise of any of the aforesaid powers for which exercise the direction of such Advisor shall be necessary, within twenty (20) days after the Successor Trustee shall have sent to such Advisor, by certified mail, at the Advisor's last known address(es), a written request for such direction (notwithstanding that the Successor Trustee shall be under no obligation to request any such direction), then the Successor Trustee is hereby authorized and empowered to take such action in the premises as it, in its sole discretion, shall deem to be for the best interest of the beneficiaries of such trust, and shall be relieved of any and all liability for losses incurred thereby. The Advisor shall be reimbursed for out-of-pocket expenses and reasonable investment counsel fees. The Successor Trustee is relieved of any and all liability for losses incurred as a result of obeying the Advisor's investment directions.

F. The Trustee may register this trust in accordance with Section 700.7101 of EPIC.

G. The Successor Trustee is authorized (but not required) to make distributions from the trust estate to the Guardian(s) of any trust beneficiary, or to the person(s) acting in such capacity to any trust beneficiary (all such being collectively referred to as the "Custodian"), for the following purposes, taking into account the funds available in the trust estate:

1. Reimbursement of the Custodian for traveling to and from the place of the beneficiary's last residence and to the Custodian's place of residence for the purpose of making arrangements for and the actual transportation of the beneficiary to the Custodian's place of residence.

2. Allowance to the Custodian in such amount as the Successor Trustee deems advisable after consultation with the Custodian for the added expenses occasioned by the beneficiary's residence with the Custodian.

3. If the Custodian's residence is inadequate to handle the addition of the beneficiary, the Successor Trustee may, in its sole discretion, disburse and/or loan to the Custodian upon such terms of repayment as the Successor Trustee deems appropriate, money to assist the Custodian in remodeling or expanding the Custodian's then present residence or to purchase a more suitable residence.

4. If the Custodian's family car/van is not adequate in size to accommodate the addition of any beneficiary, the Successor Trustee may, in its sole discretion, disburse and/or loan to the Custodian money to assist the Custodian in purchasing a new and larger car/van.

5. The Successor Trustee may advance to the Custodian the cost of any educational expense committed to on behalf of any beneficiary hereunder. These expenses shall include tuition, room and board, books, related expenses, extracurricular seminars and other expenditures which in the opinion of the Successor Trustee would further and broaden the educational opportunities available to the trust beneficiary.

H. Notwithstanding anything else contained in this Agreement to the contrary, if there is capital stock of a "small business corporation", as defined in Section 1361(b) of the Internal Revenue Code, allocable to or comprising a part of the principal of any trust created under this Trust Agreement, then, if such "small business corporation" is an "S corporation" as defined under Section 1361(a)(1) of the Internal Revenue Code, because an election had previously been made under Section 1362(a) of the Internal Revenue Code, there is only one current income beneficiary and the current income beneficiary indicates his or her willingness in writing to consent to such election, the Successor Trustee shall allocate all the capital stock of such "small business corporation" to a separate trust for the benefit of such beneficiary, or prior to making an election under said Section 1362(a) the Successor Trustee, if it has determined to make such an election and the current income beneficiary indicates his or her willingness in writing to consent to such an election, shall either allocate or sever the capital stock of such "small business corporation" from such trust and allocate the capital stock to a separate trust for the benefit of such beneficiary. The trust created hereunder shall be known as the "Qualified Subchapter S Trust FBO" said beneficiary.

The following terms and conditions of such trust shall supplement or override, if to the contrary, any other terms and conditions contained elsewhere in this Trust Agreement to the trust for the benefit of the then current income beneficiary.

1. All income, within the meaning of Section 643(b) of the Internal Revenue Code, of the trust shall be distributed to the current income beneficiary while the small business corporation is an "S corporation";

2. During the lifetime of the current income beneficiary, the income and principal of the trust may be distributed only to the current income beneficiary or, while the current income beneficiary is under any legal disability, may be paid by the Successor Trustee to any court appointed guardian or similar appointee with respect to such legally disabled current income beneficiary;

3. The income interest of the current income beneficiary shall terminate on the earlier of the beneficiary's death or the termination of the trust;

4. Upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary; and

5. The trust's terms and conditions, not to the contrary that would otherwise apply if this trust was not created, shall control the administration and disposition of any trust created hereunder.

I. Notwithstanding anything else contained in this Agreement to the contrary, if there is capital stock of a "small business corporation", as defined in Section 1361(b) of the Internal Revenue Code, allocable to or comprising a part of the principal

of any trust created under this Trust Agreement, then, if such "small business corporation" is an "S corporation" as defined under Section 1361(a)(1) of the Internal Revenue Code, because an election had previously been made under Section 1362(a) of the Internal Revenue Code, and there are two or more current income beneficiaries or the sole current income beneficiary indicates his or her unwillingness to consent to such election, or the trust does not otherwise qualify for qualified subchapter S tax treatment, the Successor Trustee may allocate all the capital stock of such "small business corporation" to a separate trust for the benefit of such beneficiary, or prior to making an election under said Section 1362(a) the Successor Trustee, if it has determined to make such an election and there are two or more current income beneficiaries or the current income beneficiary indicates his or her unwillingness to consent to such an election, or the trust does not otherwise qualify for qualified subchapter S tax treatment, may either allocate or sever the capital stock of such "small business corporation" from such trust and allocate the capital stock to a separate trust for the benefit of such beneficiary. The trust created hereunder shall be known as the "Electing Small Business Trust FBO" said beneficiary(ies). At any time while there shall be in place a valid election to administer the trust as an Electing Small Business Trust ("ESBT"), the Successor Trustee shall not be permitted to take any action, other than an express revocation of the trust's ESBT election, which would result in the trust failing to qualify as an ESBT pursuant to Section 1361(e) of the Internal Revenue Code and the Regulations promulgated thereunder, and in furtherance thereof the following shall be observed:

1. The trust shall not have as a current beneficiary any person other than an individual, an estate, or an organization described in paragraphs (2), (3), (4) or (5) of Section 170(c) of the Internal Revenue Code.

2. No interest in the trust shall be acquired by purchase.

3. An election under Section 1361(e)(3) of the Internal Revenue Code shall be made by the Successor Trustee and shall be in effect for the trust.

4. The trust shall not have a number of "potential current beneficiaries", as defined in Section 1361(e)(2) of the Internal Revenue Code, which would cause the corporation(s) whose stock is owned by the trust, to exceed the numerical shareholder limitation imposed upon such corporation(s) at any time by Section 1361(b) of the Internal Revenue Code.

J. Notwithstanding any provisions to the contrary contained in this Trust Agreement, the Successor Trustee shall be subject to the following restrictions, duties and obligations for any beneficiary of any trust receiving or entitled to receive government assistance or aid:

1 The Successor Trustee shall, in its sole and absolute discretion, expend principal or income for the needs of the beneficiary not otherwise provided for by government financial assistance and benefits or by the providers of the services. Such needs include, by way of description and not by way of limitation, additional food, clothing, health services not provided, radios, record players, television sets, camping, vacations, athletic contests, movies or trips; provided, however, that the Successor Trustee is under no obligation to expend

principal or income for such needs, but if the Successor Trustee does, in its sole discretion, decide to do so, in no case shall the Successor Trustee pay or reimburse any amounts to the federal or state governments, or any subdivision thereof.

2. Any income which is not distributed shall be retained in the trust and added to the principal thereof.

3. In making the distributions provided for in Subparagraph EIGHTH J 1, the Successor Trustee shall take into consideration the amounts which the beneficiary shall be entitled to receive from any government agency, including, but not limited to, the Social Security Administration benefits, Supplemental Security Income, or Medicaid. The Successor Trustee is directed to assist the beneficiary in obtaining the full benefit of these programs. The Successor Trustee is further directed to collect, expend and account for separately all such governmental assistance benefits, but not commingle them with the trust funds.

END

NINTH
ALIENATION

The principal of the trusts administered hereunder and the income resulting therefrom while in the hands of the Successor Trustee shall not be subject to any conveyance, transfer or assignment, or be pledged as security for any debt of any beneficiary thereof and shall not be subject to any claim of any creditor of any such beneficiary, through legal process or otherwise. Any attempted sale, anticipation, assignment or pledge of any of the principal or income held in any such trust by such beneficiaries or any of them shall be null and void, and shall not be recognized by the Successor Trustee. It is the Settlor's intention to place the absolute title to the property held in trust and the income therefrom in the Successor Trustee from the time the Successor Trustee succeeds Settlor as Trustee with the power and authority to pay out the same only as authorized herein. Nothing in this Paragraph shall prohibit the release of a power of appointment or withdrawal granted hereunder, or an exercise in accordance with the terms of the power.

END

TENTH

RULE AGAINST PERPETUITIES

If the provisions of any trust herein for any beneficiary shall be violative of the rule against perpetuities, then such trust for such beneficiary shall be based upon the lives of all beneficiaries of all other trusts hereunder whose lives shall be competent under said rule, and such trust for such beneficiary shall continue with all of its other provisions until the expiration of the maximum period permitted by the Uniform Statutory Rule Against Perpetuities unless the provisions of any such trust as continued by this Paragraph shall direct the conveyance of any part or all of the principal of the trust to the beneficiary thereof to take place at a time before the termination of the trust as continued under this Paragraph, in which case such conveyance shall be made in accordance with such direction.

END

ELEVENTH

ALLOCATION OF ASSETS

The Successor Trustee may make any division or allocation in cash or in kind, and as to any property incapable of exact division, it shall not be necessary for the Successor Trustee to divide the same physically into parts to which each trust shall be entitled, but individual parts thereof may, by appropriate book entries, be allocated among the trusts. In any case where exact division of property or allocation of undivided interests therein between or among the other trusts hereunder is not practical or expedient, the Successor Trustee may select assets to be appropriated in whole or in part to any of said trusts.

END

TWELFTH

RESIGNATION OF SUCCESSOR TRUSTEE

A. The Successor Trustee of a trust may resign by written notice setting forth the effective date thereof delivered personally or sent by registered mail, at least thirty (30) days prior to said effective date, to each of the ascertained and then living beneficiaries of the trust to or for whom income may currently be paid or used, or their guardians, addressed to the last known address of such person as disclosed by the resigning Successor Trustee's records.

B Except as otherwise provided in Paragraph SEVENTH, within twenty (20) days after the delivery or mailing of such notice of resignation, a majority of such adult beneficiaries, or a majority of the guardians of minor beneficiaries, if there are no adult beneficiaries, shall select a corporate successor to the resigning Successor Trustee and shall in writing, signed by a majority of the beneficiaries or their guardians, whichever is applicable, inform the resigning Successor Trustee of the identity of the selected corporate successor to the resigning Successor Trustee. If the beneficiaries shall fail to select a corporate successor to the resigning Successor Trustee within the twenty (20) day period or if there are no adult beneficiaries and a majority of the minor beneficiaries do not have guardians, then the resigning Successor Trustee shall select a corporate successor.

C. The resigning Successor Trustee, upon the effective date of its resignation, shall deliver to its successor and to each such beneficiary of the trust a statement of all receipts and disbursements of the trust together with an inventory of the

assets belonging to the trust. When the successor shall deliver its receipt for the assets of each of the trusts to the Successor Trustee so resigning, the latter shall stand and be discharged of all of its duties and obligations hereunder.

D. Each and every successor to the original Successor Trustee shall have the identical powers, rights, duties and obligations of the original Successor Trustee named in this Agreement unless otherwise provided herein.

END

THIRTEENTH

LIFE INSURANCE PROVISIONS

A The Settlor shall pay all premiums or assessments on any life insurance policies on Settlor's life made payable to this trust. The Trustee shall be under no obligation to see that said premiums or assessments are paid or to pay the same, and shall be under no obligation in respect to the policies deposited hereunder other than for their safekeeping, except to the extent expressly provided herein. Nothing herein contained shall be deemed to impose any obligation on the Settlor to maintain any or all of said policies in force. If, at any time, and so long as, the only assets held by the Trustee are insurance contracts or beneficiary designations under employee benefit plans and cash of nominal amount, the Trustee shall be under no duty or obligation to invest and/or keep invested such cash of nominal amount.

B. The Settlor reserves unto Settlor during Settlor's lifetime, all incidents of ownership, payments, dividends, surrender values and benefits of any kind which may accrue on account of any of the policies of life insurance on Settlor's life made payable to this trust, under this Agreement, and the right at any time to assign, pledge or use said policies or any of them or to change the beneficiary thereof, and to borrow money thereon; and the Settlor shall have the right and power at any time to withdraw from the possession of the Trustee any and all policies of life insurance deposited with the Trustee hereunder, upon the execution and delivery to said Trustee of a proper receipt therefor.

C. No insurance company who shall make payment of insurance proceeds to this trust shall be required to inquire into or take notice of any of the provisions of this Agreement or to see to the application or disposition of the proceeds of said policies, and the receipt of the Successor Trustee to any such insurance company shall be effectual to release and discharge them for any payment so made and shall be binding upon every beneficiary of the trusts hereby created.

D. The Successor Trustee shall use its best efforts to collect the proceeds of any life insurance policies that are payable to this trust, or may, at its option, exercise any of the options of settlement that may at that time be available to the Successor Trustee under the terms of any of said policies. The Successor Trustee may institute any proceedings at law or in equity in order to enforce the payment thereof, it being distinctly understood, however, that the Successor Trustee shall not, except at its option, enter into or maintain any litigation to enforce the payment of said policies until it has been indemnified to its satisfaction against all expenses and liabilities to which it may, in its judgment, be subjected by any such action on its part. The Successor Trustee is authorized to compromise and adjust claims arising out of the insurance policies or any of them, upon such terms and conditions as it may deem just, and the decision of the Successor Trustee shall be binding and conclusive upon all persons and corporations interested therein. The Successor Trustee shall be responsible for the proceeds of the insurance only when, as and if collected or paid to it, and the Successor Trustee shall not be liable to anyone if for any reason the policies shall lapse or be otherwise uncollectible in whole or in part.

E. An instrument in writing completely terminating the trust shall, without more, upon delivery to the Trustee, completely terminate all of this trust's right, title and interest to insurance proceeds otherwise payable to it. The Settlor assumes full responsibility for changing the insurance beneficiary designations to reflect Settlor's intent with respect to such policies.

F. Anything contained in this Trust Agreement to the contrary notwithstanding, the Trustees (and Successor Trustees) of each trust hereunder, other than any individual Trustee or individual Successor Trustee (except Settlor) whose life may be insured under the life insurance policy in question, shall have and, in their sole discretion, may exercise all of the incidents of ownership in each and every policy of life insurance which may at any time be owned or purchased by such trust. The term "incidents of ownership" with respect to a policy shall include, by way of illustration and not limitation, the right to collect, receive, and retain all payments, dividends, surrender values, sickness, accident, disability, retirement, or other benefits, including all death benefits, maturing on such policy during the insured's lifetime and thereafter, as well as the right to at any time transfer, assign, sell, pledge, hypothecate, borrow on, surrender, prepay, convert, divide, change the beneficiary of, and/or exercise or select any options, elections, and waivers with respect to such policy. All other provisions of this Trust Agreement to the contrary notwithstanding, any individual Trustee or individual Successor Trustee (except Settlor) whose life is insured under a trust owned policy shall under no circumstances be entitled to partake in any way in decisions relating to such policy or in the exercise of any of the foregoing powers or discretions with respect to

such policy (and in the absence of another then acting Trustee or Successor Trustee no incidents of ownership as to such policy shall be exercised).

1. The payment of premiums on each policy owned by any trust hereunder shall be charged against the principal of that trust unless the Trustees or Successor Trustees of such trust (other than any (except Settlor) who might be financially affected thereby), in the exercise of reasonable discretion, shall determine to charge such premiums against the income of such trust on the basis of that being in the best interests of the present and future beneficiaries of such trust.

2 Furthermore and also notwithstanding all other provisions of this Trust Agreement, if any insurance on the life of a beneficiary of a trust hereunder is an asset of such trust, such insurance and all proceeds thereof, unless held by the original trust hereunder, shall be excluded from the assets which might otherwise be subject to any use, enjoyment, withdrawal, or appointment by that beneficiary (and on such beneficiary's death such proceeds shall be disposed of as though any power of appointment held by such beneficiary had not been exercised).

END

FOURTEENTH
GENERAL PROVISIONS

A. The Successor Trustee shall have the entire care and custody of all of the assets comprising principal of the trusts hereunder and shall keep the assets safe in accordance with the requirements of like fiduciaries and shall maintain full and accurate records of assets, receipts and disbursements and other financial transactions relative to each trust, all of which shall be available for inspection at any reasonable time by any and all beneficiaries.

B. The Successor Trustee shall furnish at least annually, to the beneficiary or beneficiaries to whom income is currently payable or for whose benefit it may currently be expended, a complete inventory of the assets held in the trust for such beneficiary and shall furnish at least annually, or at such other periodic intervals as may be agreed upon between the Successor Trustee and such beneficiary, or beneficiaries, a statement of all receipts and disbursements.

C. The Successor Trustee shall pay all necessary and proper disbursements, expenses and liabilities in the administration of the trusts hereunder, including reasonable compensation of the Successor Trustee or its successor.

D. In cases where the Internal Revenue Code affords the Successor Trustee any election or option, the Successor Trustee shall exercise such election or option for what it believes to be the best interest of the trust and the beneficiaries thereof. The Successor Trustee shall not make any adjustment between income and principal because of a benefit conferred or a detriment imposed upon any trust or any of

the beneficiaries thereof by reason of the applicable provisions of the Internal Revenue Code, including elections or options.

E. The trusts herein provided shall be administered and this Agreement shall be construed in accordance with the laws of the State of Michigan.

F. In any proceeding involving the construction, operation or modification of this Agreement, the then living beneficiary or beneficiaries to whom income is currently payable or for whose benefit it may currently be expended shall represent any unknown and undetermined beneficiaries, and any order, judgment or decree rendered in such proceeding shall be binding not only upon such known persons but also upon all unknown and undetermined beneficiaries.

G. The Successor Trustee shall have the power to maintain the situs of the property of any trust created under this Agreement in any jurisdiction, in the Successor Trustee's absolute discretion, and thereafter transfer the situs at any time or times to any jurisdiction selected by the Successor Trustee. Upon any such transfer of situs, the trust estate may thereafter, at the election of the Successor Trustee, be administered exclusively under the laws of (and subject, as required, to the exclusive supervision of the courts of) the jurisdiction to which it has been transferred. If the Successor Trustee of any trust created hereunder elects to change the situs of any such trust, the Successor Trustee is hereby relieved of any requirement of having to qualify in any other jurisdiction and of any requirement of having to account in any court of such other jurisdiction.

END

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FIFTEENTH

DISCLAIMER

The acceptance to serve as Successor Trustee shall be construed as no more than acceptance of the terms of this Agreement as they apply to the rights, powers, duties and obligations of the Successor Trustee during its tenure as trustee and shall in no way be construed to mean acceptance, ratification or approval of any of the acts, omissions, or defaults of the individual Trustee nor any undertaking by the Successor Trustee to audit or verify the records of the individual Trustee. The Successor Trustee shall be entitled to rely upon any statements and records (which may come into the Successor Trustee's possession after a reasonable search) of the individual Trustee as to the assets of this trust and shall have no responsibility or liability hereunder to any person for the assets of this trust until reduced to the possession of the Successor Trustee.

END

SIXTEENTH

CONSOLIDATION OF TRUSTS

After the death of Settlor, if the provisions under the trust or trusts created herein shall become substantially the same as the provisions under any trust or trusts established by the Settlor or by any other person for the irrevocable benefit of the same beneficiary or beneficiaries, the Successor Trustee may, in its complete discretion, terminate such trust or trusts created hereunder and distribute all of the assets thereof to the trustee of said similar trust or trusts, or may accept from the trustee of said similar trust or trusts, all of the assets thereof, and the assets so distributed or received shall be treated as an addition to said similar trust or trusts or to this trust or trusts, as the case may be, and shall be held, treated and disposed of as a part thereof or hereof, and if distributed to a similar trust or trusts, the trust or trusts created hereunder shall thereupon terminate. The purpose of this Paragraph is to eliminate the necessity of maintaining two or more separate trusts with similar provisions for the same beneficiary. However, the Successor Trustee shall not combine any trust having an inclusion ratio, as defined in Section 2642 of the Code, of other than zero (0) with a trust having an inclusion ratio of zero (0).

END

SEVENTEENTH
ENVIRONMENTAL MATTERS

A. For purposes of this Paragraph, the following terms have the meanings set forth below:

1. "Assets held in the trust estate" include interests in sole proprietorships, partnerships, corporations, limited liability companies and other business entities and the assets owned by such business entities.

2. "Environmental law" means any federal, state, or local statute, rule, regulation or ordinance relating to protection of the environment or human health.

3. "Hazardous substance" means any substance defined as hazardous or toxic in or otherwise regulated by any environmental law.

4. "Environmental concerns" means, as determined by the Successor Trustee in its sole discretion, (a) any condition of, or activity conducted on or with, any property or assets held in the trust estate that violates, or may cause violation of any environmental law; (b) the presence of or any actual or threatened release of any hazardous substance from, to, at, under, or upon any property or assets held in the trust estate; and (c) any actual or threatened spill, leak, discharge, disposal, emission, dispersal, leaching, or migrating of any hazardous substance from, to, at, under, or upon any property or assets held in the trust estate.

5. "Governmental body" means any unit of federal, state, or local government, and any agency, department, board, commission, or subdivision thereof, and any quasi-governmental agency thereof and any court or quasi-judicial entity.

B The Successor Trustee shall have the powers, in addition to those powers provided by applicable law:

1. To inspect, assess, and evaluate any property or assets held in the trust estate or proposed to be donated or transferred to the trust estate, and any records related thereto, for the purpose of determining if any environmental concerns exist with respect to such property or assets.

2. To respond to any actual or suspected environmental concerns relating to property or assets held by the Successor Trustee in the trust estate.

3. To take, on behalf of the trust estate, any action necessary to prevent, abate, or otherwise remedy any environmental concerns relating to property or assets held by the Successor Trustee in the trust estate, either before or after the initiation of an enforcement action by any governmental body.

4. To refuse to accept property or assets in trust if the Successor Trustee determines or suspects that environmental concerns are present at, affect or relate to any property or assets to be donated or transferred to the trust which the Successor Trustee believes could result

in liability to the trust or the Successor Trustee, or otherwise impair the value of the property or assets held therein.

5. To settle or compromise at any time any and all claims or lawsuits against the trust estate or against the Successor Trustee which may be asserted by any governmental body or private party involving any alleged environmental concern relating to property or assets held in the trust estate.

6. To disclaim any power granted by any document, statute or rule of law which, in the sole discretion of the Successor Trustee, may cause the Successor Trustee to incur personal liability under any environmental law or under the common law.

7. To decline to serve as Successor Trustee if the Successor Trustee reasonably believes that there is or may be a conflict of interest between the Successor Trustee in its fiduciary capacity and in its individual capacity because of potential claims or liabilities which may be asserted against it on behalf of the trust estate because of any environmental concerns that relate to property or assets held in the trust estate.

8. To disclaim, in whole or in part, any interests in property or assets for any reason including, but not limited to, a concern that holding such property or assets in the trust estate could result in liability to the trust or the Successor Trustee as a result of any environmental concerns.

9. To use and expend the trust income and principal to: (i) conduct environmental assessments, audits, and site monitoring to determine if any environmental concerns are present at or affect any property or assets held in the trust estate; (ii) take all appropriate remedial action to contain, remedy, cleanup, or respond to environmental concerns that relate to property or assets held in the trust estate, either on its own accord or in response to an actual or threatened claim by any governmental body or private party; (iii) institute legal proceedings concerning any environmental concerns that relate to property or assets held in the trust estate or contest or settle legal proceedings brought by any governmental body or by any private person or entity regarding environmental concerns that relate to any property or assets held in the trust estate; (iv) comply with any order of any governmental body directing an assessment, investigation, remedial action, response action, abatement or cleanup of any environmental concerns relating to property or assets held in the trust estate; (v) to take any action or do anything permitted in the above paragraph, or as otherwise permitted by law; and (vi) employ agents, consultants and legal counsel to assist or perform the above undertakings or actions. Any expenses incurred by the Successor Trustee under this paragraph may be charged against income or principal as the Successor Trustee shall determine.

C. The Successor Trustee shall not be personally liable to any beneficiary or other person or entity for any decrease in value of property or assets held in the trust estate by reason of the Successor Trustee's compliance with any environmental law, specifically including any reporting requirement under such law. Neither the acceptance by the Successor Trustee of property nor a failure by the Successor Trustee to inspect property or assets shall be deemed to create any inference as to whether there is or may be any liability under any environmental law with respect to such property or assets.

D. No Successor Trustee shall be liable for any loss or depreciation in value sustained by the trust as a result of the Successor Trustee retaining any property or assets upon which there is later discovered to be environmental concerns requiring remedial action pursuant to any environmental law, unless the Successor Trustee contributed to the loss or depreciation in value through willful default, willful misconduct, or gross negligence.

E. Settlor's estate shall indemnify, defend, protect, and hold harmless the Successor Trustee, and each of the Successor Trustee's successors, from and against any and all claims, liabilities, penalties, fines, judgments, forfeitures, losses (including without limitation, diminution in the value of the trust property or assets, damages for the loss of or restriction on the use of rentable or usable space or of any amenity of the trust property), costs, or expenses (including attorneys' fees, consultants' fees, and experts' fees) arising from or caused in whole or in part, directly or indirectly, by any environmental concerns relating to property or assets held in the trust estate,

regardless of the cause of such environmental concerns. Settlor's obligations under this indemnification shall include, without limitation, whether foreseeable or unforeseeable, any and all costs incurred in connection with any investigation or testing of site conditions, and any and all costs of any required or necessary repair, remedial action, response action, cleanup, detoxification, or decontamination of the trust property (including, without limitation, the soil and ground water on, under or about the trust property), and the preparation and implementation of any closure, remedial action, or other required plans in connection therewith. Settlor's obligation under this indemnification shall survive the expiration or earlier termination of the Successor Trustee's term as fiduciary under the Trust Agreement. For purposes of the release and indemnity provisions, hereof, any acts or omissions of Settlor, or by employees, agents, assignees, contractors, or subcontractors of Settlor, or by others acting for or on behalf of Settlor (whether or not they are negligent, intentional, willful, or unlawful), shall be strictly attributable to Settlor.

END

EIGHTEENTH

FORFEITURE

The beneficial provisions of this Trust Agreement and of Settlor's Last Will and Testament are intended to be in lieu of any other rights, claims or interests, whether statutory or otherwise, except bona fide pre-death debts, which any beneficiary hereunder may have against or in Settlor's estate or the assets held under this Trust Agreement. Therefore, if any beneficiary shall assert any claim, statutory election or other right or interest against or in the Settlor's estate, either pursuant to Settlor's Last Will and Testament, this Trust Agreement (as it may be amended) or otherwise, or directly or indirectly contest the Settlor's Last Will and Testament or this Trust Agreement (as it may be amended), or attack or seek to impair or invalidate any of the provisions thereof, or conspire with or voluntarily assist anyone attempting to do any of those things, then (a) all beneficial interest, powers and rights of every kind and nature which such beneficiary might otherwise have had under this Trust Agreement shall be forfeited and such forfeited interest shall augment proportionately the shares of the beneficiaries designated in Paragraph SIXTH B who shall not have participated in such acts or proceedings, (b) all of the provisions of this Trust Agreement, to the extent that they confer any benefits, powers or rights whatsoever upon such beneficiary, shall thereupon become absolutely void and revoked, and (c) such beneficiary, if then acting as a Successor Trustee hereunder, shall automatically cease to be a Successor Trustee and shall thereafter be ineligible either to select, remove or become a Successor Trustee hereunder. The foregoing shall not be construed, however, to limit the

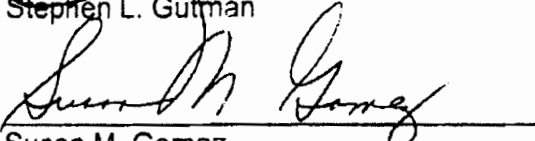
appearance of any beneficiary as a witness in any proceeding involving the Settlor's Last Will and Testament or this Trust Agreement nor limit any beneficiary's appearance in any capacity in the proceeding solely for the construction of either of said documents.

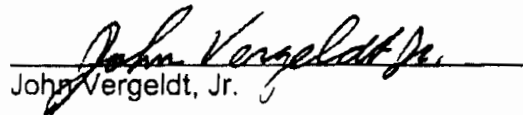
END

IN WITNESS WHEREOF, the parties hereto have executed this Eighth Amendment and Complete Restatement as of the day and date first above written and by so doing the Trustee herein named accepts all of the duties and conditions imposed.

Signed in the presence of:

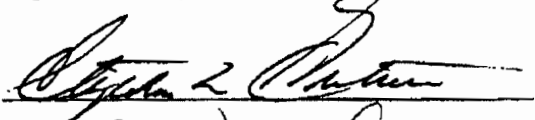

Stephen L. Gutman

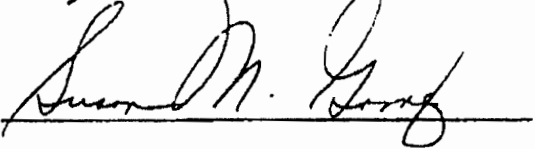

Susan M. Gomez

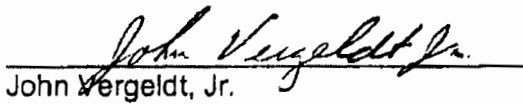

John Vergeldt, Jr.

"Settlor"

Signed in the presence of:





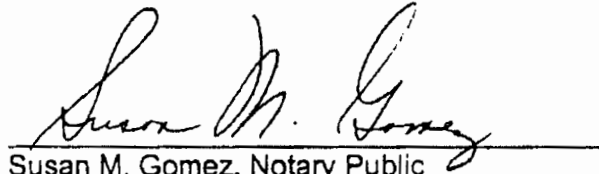

John Vergeldt, Jr.

"Trustee"

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

On this 29th day of July, 2009, before me personally appeared John Vergeldt, Jr., to me known to be the person described in and who executed the

foregoing instrument and acknowledged that he executed the same as his free act and deed.

A handwritten signature in cursive script, appearing to read "Susan M. Gomez", is written over a horizontal line.

Susan M. Gomez, Notary Public
Wayne County, Michigan acting in
Wayne County, Michigan
My Commission expires: 11/11/2012

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JUDGE OF PROBATE
YORK COUNTY, SC

EXHIBIT B

NINTH AMENDMENT TO TRUST AGREEMENT

FILED RECEIVED

2016 FEB -1 PM 2:42

JUDGE OF PROBATE
YORR COUNTY, SC

THIS NINTH AMENDMENT TO TRUST AGREEMENT dated September 27, 1978, is made this 5th day of February, A.D., 2010, between John Vergeldt, Jr., of the City of Dearborn, County of Wayne, and State of Michigan, hereinafter called the "Settlor;" and John Vergeldt, Jr., hereinafter called the "Trustee." This Trust is sometimes referred to as the "John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978."

WITNESSETH

WHEREAS, on July 29, 2009 the Settlor completed amended and restated the provisions of the aforesaid Trust Agreement signed by him on September 27, 1978, by deleting all of the provisions of said Trust Agreement and Amendments and by substituting the provisions set forth in the Eighth Amendment and Complete Restatement;

WHEREAS, the Settlor desires to amend the Eighth Amendment and Complete Restatement; and

WHEREAS, the Trustee is agreeable to the amendments hereinafter set forth.

NOW, THEREFORE, it is agreed that the Eighth Amendment and Complete Restatement shall be amended as follows:

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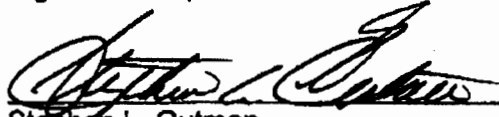
Paragraph SIXTH B of the Eighth Amendment and Complete Restatement

shall be deleted and the following Paragraph SIXTH B shall be substituted therefor:

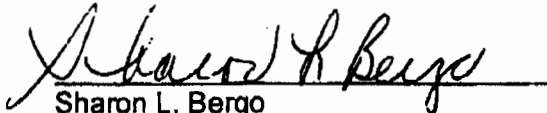
B. After the death of Settlor, the Successor Trustee shall distribute the sum of six thousand (\$6,000.00) dollars, free and discharged from the trust hereof, to each grandchild of Settlor who survives Settlor and shall divide the balance of the assets of the Residuary Trust into equal shares, one (1) share for each of Settlor's children. If any child of Settlor shall predecease Settlor (other than Patricia A. Vergeldt Downey and other than David Leigh Vergeldt who died on January 30, 2010), said child's share shall be distributed as follows: one-half (1/2) to Settlor's child's spouse, if then living, Settlor's child was married to him or her at the date of his or her death, and there was no divorce proceeding pending at the date of his or her death, and the other one-half (1/2) (or all if there is no surviving spouse who meets said conditions) shall be divided equally between Settlor's then living children. If Patricia A. Vergeldt Downey shall not survive Settlor, then her share shall be divided equally between Settlor's then living children. The Successor Trustee shall distribute from the share of David Leigh Vergeldt the sum of twenty thousand (\$20,000.00) dollars to his surviving spouse, Bonnie Graham Vergeldt, if and only if she survives Settlor and if the assets of the residuary estate have a fair market value at the date of Settlor's death of at least five hundred thousand (\$500,000.00) dollars, and the balance (or all if these conditions are not satisfied) shall be divided equally between Settlor's then living children. The part so set aside for Settlor's children and spouses of deceased children shall forthwith be assigned, transferred, conveyed and paid over to them free and discharged from the trust hereof. The part so set aside for the descendants of any of Settlor's children (other than the specific bequest of six thousand (\$6,000.00) dollars) shall, in the discretion of the Successor Trustee, either be distributed to a Uniform Transfers to Minors Act account to age twenty-one (21) or to a trust described in Paragraph SIXTH C, if the descendant has not attained age thirty (30), or otherwise shall forthwith be assigned, transferred, conveyed, and paid over to said descendants free and discharged from the trust hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Ninth Amendment as of the date and date first above written and by so doing the Trustee herein named accepts all of the duties and conditions imposed.

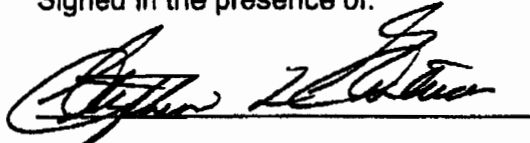
Signed in the presence of:

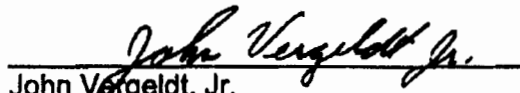

Stephen L. Gutman

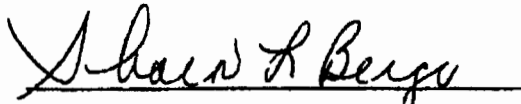

John Vergeldt, Jr.
"Settlor"


Sharon L. Bergo

Signed in the presence of:


Stephen L. Gutman

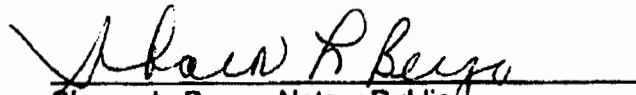

John Vergeldt, Jr.


Sharon L. Bergo

"Trustee"

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

On this 5th day of February, 2010, before me personally appeared John Vergeldt, Jr., to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed.


Sharon L. Bergo, Notary Public
Oakland County, Michigan acting in
Wayne County, Michigan
My Commission expires: 09/14/2012

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JUDGE OF PROBATE
YORK COUNTY, SC

EXHIBIT C

FILED RECEIVED

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TENTH AMENDMENT TO TRUST AGREEMENT OF PROBATE
YORK COUNTY, SC

THIS TENTH AMENDMENT TO TRUST AGREEMENT dated September 27, 1978, is made this 7th day of March, A.D., 2011, between John Vergeldt, Jr., of the City of Birmingham, County of Oakland, and State of Michigan, hereinafter called the "Settlor;" and John Vergeldt, Jr., hereinafter called the "Trustee." This Trust is sometimes referred to as the "John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978."

WITNESSETH

WHEREAS, on July 29, 2009 the Settlor completely amended and restated the provisions of the aforesaid Trust Agreement signed by him on September 27, 1978, by deleting all of the provisions of said Trust Agreement and Amendments and by substituting the provisions set forth in the Eighth Amendment and Complete Restatement;

WHEREAS, on February 5, 2010 the Settlor amended the Eighth Amendment and Complete Restatement by the Ninth Amendment;

WHEREAS, the Settlor desires to amend the Eighth Amendment and Complete Restatement and Ninth Amendment; and

WHEREAS, the Trustee is agreeable to the amendments hereinafter set forth.

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NOW, THEREFORE, it is agreed that the Eighth Amendment and Complete Restatement and Ninth Amendment shall be amended as follows:

1. Paragraph SECOND C as set forth in said Trust Agreement shall be deleted and the following Paragraph SECOND C substituted therefor:

C. The initial Successor Trustee is John Edward Vergeldt. The Settlor may change the Successor Trustee at any time during Settlor's lifetime. The Successor Trustee and each Trustee is referred to in the neuter gender. The Successor Trustee and each Trustee of each trust created pursuant to this Trust Agreement shall have all of the rights, duties and powers herein created and conferred upon the Trustee and/or Successor Trustee except those powers which this Agreement specifically limits to either the Settlor acting as Trustee or to the Successor Trustee. The Successor Trustee's duties relate to the trust while Settlor is alive, the trust after Settlor's death and during the post-death administration period and before its division for the beneficiaries' shares and each and every trust created pursuant to this Trust Agreement after Settlor's death unless this Agreement specifies a different Trustee for one or more of such trusts.

2. Paragraph SECOND D as set forth in said Trust Agreement shall be deleted and the following Paragraph SECOND D substituted therefor:

D. All tax-related terms, provisions and sections mean the same in this Agreement as they mean in the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder, and any successor provisions of either. Notwithstanding, if at any time a federal tax including, but not limited to, estate, gift or generation-skipping transfer tax, is not applicable and there is no term, provision or section of the federal tax law that corresponds to any term, provision or section contained in this Agreement, then such term, provision or section contained in this Agreement shall nevertheless be interpreted with reference to the term, provision or section that was in effect at the time of the execution of this Agreement or the term, provision or section that was in effect immediately before such tax law became inapplicable, as the case may be.

3. The following Paragraphs SECOND Q and SECOND R shall be added to the end of Paragraph SECOND:

Q. The term "mental incapacity" shall mean the court appointment of a guardian or conservator for a person or if that person's primary care physician renders such an opinion.

R. The term "current trust beneficiary" means each beneficiary who currently either has a right to receive all or a portion of the income of a trust or is eligible to receive a mandatory or discretionary distribution of income or principal of a trust.

4. Paragraph SIXTH B as set forth in said Trust Agreement shall be deleted and the following Paragraph SIXTH B shall be substituted therefor:

B. After the death of Settlor, the Successor Trustee shall distribute the sum of six thousand (\$6,000.00) dollars, free and discharged from the trust hereof, to each grandchild of Settlor who survives Settlor and shall divide the balance of the assets of the Residuary Trust into equal shares, one (1) share for each of Settlor's children. If any child of Settlor shall predecease Settlor (other than Patricia A. Vergeldt Downey and other than David Leigh Vergeldt who died on January 30, 2010), said child's share shall be distributed as follows: one-half (1/2) to Settlor's child's spouse, if then living, Settlor's child was married to him or her at the date of his or her death, and there was no divorce proceeding pending at the date of his or her death, and the other one-half (1/2) (or all if there is no surviving spouse who meets said conditions) shall be divided equally between Settlor's then living children. If Patricia A. Vergeldt Downey shall not survive Settlor, then her share shall be divided equally between Settlor's then living children. The share of David Leigh Vergeldt shall be divided equally between Settlor's then living children. The part so set aside for Settlor's children and spouses of deceased children shall forthwith be assigned, transferred, conveyed and paid over to them free and discharged from the trust hereof. The part so set aside for the descendants of any of Settlor's children (other than the specific bequest of six thousand (\$6,000.00) dollars) shall, in the discretion of the Successor Trustee, either be distributed to a Uniform Transfers to Minors Act account to age twenty-one (21) or to a trust described in Paragraph SIXTH C, if the descendant has not attained age thirty (30), or otherwise shall forthwith be assigned, transferred, conveyed, and paid over to said descendants free and discharged from the trust hereof.

5. The following paragraph shall be added to the end of Paragraph

SEVENTH:

An individual Successor Trustee's liability is limited to an act or omission committed in bad faith or with reckless indifference to the purposes of the trust or

the interests of the trust beneficiaries. The individual Successor Trustee shall be indemnified from the applicable trust estate for reasonable legal expenses in defending any claim or action filed by a trust beneficiary, except for a claim or action based upon an act or omission by the Successor Trustee to have been committed in bad faith or with reckless indifference to the purposes of the trust but only if the beneficiary prevails in such litigation.

6. Paragraph FOURTEENTH B as set forth in said Trust Agreement shall be deleted and the following Paragraph FOURTEENTH B shall be substituted therefor:

B The Successor Trustee shall keep a trust account of the affairs of a trust. At least annually and upon termination of a trust, the Successor Trustee shall render a statement of account. A statement of account is a report by the Successor Trustee of the trust property, liabilities, receipts, and disbursements, including the source and amount of the Successor Trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values. No particular format or formality is required for a report unless a court specifies its content and presentation. The statement shall be delivered as soon as practicable after the close of the accounting period or upon termination of the trust. The Successor Trustee need not render account statements so long as Settlor is a Trustee. If Settlor is living but is not a Trustee, the Successor Trustee shall account only to Settlor or, if Settlor is deemed mentally incapacitated, to Settlor's spouse, and to each current trust beneficiary, but shall not provide any account statements or information about the trust to any other beneficiary. If a current trust beneficiary is another trust, accounts statements shall be delivered to the trustee of the other trust. Except as provided above, if any current trust beneficiary is a minor or otherwise disabled, delivery shall be made to his or her designated agent, to the conservator of his or her estate, or, if none, then to his or her parent, nearest of kin, or an adult with whom he or she is living.

8. Paragraph EIGHTEENTH as set forth in said Trust Agreement shall be deleted and the following Paragraph EIGHTEENTH substituted therefor:

EIGHTEENTH

CONTEST

A. The beneficial provisions of this Trust Agreement and of Settlor's Last Will and Testament are intended to be in lieu of any other rights, claims or interests, whether statutory or otherwise, except bona fide pre-death debts,

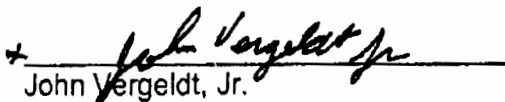
which any beneficiary hereunder may have against or in Settlor's estate or the assets held under this Trust Agreement. Except as provided in subsection (D) below, every share, interest, or power conferred by this trust is made on the condition precedent that the recipient acquiesce in all aspects of Settlor's estate planning and not engage in any activity described in clauses (i) through (x) set forth below. If any beneficiary of this trust, singly or in conjunction with any other person or persons, directly or indirectly, (i) contests in any court the validity of this trust or, in any manner, attacks or seeks to impair or invalidate any of its provisions; (ii) contests in any court the validity of the Settlor's Last Will in any manner, or attacks or seeks to impair or invalidate any of its provisions; (iii) seeks to obtain an adjudication in any proceeding in any court that this trust or any of its provisions or that Settlor's Will or any of its provisions is void; (iv) claims entitlement by way of any written or oral contract to any portion of the Settlor's estate, whether in probate or under this instrument; (v) unsuccessfully challenges the appointment of any person named as Successor Trustee of this trust, or as personal representative or successor personal representative of the Settlor's Will; (vi) objects in any manner to any action taken or proposed to be taken in good faith by the Successor Trustee or the personal representative of the Settlor's Will, or other agent, whether said personal representative is acting under court order, advice of legal counsel, or otherwise; (vii) objects to any construction or interpretation of this Trust, or any provision of it, that is adopted or is proposed in good faith by the acting Successor Trustee; (viii) unsuccessfully seeks the removal of any person acting as Successor Trustee of any Trust created under this instrument, or of the personal representative of the Settlor's Will; (ix) files any creditor's claim in Settlor's estate (without regard to its validity), whether the claim arose before or after the date of this instrument, except for claims for cash advanced or paid for expenses of last illness or funeral by said claimant; or (x) contests or seeks to invalidate any of the following: any trust which Settlor has created or may create during Settlor's lifetime, or any provision thereof, any gift which Settlor has made or will make during Settlor's lifetime, whether before or after the date of this instrument, any exercise of a power of appointment possessed by the Settlor, or any other transaction by which Settlor sold any assets (whether to a relative of Settlor's or otherwise), then that person's right to take any interest given to him or her by this trust shall be determined as it would have been determined if the person had predeceased the execution of this Trust Agreement. Further, such beneficiary, if then acting as a Successor Trustee hereunder, shall automatically cease to be a Successor Trustee and shall thereafter be ineligible either to select, remove or become a Successor Trustee hereunder. The provisions of this paragraph shall not apply to any disclaimer by any person of any benefit under this trust or under any Will. The foregoing shall not be construed, however, to limit the appearance of any beneficiary as a witness in any proceeding involving the Settlor's Last Will and Testament or this Trust Agreement nor limit any beneficiary's appearance in any capacity in the proceeding solely for the construction of either of said documents.

B. The Successor Trustee is authorized to enforce this provision and to defend, at the expense of the trust, any contest or other attack of any nature on the trust or any of its provisions.

C. In the event that any provision of this paragraph is held to be invalid, void or legal, the same shall be deemed severable from the remainder of the provisions in this paragraph, and shall, in no way, affect, impair or invalidate any other provision in this paragraph.

D. Both Settlor and the law recognize that facts or circumstances could give rise to probable cause to challenge this Agreement or some of its provisions. Therefore, the precondition of subparagraph (A) above shall not apply to a challenge or contest if there is probable cause for asserting the challenge or contest. As used in this subparagraph, probable cause shall exist if at the time of instituting the proceeding, there was evidence that would lead a reasonable person, properly informed and advised, to conclude that there was a substantial likelihood that the challenge would be successful.

IN WITNESS WHEREOF, the parties hereto have executed this Tenth Amendment as of the date and date first above written and by so doing the Trustee herein named accepts all of the duties and conditions imposed.

* 
John Vergeldt, Jr.

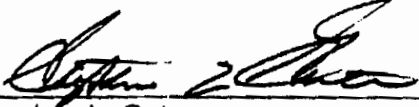
"Settlor"

* 
John Vergeldt, Jr.

"Trustee"

We sign below as witnesses. This Amendment was signed in our presence by the Settlor and the current Trustee. To the best of our knowledge, John Vergeldt, Jr. signed this Amendment willingly; signed it as his voluntary act for the purposes set forth in this Amendment; and at the time of execution of this Amendment

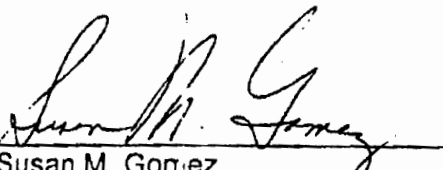
was 18 years of age or older, was under no constraint or undue influence, and had sufficient mental capacity to make this Amendment.


Stephen L. Gutman

of 6th Floor at Ford Field

1901 St. Antoine Street

Detroit, Michigan 48226


Susan M. Gomez

of 30496 Minton Street

Livonia, Michigan 48150

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JUDGE OF PROBATE
YORK COUNTY, SC

EXHIBIT D

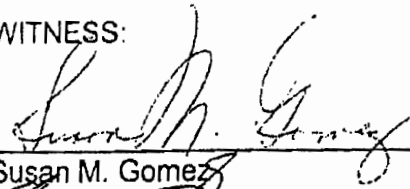
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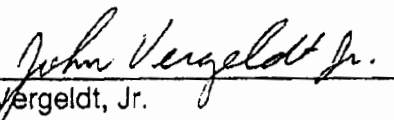
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JUDGE OF THE CLERK
YORK APPOINTMENT

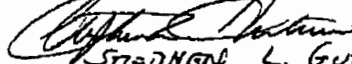
Pursuant to Paragraph THIRD C of a Trust Agreement dated September 27, 1978, as amended, between John Vergeldt, Jr., Settlor, and John Vergeldt, Jr., Trustee, the undersigned, as Settlor, hereby appoints John Edward Vergeldt to serve as Co-Trustee of the Trust created by the Trust Agreement during the undersigned's lifetime. According to Paragraph THIRD C, John Edward Vergeldt, as Co-Trustee, is vested with all of the powers, duties and obligations of the Trustee and the decisions of the Co-Trustee made during Settlor's lifetime shall be binding upon the Trust as if made by Settlor as Trustee. The undersigned reserves the right to revoke this appointment.

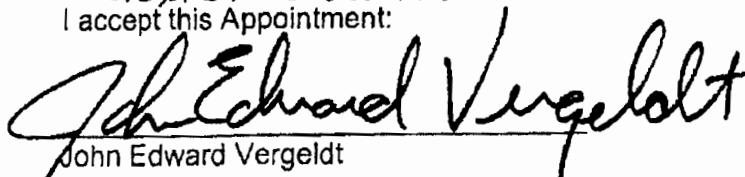
Dated: July 29, 2009

WITNESS:


Susan M. Gomez


John Vergeldt, Jr.


STEPHEN L. GUTMAN
I accept this Appointment:


John Edward Vergeldt

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CIVIL ACTION NO.: 2016-CP-46-0820
Vicki Lynn Vergeldt,	)	
	)	
Petitioner,	)	
	)	NOTICE OF MOTION AND MOTION TO
vs.	)	AMEND PETITION
	)	
John Edward Vergeldt, Individually and as	)	
Successor Trustee of the John Vergeldt, Jr.	)	
Revocable Living Trust dated	)	
September 27, 1978, as amended	)	
	)	
Respondent.	)	
	)	

**TO: DANIEL J. BALLOU, ESQ., MORTON & GETTYS, LLC
ATTORNEYS FOR JOHN EDWARD VERGELDT, INDIVIDUALLY
AND AS SUCCESSOR TRUSTEE FO THE JOHN VERGELDT, JR.
REVOCABLE LIVING TRUST DATED SEPTEMBER 27, 1978, AS
AMENDED**

YOU WILL please take notice that Petitioner Vicki Lynn Vergeldt ("Petitioner"), by and through the undersigned counsel, will move before this Honorable Court ten (10) days after service hereof or as soon thereafter as counsel may be heard for an Order under Rule 15(a), SCRCF, allowing the amendment of the Petition for Removal of Trustee and Related Relief filed on March 16, 2016 ("Petition").

Petitioner bases her Motion on the grounds that this litigation was filed seeking the removal of Respondent John Edward Vergeldt, individually and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978, as amended ("Respondent"). During the course of the litigation, Kathleen Palinski, Esq., was appointed as the Limited Special Trustee by Consent Order Appointing Special Trustee and Staying Case filed February 23, 2017 for the purpose of performing a forensic accounting of the various accounts of John Vergeldt, Jr.

and the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978, as amended. Petitioner is informed and believes that the Limited Special Trustee has substantially completed her work and/or fully completed the same. A copy of the Limited Special Trustee's report will be submitted to the Court at the hearing or filed before same. As a result of the Limited Special Trustee's work, Petitioner, as a qualified beneficiary, is informed and believes that Respondent committed acts while serving as Successor Trustee and/or is continuing to commit acts that amount to breach of trust and may be a violation of various orders of this Court. In particular, Petitioner is informed and believes that Respondent commingled trust funds, used the same for his own personal use and not for the benefit of John Vergeldt, Jr. or any other beneficiary, failed to distribute trust assets in a timely manner, failed to provide Petitioner with trust records upon request, and committed waste with trust assets. Petitioner only became aware of the extent of Respondent's upon receipt of the Limited Special Trustee's report, as amended. Petitioner's allegations related to Respondent's actions are more fully set forth on her proposed Amended Petition attached hereto as **Exhibit 1**. It is also worth noting that John Edward Vergeldt purportedly resigned as Successor Trustee on April 19, 2019, and a copy of said resignation will be filed prior to the hearing on this matter. Petitioner is informed and believes that justice requires that the Petition be amended based on the evidence uncovered during the course of this litigation, and she is informed and believes that Respondent will not be prejudiced by the amendment as he has been in possession of the evidence and/or had knowledge of the same prior to and at all times relevant herein, and Respondent's failure to disclose said evidence is part of the reason why Petitioner was forced to bring this matter.

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Petitioner additionally bases this motion on such other and further affidavits, memorandum of law, case law, statutory law, and such argument of counsel as may be appropriate.

Counsel for Petitioner certifies pursuant to Rule 11, SCRPC, that he has communicated in writing with opposing counsel and has attempted in good faith to resolve the matter contained herein and to obtain consent to the filing of proposed amended pleading; however consent was not able to be obtained.

Respectfully Submitted,

HARRELL, MARTIN & PEACE, P.A.

/s/ Taylor A. Peace, Esq. _____
TAYLOR A. PEACE, ESQ.
135 Columbia Avenue (Physical Address)
PO Box 1000 (Mailing Address)
Chapin, South Carolina 29036
Phone (803) 345-3353
tpeace@hmp-law.com

May 14, 2019
Chapin, South Carolina

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Aug 02 2021

SC Court of Appeals

ELECTRONICALLY FILED - 2021 Aug 02 2:47 PM - YORK - COMMON PLEAS - CASE#2016CP4600820

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
TEASA K. WEAVER, MASTER-IN-EQUITY
Case No. 2016-CP-46-00820

Vicki Lynn Vergeldt, individually and as
Successor Trustee of the John Vergeldt, Jr.
Revocable living Trust dated September 27, 1978, ...Respondent,

v.

John Edward Vergeldt, ...Appellant.

NOTICE OF APPEAL

Appellant John Edward Vergeldt (hereafter “Appellant”) appeals from the order of the Master in Equity filed February 2, 2021 that was received by Appellant *pro se* on or about February 6, 2021, and from the order denying reconsideration dated July 2, 2021 that was received by the undersigned counsel for Appellant on July 2, 2021. Copies of both orders are attached hereto as **Exhibits A** and **B**, respectively.

In addition, Appellant appeals from that order dated June 13, 2019, which was an interlocutory order not appealable at that time, but is now appealed pursuant to Rule 54(b) and S.C. Code Ann. § 14-3-330 (1). A copy of the order dated June 13, 2021 is attached hereto as **Exhibit C**.

Appellant reserves the right to argue on appeal any intermediate judgment order or decree necessarily affecting the judgement not before appealed from, including but not limited to the order

filed May 12, 2020 and the order dated May 21, 2018, copies of which are attached hereto respectively as **Exhibits D** and **E**.

Finally, Appellant appeals the order filed August 31, 2020, a copy of which is attached hereto as **Exhibit F**.

s/ Desa Ballard
Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
226 State Street
West Columbia, SC 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR APPELLANT

August 2, 2021

Other counsel of record:

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Harrell, Martin & Peace P.A.
Post Office Box 1000
Chapin, South Carolina 29036
Telephone 803.345.3353
Facsimile 803.345.9171
tpeace@hmp-law.com

ATTORNEY FOR RESPONDENT



STATE OF SOUTH CAROLINA

COUNTY OF YORK

Vicki Lynn Vergeldt, Individually,
and as Successor Trustee of the John
Vergeldt, Jr. Revocable Living Trust
dated September 27, 1978,

Petitioner,

vs.

John Edward Vergeldt,

Respondent.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP46-00820

FINAL ORDER

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SC Court of Appeals

THIS MATTER came before the Court for a final hearing on January 30, 2020. Present at the hearing was Petitioner Vicki Lynn Vergeldt ("Petitioner"), Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978, her counsel, Taylor A. Peace, Esq., and Respondent John Edward Vergeldt ("Respondent"), who appeared pro se. The following witnesses appeared and testified: Kathleen Palinski, Esq., Court appointed Limited Special Trustee ("Palinski"); Charles E. Bosler, Jr. ("Bosler"); and Audry Scheible.

FACTUAL AND PROCEDURAL BACKGROUND

This is the second legal proceeding between Petitioner and Respondent who are siblings and the last surviving heirs of John Vergeldt, Jr ("Settlor"). Another sister, Patricia Vergeldt Downey ("Patti") survived the Settlor, but she died on September 28, 2018. Both actions concern Respondent's handling and administration of the Trust as Co-Trustee and Successor Trustee.

In the first action, (C/A No.: 2014-46-1956), Petitioner sought to have certain provisions of the trust construed regarding Respondent's duty to account and produce records as well as to have the Court declare the date when the Settlor became incapacitated.

Petitioner brought the current action in the York County Probate Court on February 1, 2016 seeking to have Respondent removed as Successor Trustee, and Respondent timely responded to the same. Initially, Respondent was represented by Daniel J. Ballou, Esq. The action was removed to the Court of Common Pleas for York County on March 16, 2016.

Due to the matters at issue, the parties consented to appoint Kathleen Palinski, Esq. ("Palinski"), as non-fiduciary Limited Special Trustee, who was empowered and authorized to obtain documents and information about the Trust related to any account(s) at any bank, investment house, or other financial institution, including, but not limited to, statements, account ownership documents/signature cards, correspondence and/or check copies.

On April 29, 2019, Respondent resigned his position as Successor Trustee of the Trust and Petitioner became the Second Successor Trustee. Having resigned as trustee, Respondent filed a motion to have the action dismissed. The motion was denied, and Petitioner was allowed to file an Amended Petition for Removal of Trustee and Related Relief on June 20, 2019.

At trial in January 2020, Respondent objected to certain exhibits offered by Petitioner, stating he had not received the exhibits. This matter was deferred, and an order issued on May 12, 2020 allowing the Respondent thirty days to provide responding affidavits. On August 31, 2020, an order was filed specifying what affidavits or exhibits filed by Respondent after the trial were received into evidence.

With this factual and procedural background set forth, based upon the testimony and other evidence, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. On September 27, 1978, Mr. Vergeldt ("Settlor"), executed the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978, in which he identified himself as Trustee and

beneficiary. This trust was amended seven times prior to the current Restatement of Trust, executed on July 29, 2009. The Restatement appointed Respondent to serve as Co-trustee of the trust during the Settlor's lifetime, vesting him with all of the powers, duties and obligations of trustee, and giving him binding decision-making authority for the trust as if made by the Settlor as trustee.

2. Following the Restatement, the trust was amended two additional times; first in February 2010 to account for the death of the Settlor's son, David Leigh Vergeldt (NINTH AMENDMENT); and second in March 2011 to name Respondent as the initial successor trustee and amend other portions (TENTH AMENDMENT).

3. Relevant paragraphs of the trust include the FIFTH (residuary trust), SIXTH (cottage and beneficiary distributions), FOURTEENTH (trustee duties), and EIGHTEENTH (forfeiture). Portions of these paragraphs were amended by the TENTH AMENDMENT.

4. From approximately 2005 through his death on July 9, 2013, the Settlor experienced a decline in his mental and physical condition brought on by Parkinson's disease. The symptoms the Settlor experienced were primarily related to his physical condition, but they, over time, impaired his ability to function physically and mentally until his death on July 9, 2013.

5. In 2008, the Settlor lived independently in a retirement community where he remained until sometime in 2010 when he moved in with Petitioner. In October 2011, the Settlor was moved to Patti's home, and resided there until his transfer to Respondent's home in South Carolina in January 2012. The Settlor resided with the Respondent in South Carolina until his death in July 2013.

6. Following the Settlor's death, Petitioner requested that Respondent provide her with records and accounting as he had proposed distributing assets. It was at this point that the

relationship between the Petitioner and the Respondent became strained and hostile. While Petitioner continued to make request for records and information, the Respondent demanded she sign a release, or be disinherited. Ultimately, Petitioner filed the first civil action between the parties.

7. The first action was presided over by the Honorable S. Jackson Kimball, III, Master-In-Equity for York County and resulted in a bench trial. As discussed previously, this action decided what reporting and accounting duties were owed to the Petitioner. No findings or conclusions were made as to whether or not Respondent breached those duties.

8. After trial, Judge Kimball ordered as follows (“2015 Final Order”):

- a) the Settlor became mentally incapacitated under the terms of the trust as of May 6, 2013;
- b) Respondent became Co-Trustee on July 29, 2009, and Successor Trustee on May 6, 2013;
- c) Respondent has a duty to provide Petitioner with “a copy of the terms of the trust that describe or affect the trust beneficiary’s interest and relevant information about the trust property” without limitation as to time.
- d) Respondent has a duty to provide statements of account, at least annually, to Petitioner, and to permit inspection of the records since the Settlor’s death.

9. Following the 2015 Final Order, this action was brought in probate court where Palinski was appointed as limited special trustee for the purpose of reviewing Respondent’s administration of the trust. Palinski received some records from Respondent, but also had to subpoena various financial institutions to piece together how the assets were disposed. She

prepared an accounting of the trust's accounts, finances and assets covering the period between January 1, 2009 and December 31, 2016. Petitioner called her as an expert witness.

10. Petitioner also called Bosler as an expert witness who reviewed the records received by Palinski. Bosler generated an accounting from the available data, and conducted a *pro forma* and prudent man standard assessment, starting from December 31, 2008, and ending April 30, 2019. The *pro forma* amount shows the adjustment made from the available data to the Prudent Man standard.

11. Both experts determined that the Respondent, while acting as Co-Trustee or Successor Trustee, failed to adhere to the terms of the trust and his fiduciary duties, including as follows:

- a. Comingling trust funds with his personal account;
- b. Comingling funds with accounts jointly owned with the Settlor or the trust;
- c. Failing to keep and maintain adequate records, and account for numerous cash withdrawals by check or ATM card;
- d. Failing to provide records or other information to Petitioner as beneficiary;
- e. Failing to be impartial and loyal to Petitioner as beneficiary;
- f. Failing to administer and distribute funds as directed by the trust.

12. Due to the lack of recordkeeping and comingling of funds, Palinski was unable to verify the frequent transfers to and from Respondent's personal account First Citizen's #9209; numerous checks written to cash from joint owned First Citizens account #4009; and frequent use of an ATM card from this same account. Bosler was also unable to resolve these and other transactions, including a \$17,000.00 withdrawal from a Fifth Third joint owned account in 2011. This was the same year that Respondent failed to provide an annual statement. The amount of

unresolved withdrawals made while Respondent was Trustee reached \$64,410.00 at the time of Settlor's death. This amount increased to \$127,770.00 through his remaining time as trustee. Bosler's report also demonstrates the inaccuracies of Respondent's annual statements in comparison with the available data.

13. In addition to the unresolved transactions, Respondent also mishandled the Residuary Trust. Paragraphs FIFTH A and SIXTH direct how the Residuary Trust would be administered by the Successor Trustee. Initially, \$50,000.00 was to be separated from the Residuary Trust and placed in a "Cottage Trust", to be used solely for the Cottage's maintenance and expenses.¹ Second, \$6,000.00 was to be paid to each grandchild. Thereafter, the Successor Trustee "shall divide the balance of assets of the Residuary Trust into equal shares, one (1) share for each of Settlor's children."

14. At the time of the Settlor's passing in July 2013, the trust assets totaled \$479,703.00. Respondent paid \$48,000.00 to the grandchildren, \$60,000 to himself, \$60,000.00 to Petitioner, and \$51,000.00 to Patti.² Petitioner received no further payments, yet Respondent continued to distribute assets to himself and Patti. Notably in 2014, Respondent paid himself \$45,826.00, Patti \$35,836.00, and nothing to Petitioner.

15. Respondent also failed to follow the terms of the trust by allocating \$50,000.00 solely for the maintenance and upkeep of the Cottage. Also, while Respondent was Successor Trustee, the Cottage experienced mold, mildew or water and other damage, decreasing in value from \$62,500.00 at the time of Settlor's death to \$25,000.00.³

16. Based on the above, I find that Respondent, during his time as Co-Trustee and

¹ The "Cottage" is real estate located in Michigan described in more detail in Petitioner's exhibit 9.

² Patti's amount may have reduced to account for a vehicle gifted to her prior to the Settlor's death valued at \$10,000.00.

³ Petitioner's exhibit 9 contains a copy of the appraisal and estimate.

Successor Trustee, not only failed to abide by the terms of the trust, but also failed in his fiduciary duties owed to the trust and the Petitioner as a beneficiary. As a result, Petitioner and the trust have suffered actual and consequential damages.

CONCLUSIONS OF LAW

Based on the forgoing Findings of Fact, the Court makes the following Conclusions of Law:

1. This Court has jurisdiction over the subject matter and parties and venue is proper pursuant to Rule 53, SCRCP and the Order of Reference filed in this matter on March 27, 2018.

2. As noted in paragraph FOURTEENTH E, the trust must be administered and construed in accordance with Michigan Law, thus this court will determine this matter according to the Michigan Trust Code, §700.7101 *et. al.*, and other applicable Michigan law.

3. First and foremost, a trustee should follow the terms of the trust. “Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, expeditiously, in accordance with its terms and purposes ...” M.C.L.A. §700.7801 (2010). Paragraphs FIFTH and SIXTH set clear terms for administration and disbursement of the Residuary Trust. Respondent ignored those terms as to the “Cottage Trust”, and failed to disburse funds equally between the beneficiaries.

4. Respondent, as Successor Trustee, also failed to follow the terms of the trust in FOURTEENTH A and C. Paragraph FOURTEENTH A required the Successor Trustee keep “full and accurate records of assets, receipts and disbursements, and other financial transactions relative to each trust”, and allow for inspection. Further, the burden rests upon the trustee, under either Michigan or South Carolina law, to show the correctness of his accounting. *See Long v. Earle*, 277 Mich. 505, 269 N.W. 577 (1936); *Neely v. People’s Bank of Anderson*, 133 S.C. 43, 130 S.E. 550 (1925). Respondent failed to adequately account for numerous transactions to his personal

account, checks written to cash, and ATM purchases/withdrawals. He also failed to provide full and accurate annual statements, or make them available for Petitioner at her request. Respondent also failed to pay all “proper” disbursements as required by FOURTEENTH C by withholding funds from the Petitioner.

5. In addition to the terms of the trust, Michigan Trust Code §700.7811(1) required Respondent to maintain adequate records. In this case, Respondent failed to provide a 2011 annual statement, and the statements or other information he did provide were incorrect or insufficient.

6. Respondent breached the trust by comingling funds. “A trustee shall keep trust property separate from the trustee’s own property” M.C.L.A. §700.7811(2) (2010). It is apparent that Respondent over several years as both Co-Trustee and Successor Trustee comingled trust funds with his own personal account First Citizen account #9209, or accounts he jointly owned with the Settlor or the trust.⁴

7. Respondent failed in his statutory duties to provide information and records to the Petitioner, as a beneficiary. According to Michigan Trust Code §700.7814, a trustee shall:

Upon the reasonable request of a trust beneficiary, promptly furnish to the trust beneficiary a copy of the terms of the trust that describe or affect the trust beneficiary’s interest and relevant information about the trust property.” M.C.L.A. §700.7814(2)(a) (2010); and

[S]end to ... qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust property and, if feasible, their respective market values ...”

⁴ A more detailed list of the joint owned accounts is found in Palinksi’s report. (Petitioner’s 2, Tab 1).

M.C.L.A. §700.7814(3) (2010).

Respondent breached his duties to the Petitioner by failing to account and report on the assets and funds despite Petitioner's multiple requests to do so, thus concealing from Petitioner his commingling and self-dealing of trust property.

8. Respondent, as trustee, owed a duty of loyalty to the beneficiaries. A trustee is obligated to protect the trust property, administering its assets as would a prudent person in accordance with the applicable statutes, for the benefit of the trust beneficiaries. M.C.L.A. §§ 700.7810, 700.7802, 700.7803 (2010). Respondent failed in these duties for the same reasons as discussed above. He failed to keep or provide records to Petitioner, comingled funds, distributed assets to Petitioner's harm and detriment, and failed to follow the terms of the trust regarding the Cottage and protect its value.

9. Respondent as trustee was to expeditiously distribute the trust property to those entitled, upon termination or partial termination of the trust. M.C.L.A. §700.7821 (2010). Following the Settlor's passing, Respondent partially terminated the Residuary Trust by making disbursements to the child beneficiaries in 2013. He should have promptly disbursed the remaining assets.

10. As a remedy for breach of trust, the trustee may be ordered to pay the amount needed to restore the value of the trust to what it would have been had the breach not occurred. M.C.L.A. §700.7902(2)(a) (2010). It is the opinion of this court that this analysis begins by establishing what amount the Residuary Trust should have been prior to any breach. I find that amount to be \$544,113.00, which includes the total assets that existed at the time of Settlor's death according to the available data (\$479,703.00), and the total of unaccounted for expenditures during Respondent's time as Co-Trustee prior to Settlor's death (\$64,410.00).

11. Recognizing that Respondent made some beneficiary distributions, I conclude the amount stated above should be offset by the following: (1) \$48,000 to the grandchildren, (2) \$102,496.00 to Patti, and (3) \$60,000.00 to Petitioner. Further reduction should be made to include the remaining value of the Cottage (\$25,000.00), and by the amount of funds returned to the trust in November 2019 following Respondent's resignation as trustee (\$8,906.74). Therefore, I conclude the amount to restore the trust is \$299,710.26.

12. The trust is also entitled to be reimbursed for \$5,870.00 in costs related to determining the conditions of the Trust's assets and finances. *See* M.C.L.A. §700.7901(c) and (j) (2010) (The court may order the trustee to pay money, or other appropriate relief).

13. Respondent shall also pay reasonable attorney's fees and costs. *See* M.C.L.A. §700.7904 (2010) (Costs, expenses, and reasonable attorney fees, may be awarded to any party who enhances, preserves, or protects trust property...). Petitioner and the Trust have incurred attorney's fees and other related to costs to enforce her and its rights against Respondent in the amount of \$55,512.62. The Court concludes that Petitioner's attorneys' fees are reasonable, and she is entitled to the same under Deborah Dereede v. Living Trust dated December 18, 2013 v. Karp, 427 S.C. 336, 831 S.E. 2d 435 (Ct. App. 2019) and S.C. Code Ann. §62-7-1004 (Supp. 2018). In particular,

- a. Nature, Extent and Difficulty of the Legal Services Rendered. This is an action to remove Respondent as Trustee of the Trust and to seek damages from breaches of his fiduciary duties. The case involved complex issues of probate law including the preparation and examination of pleadings, discovery and the trial preparations. A two-day hearing was held by the York County Master-In-Equity, who required an order to be prepared by Petitioner's counsel. Accordingly, the factual and legal issues presented were complex and detailed in nature, the extent of the work performed was necessary to adequately prepare and try these matters, and the matters decided were of legal and factual difficulty.

- b. Time and Labor Necessarily Devoted to the Case. As stated above, this case involved difficult issues of both legal and factual natures. Approximately One Hundred Seventy-Four (174) hours were devoted to the case by Petitioner's counsel's firm. This does not include amount by Petitioner's previous counsel. Accordingly, the time and labor devoted to this case were necessary to properly prepare and try this case.
- c. Professional Standing of Counsel. The attorneys representing Petitioner in this case are licensed members of the Bar of the State of South Carolina. Collectively, they have many years of experience in practice in South Carolina. The practice of Petitioner's attorneys consists of foreclosure cases, collection cases, real property closing transactions, real property litigation, land title questions, other land related litigation, probate and estate administration and related litigation. Accordingly, Petitioner's attorney has high professional standing in general and in this area of practices.
- d. Contingency of Compensation. As recited above, Petitioner is being charged an hourly rate in the pursuit of this matter, and the contingency of compensation is not appropriate.
- e. Customary Fee Charged on the Locality for Similar Services. I am aware from discussions with other attorneys in the Probate/Estate Bar in the Midlands region of South Carolina, and from my general familiarity with the legal profession, that the fees charged for services similar to those in this case are similar to those charged in other like cases. Accordingly, the fees charged in this case are within the fee range charged in this locality for similar services.
- f. Beneficial Results Obtained. This attorney obtained beneficial results for the Petitioner in this action in that the Court found in favor of the Petitioner. Accordingly, it is submitted that beneficial results were obtained by this firm on the Petitioner's behalf.

14. In addition, any interest Respondent may have in these trust assets has been forfeited. According to paragraph EIGHTEENTH of the Tenth Amendment, "[i]f any beneficiary of this trust ... in any manner, ... seeks to impair or invalidate any of its provisions ... then that person's right to take an interest given to him or her by this trust shall be determined as it would have been determined if the person had predeceased the execution of this Trust Agreement." Respondent's actions as outlined in this order, impaired or invalidated the terms of the trust; therefore, he should be treated as having predeceased the Settlor.

15. As Respondent has failed to present any evidence related to his counterclaims, they are dismissed.

16. It is also appropriate that the Trust be wound up with the assets, property, and/or funds constituting the same be distributed according to the terms of the trust.

ORDER

Accordingly, and based on the Findings of Fact and Conclusions of Law set forth above,

IT IS ORDERED, ADJUDGED AND DECREED that the Trust, as a result of the above, is hereby granted judgment against Respondent in the total amount of \$361,092.88, said amount being comprised of: \$299,710.26, to restore the trust assets; additional expenses of \$5,870.00; and Attorney's fees and costs of \$55,512.62;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Respondent is hereby and shall be treated as having predeceased the Settlor;

IT IS ADDITIONALLY ORDERED that the judgment granted herein shall accrue interest at the legal post judgment legal interest rate; and

MOREOVER, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Petitioner shall take all reasonable and necessary steps to wind up the Trust's business and distribute any remaining assets to the living beneficiaries thereof not having been deemed to predecease Mr. Vergeldt.

FINALLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Respondent's counterclaims are herein **DISMISSED**.

[Judge's Signature Page to Follow]

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-46-00820

Vicki Lynn Vergeldt
PLAINTIFF(S)

John Edward Vergeldt,
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), 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:

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)
Vicki Lynn Vergeldt	John Edward Vergeldt	\$361,092.88
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

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

Aug 02 2021

ROA 00408

RECEIVED
SC Court of Appeals

Judge

Judge Code

Date**For Clerk of Court Office Use Only**

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: **Cherie J. Anderson, RMR, RPR, CRR, with EveryWord, Inc.**

A transcript of these proceedings can be obtained by making a written request to EveryWord, Inc. at P.O. Box 1459, Columbia, South Carolina 29202 or calling (803) 212-0012.

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

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

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



York Common Pleas

Case Caption: Vicki Lynn Vergeldt VS John Edward Vergeldt

Case Number: 2016CP4600820

Type: Order/Judgment and Form 4

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2021-02-02 14:01:44 page 15 of 15

ELECTRONICALLY FILED - 2021 Feb 02 2:45 PM - YORK - COMMON PLEAS - CASE#2016CP4600820

ROA 00410



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) CIVIL ACTION NO.: 2016-CP-46-00820

Vicki Lynn Vergeldt, Individually, and as)
Successor Trustee of the John Vergeldt, Jr.)
Revocable Living Trust dated September)
27, 1978,)

Petitioner,)

vs.)

John Edward Vergeldt)

Respondent.)

ORDER DENYING
MOTION TO RECONSIDER

RECEIVED

Aug 02 2021

SC Court of Appeals

THIS MATTER came before the Court on March 17, 2021 at 2:00 PM for a hearing on Respondent John Edward Vergeldt's ("Respondent") Amended Motion to Reconsider ("Motion"). Due to the ongoing public health crisis precipitated by the COVID-19 pandemic, the hearing took place *via* the internet-based video conferencing platform Cisco Webex as allowed by the Administrative Order of the Honorable Donald W. Beatty, Chief Justice for the Supreme Court of South Carolina, *Re: Operation of the Trial Courts During Coronavirus Emergency (As Amended March 4, 2021)* (Appellate Case No. 2020-000447). Present at the hearing was Taylor A. Peace, Esq., attorney for Petitioner Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Trust dated September 27, 1978 ("Petitioner") and Respondent's counsel, Desa Ballard, Esq. Petitioner also appeared.

In the Motion and Respondent's Memorandum in Support Motion to Reconsider and Supplemental Motion to Reconsider, Respondent argues the Court should reconsider its rulings in the Final Order entered on February 2, 2016. He also asks the Court to reconsider, amend or vacate other prior temporary orders entered during the present litigation.

Respondent asserts the Court erred in allowing Petitioner to amend her initial Petition for Removal of Trustee and Related Relief (“Petition”) to assert legal causes of action and entitlement to damages. Respondent argues these causes of action are barred by the doctrines of *res judicata* and issue preclusion due to the rulings in the case of *Vicki Lynn Vergeldt v. John Edward Vergeldt, Individually, and as Successor Trustee of the John Edward Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 and Patricia Vergeldt Downey* (C/A No.: 2014-CP-46-01956) (“First Lawsuit”). Respondent also argues amendment of the Petition was in error as the case was already referred to this Court and Respondent was denied his right to a jury trial as a result. Respondent further asserts the Court erred by failing to apply the proper standard of proof and/or that Petitioner presented expert testimony to meet same, erred by freezing assets of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 (“Trust”), and erred by allowing and considering certain items of Petitioner’s evidence while denying Respondent the right to rebut same.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After hearing argument of counsel and reviewing documents in the Court’s file, the following Findings of Fact and Conclusions of Law are made.

A. *Res judicata* and Issue Preclusion

In the Motion, Respondent argues the Court should reconsider, amend, and/or vacate the Final Order on the grounds the Order Granting Motion to Amend (“Order Allowing Amendment”) entered on June 13, 2019 and following Amended Petition for Removal of Trustee and Related Relief filed June 20, 2019 (“Amended Petition”) were in error based on the doctrines of *res judicata* and issue preclusion. This ground for reconsideration fails.

“*Res Judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of prior action between those parties. Under the doctrine of *res judicata*, ‘[a] litigant is barred from raising issues which were adjudicated in the form suit and any issues which might have been raised in the former suit.’” Judy v. Judy, 393 S.C. 160, 172, 712 S.E. 2d 408, 414 (2011). (citing Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34, 512 S.E. 2d 106, 109 (1999)). “The doctrine of *res judicata* is founded on the principle that the public interest requires an end to litigation and that no one should be sued twice for the same cause of action.” Town of Sullivan’s Island v. Felger, 318 S.C. 340, 344, 457 S.E. 2d 626, 628 (Ct. App. 1995). “*Res Judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.” Plott v. Justin Enterprises, 374 S.C. 504, 511, 649 S.E. 2d 92, 95 (Ct. App. 2007). “Under *res judicata*, ‘[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit’” Id (internal citations omitted). “To establish *res judicata*, three elements must be shown: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” Plum Creek Development Co., Inc. v. City of Conway, 334 S.C. 30, 34 512 S.E. 2d 106, 109 (1999). However, *res judicata* does not bar a second action for damages and other relief where it follows a first action that seeks a declaratory judgment. See Robison v. Asbill, 328 S.C. 450, 492 S.E. 2d 400 (Ct. App. 1997).

Narrower than *res judicata* is the doctrine of collateral estoppel or issue preclusion. See Liberty Mut. Ins. Co. v. Employers, Ins. of Wausau, 284 S.C. 234, 237, 325 S.E. 2d 566, 568 (Ct. App. 1985) (internal citations omitted). Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. Carolina Renewal, Inc. v.

South Carolina Dept. of Transp., 385 S.C. 550, 553, 684 S.E. 2d 779, 782 (Ct. App. 2009). “While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” Id (citing Snavelly v. AMISUB of S.C., Inc., 379 S.C. 386, 398, 665 S.E. 2d 222, 228 (Ct. App. 2008)). To prove a defense of issue preclusion, Respondent must show that the issues in this lawsuit were: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. Id. The doctrine of collateral estoppel should not be rigidly or mechanically omitted. Thus, even if all the elements for collateral estoppel are met, when unfairness or injustice results or public policy requires it, courts may refuse to apply it. Id (internal citations omitted).

To avail themselves of these defenses, a party must affirmatively plead them or they are waived. See Rule 8(c), SCRCPP; RIM Associates v. Blackwell, 359 S.C. 170, 183, 597 S.E.2d 152, 159 (Ct. App. 2004) (“Res judicata is an affirmative defense that must be pled at trial in order to be pursued on appeal.....An affirmative defense is waived if not pled....Generally claims or defenses not presented in the pleadings will not be considered on appeal.”).

1. *Res Judicata* and Collateral Estoppel Not Raised in Pleadings

As applied to this matter, neither *res judicata* nor collateral estoppel were raised by the Respondent in his Answer and Counterclaim filed March 7, 2016 (“Answer”) or his Response to Amended Petition for Removal of Trustee and Related Relief and Request for Damages and Disinheritance of Plaintiff filed August 21, 2019 (“Amended Counterclaim”), and, as a result, they are waived. See Id. Because they were raised for the first time in the Motion, it would be improper for the Court to consider them. See Patterson v. Reid, 318 S.C. 183, 456 S.E. 2d 436 (Ct. App. 1995); Miller Construction Co., LLC v. P.C. Construction of Greenwood, 418 S.C. 186, 791 S.E.

2d 321 (Ct. App. 2016).

2. *Res Judicata* Did Not Preclude Amendment of the Petition

Even if Respondent properly raised *res judicata* and collateral estoppel as affirmative defenses, it was proper for the Court to allow amendment of the Petition to assert legal causes of action for damages.

a. Amendment of the Petition was not in error based on *res judicata*.

As to the first element of *res judicata*, identity of the parties is not present. In the First Lawsuit, Petitioner brought her action against Respondent individually and as the successor trustee to declare, among other things, her rights in the Trust and entitlement to information concerning same. In contrast, the present action was brought, ultimately, by Petitioner individually and as successor trustee against Respondent for actions taken while he served as co-trustee and successor trustee that she believed were breaches of his fiduciary duties. In other words, the identity of the parties and their duties toward each other reversed between the First Lawsuit and this case such that the parties are not identical.

The second element of *res judicata* is also not present as there is no identity of subject matter between the First Lawsuit and present litigation nor did the First Lawsuit adjudicate Respondent's liability or Petitioner's resulting damages. In the First Lawsuit, Petitioner sought only declaratory relief related to: (1) John Vergeldt's Jr.'s ("Settlor") mental competency and lack thereof, (2) the effect Settlor's competency had on who was trustee of the Trust, (3) when Respondent became co-trustee and/or successor trustee, (4) his rights and obligations toward Petitioner as one of the Trust's beneficiaries, and (5) whether Petitioner had probable cause to pursue the First Lawsuit. To be sure, the final Order in the First Lawsuit filed August 31, 2015 ("2014 Final Order") found that no declaration concerning probable cause to challenge Respondent's performance of his duties as co-trustee or successor trustee was being made, and it

was preserved until such time that Petitioner had adequate information, which Respondent was withholding, to challenge his actions. The 2014 Final Order further found no conclusion therein should be deemed to be a determination of Respondent's compliance or non-compliance with applicable law or the Trust. No damages were claimed or adjudicated in the First Lawsuit or 2014 Final Order. In contrast, the Amended Petition expressly seeks damages related to Respondent's actions relative to the Trust as co-trustee or successor trustee such that identity of subject matter does not exist. To the extent Respondent argues Petitioner should have brought a claim for damages in the First Lawsuit, the same is not persuasive as the relief requested was only declaratory. In particular, Petitioner brought the First Lawsuit to obtain information about the Trust and Respondent's actions which he was intentionally withholding, presumably, in an attempt to conceal his actions and frustrate her efforts to discover same. To rule otherwise as to the claim for damages would not be fair or just.

The same analysis applies to the third element of *res judicata* as Respondent's liability for his actions as co-trustee and/or successor trustee and damages to Petitioner and the Trust were not adjudicated in the First Lawsuit or needed to support to final decision in the 2014 Final Order. Those issues were also expressly preserved in the 2014 Final Order which went unappealed and from which Respondent has not sought relief.

b. Issue Preclusion is also not present such that allowance of the Amended Petition was not error

The argument that issue preclusion or collateral estoppel requires reconsideration of the Final Order also fails since Respondent's liability and Petitioner's resulting damages were not actually litigated in the First Lawsuit, were not determined, and were not necessary to support the 2014 Final Order. They were expressly preserved under the 2014 Final Order. Presumably, these issues were not litigated and preserved as Respondent did not or would not recognize his own

duties toward the Petitioner and would not provide information relating to the Trust.

c. No error allowing Amended Petition

As a result, the Court finds and concludes that *res judicata* and issue preclusion did not prohibit the Court from allowing amendment and filing of the Amended Petition, and this ground for reconsideration fails.

B. Respondent's Right to a Jury Trial

Respondent also asserts he was denied his right to a jury trial on Petitioner's legal causes of action in the Amended Petition. This ground for reconsideration also fails.

Under Rule 38(b), SCRCP, "Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefore in writing at any time after the commencement of the action and not later than ten (10) days after service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party." Rule 38(b), SCRCP. "The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of a trial by jury." Rule 38(b), SCRCP. Also, "[i]n equity the parties are not entitled, as a matter of right, to a trial by jury. However—counterclaims—including those raised in equitable actions—may, at times, be entitled to a jury trial. As we have previously explained: (1) if both the complaint and the counterclaim are in equity, the entire matter is triable by the court. (2) If both are at law, the issues are triable by a jury. If the complaint is equitable and the counterclaim is legal and permissive, the defendant waives his right to a jury trial. (4) If the complaint is equitable and counterclaim legal and compulsory, the plaintiff or the defendant has a right to a jury trial on the counterclaim." Wachovia Bank, Nat'l Assn. v. Blackburn, 407 S.C. 321, 328-329, 755 S.E. 2d 437, 441 (2014). Also, Rule 53(b), SCRCP provides, "In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action may be referred to a master or special referee by order of a

circuit judge or the clerk of court....Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court.” Rule 53(b), SCRCP.

In this matter, the Petition was filed February 1, 2016 in the York County Probate Court and Respondent filed his Answer and Counterclaim in which he asserted counterclaims for: (1) abuse of process, (2) malicious prosecution, (3) violation of the South Carolina Frivolous Civil Proceedings Sanctions Act, and (4) an action for a declaratory judgment. Respondent did not demand a jury trial in his pleading despite having the right to do so. The case was referred to this Court by Order of Reference filed March 17, 2018. The Amended Petition was then filed on June 20, 2019, and Respondent filed his Response to the Amended Petition on August 21, 2019 in which he failed to re-assert his claims or assert a demand for a jury trial. No separate jury trial demand has been filed or entered since.

Because of the nature of the claims Respondent raised in his Answer and Counterclaim, he could have demanded a jury trial when it was filed or shortly thereafter, but he failed to do so. He also could have demanded a jury trial when he filed his Response to Amended Petition and divested this Court of jurisdiction of the causes of action to which he is entitled under Rule 53(b), SCRCP, but he did not do so. In other words, Respondent waived his right to a jury trial under the applicable rules of civil procedure.

As a result, the Court finds and concludes that Respondent was not denied his constitutional right to a jury trial. He waived same, and, therefore, the Court is not required to reconsider, amend, and/or vacate the Final Order on that ground.

C. Sua Sponte Relief

Respondent additionally seeks to have the Court reconsider, amend, or vacate some of its prior temporary orders and/or Final Order due to the purported *sua sponte* relief granted during

this litigation. This ground for reconsideration fails.

1. May 21, 2018 Order

The Court initially notes Respondent's description of the May 21, 2018 Order is a mischaracterization. The May 21, 2018 Order prohibited Respondent from making expenditures from the Trust without Petitioner's consent or order of the Court. If Petitioner's consent could not be obtained, Respondent could make application to the Court. The application was required to include the amount of the expenditure, an explanation of the necessity of the expenditure, and the bill, estimate, invoice or other documentation evidencing the need for an expenditure. In other words, the Trust assets were not frozen. Regardless, the injunction imposed by the May 21, 2018 Order became moot with Respondent's resignation as successor trustee effective April 1, 2019 such the Court is not required to reconsider, amend, and/or vacate same. See Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 630 S.E. 2d 474.

It is additionally worth nothing that Respondent did not seek reconsideration of the May 21, 2018 Order under Rule 59, SCRPC or seek the appeal thereof which would have been allowed under S.C. Code Ann. §14-3-330 (4). As a result, the time for Respondent to seek reconsideration or appeal of the May 21, 2018 Order has passed such that the Court cannot reconsider same if it were not already moot.

Aside from the legal argument, there have only been two (2) instances in this litigation in which Respondent could not obtain Petitioner's approval for expenditures such that Court intervention was required. The first instance concerns the Application of John E. Vergeldt for Approval of Payment which was filed on May 30, 2018 ("First Application") and concerned expenses related to a cottage owned by the Trust located in Au Gres, Michigan. The Court's file reveals no order was entered approving or denying the First Application leaving the Court to assume Petitioner ultimately consented to the proposed expenditures. The second instance was

the Application of John E. Vergeldt for Approval of Payment filed August 29, 2019 in which Respondent sought to have the Trust pay for his former attorney's fees and costs related to this litigation which the Court denied in the Order Regarding Trust Expenditures filed September 12, 2019 ("September 2019 Order"), as amended on November 26, 2019 on the basis Respondent had not followed the procedures in the May 21, 2018 Order. Court also imposed the same injunctive relief on Petitioner which has gone unappealed. If Respondent was unable to make expenditures related to the damage to the cottage as he claims, it was not because of the *sua sponte* relief issued by the Court.

Based on the above, the relief granted in the May 21, 2018 Order is not a ground for reconsideration, vacation, or amendment of the Final Order.

2. Termination of Interest in Trust

In addition to the May 21, 2018 Order, Respondent asserts the termination of his interest in the Trust set forth was not requested in the pleadings and is a ground for reconsideration; however, this argument fails.

Under Rule 8, SCRCP, "All pleadings shall be so construed as to do substantial justice to all parties." Rule 8, SCRCP. In order to achieve substantial justice for all parties, our courts have determined that pleadings should be liberally construed. Fountain v. Fred's, Inc., 429 S.C. 533, 839 S.E. 2d 475 (Ct. App. 2020). It is the substance of the requested relief that matters "regardless of the form in which the request for relief was framed." Richland County v. Kaiser, 351 S.C. 89, 94, 5767 S.E. 2d 260, 263 (Ct. App. 2002) (internal citations omitted). "Indeed, our supreme court has 'repeatedly held that that the plaintiff may obtain any relief appropriate to the case made by the pleadings and the evidence, without regard to the *form* of the prayer for relief'. Fountain at S.C. 487 (2020) (citing Beaty v. Mass Protective Ass'n, 160 S.C. 205, 207, 158 S.E. 206, 207 (1931)). "Especially is this true in an equity case." Id. In a similar vein, "Courts have the inherent

power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.” Ex parte Dibble, 279 S.C. 592, 595, 310 S.E. 2d 440, 442 (Ct. Ap. 1983).

Respondent correctly points out that a party may generally not be granted relief unless it is requested in pleadings. Norwest Properties, LLC v. Strebler, 424 S.C. 617, 819 S.E. 2d 154 (Ct. App. 2018). However, the Amended Petition alleges, among other things, that Respondent placed Trust assets in his own name, that he used Trust funds and assets for his own personal gain and to intimidate and harass Petitioner, distributed Trust assets in a way that was contradictory to the Trust, used them to pay for this litigation, and let Trust assets falls into disrepair and waste. The Amended Petition also alleges that Respondent concealed and/or attempted to conceal these actions from Petitioner and that he took the same willfully, recklessly and with conscious disregard to Petitioner’s rights. Attached to the Amended Petition was the Eighth Amendment and Complete Restatement to Trust Agreement between John Vergeldt, Jr., Settlor, and John Vergeldt, Jr., Trustee, the Ninth Amendment To Trust Agreement, and the Tenth Amendment to Trust Agreement. Under these documents, the Trust provides that a beneficiary is to be treated as if they predeceased Settlor if they seek to impair or invalidate any of the Trust’s provisions. Finally, the Amended Petition prays the Court issue such other and further relief as the Court deems just and proper.

Based on the evidence presented at the hearing in this matter, the Court finds that it, while sitting in equity, has the power to liberally construe the relief requested in the Amended Petition such that it can terminate Respondent’s interest in the Trust and enforce other provisions thereof to ensure that a just result is reached. As a result, the ground for reconsideration of the Final Order fails.

D. Standard of Proof

In addition to the above, Respondent asserts the Final Order should be reconsidered

because the Court failed to include the appropriate standard of proof or apply same. Like those before it, this ground for reconsideration fails.

Respondent argument that the Final Order's failure to address the applicable standard of proof is based on the terms of the Tenth Amendment which states a successor trustee's liability would be limited to his/their actions taken in bad faith and with reckless indifference to the Trust. Respondent attempts to interpret this language to mean that the Court should apply the clear and convincing standard of proof rather than the lower standard of preponderance of evidence.

Respondent has cited no case or statutory law requiring a higher standard of proof, so the Court finds and concludes that the applicable standard of proof in this matter is indeed the preponderance of evidence standard. The Court finds and concludes that the same was applied in this matter based on the evidence was presented such that reconsideration is not required.

Even if the clear and convincing evidence standard of proof were required to be applied, the evidence presented the First Lawsuit and this action proves Respondent's liability and Plaintiff's damages by clear and convincing evidence. The record is clear. If not for Respondent's actions over the past seven (7) or more years of using Trust's assets to enrich himself to Petitioner's detriment, intentionally withholding information and records from her so that she could not exercise her rights under the Trust, and using the Trust to intimidate, harass and threaten Petitioner, the parties would not have become embroiled in two protracted litigations and incurred extensive attorney's fees to both of their detriments.

The Court also finds and concludes that the language of the Tenth Amendment related to proof of a successor trustee's bad faith and reckless indifference is of no assistance to Respondent as that term implicates a conclusion of law to be made by the Court. It does not correlate to a particular standard of proof that Petitioner must meet. As a result, this ground for reconsideration fails.

E. Evidentiary Issues

Many of the remaining objections Respondent raises relate to evidentiary issues; however, these objections do not require the Court to reconsider, alter, and/or vacate its Final Order as the Court does not find that it abused its discretion as to the admission of Petitioner's or Respondent's evidence. See Moore v. Moore, 360 S.C. 241, 599 S.E. 2d 467 (Ct. App. 2004).

1. Timeliness of Production of Exhibits and Disclosure of Witnesses.

One of the evidentiary objections raised by Respondent concerns the timeliness of the production and disclosure of Petitioner's exhibits and witnesses. However, this objection fails.

During the first day of the trial, Respondent objected to Petitioner's exhibits on the grounds they were not timely produced. He claimed he had not seen them prior to. Respondent asked for a continuance on the second day of trial on these grounds. Petitioner was able to provide proof that the witnesses were disclosed and exhibits mailed to Respondent prior to trial albeit shortly before. The Court denied the request considering the age of the case and that Petitioner, her witnesses, and Respondent all traveled to York for the final hearing. However, the Court took the issue of the timeliness of the production of exhibits and disclosure of witnesses under advisement to determine if the same would be admitted into evidence.

After the hearing, Respondent filed multiple motions seeking to have some of Petitioner's witnesses and evidence excluded which are noted in the public record. The Court eventually allowed Respondent to present his own affidavits, reports and/or other proposed exhibits to the Court to eliminate any prejudice Respondent may have suffered, if any, due to the late production of documents and disclosure of witnesses as indicated in an Order entered May 12, 2020 which was amended by an Order Granting Petitioner's Motion to Alter or Amend entered August 31, 2020. In particular, the Court granted Respondent leave to procure his own expert to review the Trust's accounting records and prepare a rebuttal report to that of Plaintiff's expert, Charles E.

Bosler, and to provide affidavits as to the condition of the Cottage. The only affidavits that Respondent submitted were those of Robert T. Nirenberg and Audry Scheible. The Court allowed the former, but the latter was excluded. Respondent also submitted an affidavit executed by himself related to Mr. Bosler's report that was excluded.

Regarding the timeliness of the production of exhibits and disclosure of witnesses, Rule 26(a), SCRCP provides, "Parties may obtain discovery by one or more of the following methods:....written interrogatories...requests for production..." Rule 26(a), SCRCP. "A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response include information thereafter acquired, except that requests for discovery under Rule 31, 33, 34, and 36 shall be deemed to continue from the time of service until the time of trial of the action so that the information sought, which comes to the knowledge of a party, or his representative or attorney, after original answers have been submitted, shall be promptly transmitted to the other party" Rule 26(e), SCRCP. "In addition, a party is under a duty seasonably to supplement his response with respect to any question directly addressed to (1) the identity and location of persons having knowledge of discoverable matters, and (2) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony." Rule 26(e), SCRCP. Also, "[a]t any time after the commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery....Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan for discovery and schedule for discovery...." Rule 26(f), SCRCP. Relatedly, "[t]he order may, in its courts discretion, also: (1) provide that exhibits or witnesses not listed at the hearing may not be called or admitted in evidence at the trial, unless such witness or exhibit is discovered after pre-trial hearing and promptly disclosed to opposing parties." Rule 16(b),

SCRCP. “The entire thrust of discovery rules involves full and fair disclosure, ‘to prevent a trial from becoming a guessing game or one of surprise for either party.’” Samples v. Mitchell, 329 S.C. 105, 113, 495 S.E. 2d 213, 217 (Ct. App. 1997) (internal citations omitted). “Essentially, the rights of discovery provided by the rules give the trial lawyer the means to prepare for trial...” Id at S.C. 113.

In this matter, the Court finds and concludes that the parties exchanged interrogatories and requests for production to which they both answered and/or responded. Also, no court order was entered dictating the time by which discovery had to be completed and/or finalized. Accordingly, either party could have and had a duty to supplement their answers to interrogatories and/or documents produced in response to requests for production at any time prior to trial which Petitioner did by mailing the objection to exhibits to Respondent’s last known address between three times between January 16, 2020 and January 28, 2020. See Rule 26, Rule 33, Rule 34, and Rule 5(b) (“Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and compliant”). The Court concludes that no violation of the discovery rules occurred as a result that would warrant the exclusion of the exhibits if that were Respondent’s position.

To the extent Respondent argues he suffered prejudice by not having the proposed exhibits and witnesses disclosed to him prior to trial as he claims, such prejudice was eliminated by the Court allowing Respondent to submit rebuttal affidavits as to the condition of the cottage as well as the opportunity to obtain his own qualified expert to rebut Mr. Bosler’s report which he failed to do during the six (6) month period after the final hearing. In other words, both parties were allowed an opportunity to offer the same type of exhibits into evidence as the other regarding the cottage and Respondent had an opportunity to but failed to procure an expert witness to rebut Mr. Bosler’s report.

Accordingly, the timeliness of the production of reports and disclosure of Mr. Bosler as a witness is not a ground for reconsideration or amendment of the Final Order.

2. Hearsay

Respondent asserts in the Motion that the Court improperly allowed Petitioner to present hearsay into evidence. However, Respondent failed to timely object to said hearsay, if it existed, and the same is waived as result and cannot be a ground for reconsideration. See Patterson v. Reid, 318 S.C. 183, 456 S.E. 2d 436 (Ct. App. 1995); Miller v. Construction Co., LLC v. P.C. Construction of Greenwood, 418 S.C. 186, 791 S.E. 2d 321 (Ct. App. 2016).

3. Affidavit of Audry L. Scheible and attachments

The Court properly excluded the Affidavit of Audry L. Scheible and attached exhibits considering Respondent attempted to introduce same into evidence after Ms. Scheible presented testimony to the Court and she concluded same. If Respondent wished her to testify as to matters in the affidavit, he should have elicited it at the time of her testimony. The exclusion of her affidavit and attachments is not grounds for reconsideration.

4. Charles E. Bosler Report

Aside from the timeliness of the production of Mr. Bosler's report, Respondent argues the same should have been excluded for other reasons to include but not limited to the fact that it was not based on actual knowledge, included transactions for which the settlor was responsible and could not preclude, and included legal analysis. Tangentially, Respondent argued that the Court erred in failing to consider his written response to Mr. Bosler's report as it was *in lieu* of cross-examination.

In this matter, Mr. Bosler was Petitioner's witness, he provided testimony that he was provided the Trust's bank statements and other account records, and these records serve as the basis of his report. Mr. Bosler's report was based on his actual knowledge of the documents

presented to him as required under Rule 602, SCRE. He was also qualified as an expert in the field of accountancy such that the statements and testimony he made about the facts and data used to come to the conclusions in his report and testimony related thereto were proper under Rule 703, SCRE. As a result, the Court finds and concludes Mr. Bosler had personal knowledge of the facts and records presented to him which serve as the basis of his report, and it was proper to admit the same into evidence.

As to whether the report included transactions for which the Trust's settlor was solely responsible, Respondent had an opportunity to testify after Mr. Bosler's testimony and chose not to do so nor did he present witnesses to testify as to whether the Settlor was responsible for the transactions at issue despite being on notice of Petitioner's claims. Even so, testimony about Respondent's communications with Settlor about what Settlor intended with regard to specific transactions would have been barred by S.C. Code Ann. §19-11-20, as amended, (1976) ("Dead Man Statute"). The Court finds and concludes Respondent presented little evidence, if any, about transactions for which the Settlor was responsible, and this argument is not a ground for the Court to reconsider the Final Order as a result.

To the extent the Bosler report includes legal analysis, the Court finds that Mr. Bosler's report and analysis was being provided solely for a comparison between how Respondent acted with regard to the Trust's assets versus how he believed a similarly situated fiduciary would/should have acted as required by applicable accountancy standards. This testimony is allowable under Rule 703 and Rule 704, SCRE.

Further, Respondent's reply to Mr. Bosler's report was not in compliance with Court's May, 2020 Order, as amended, which allowed him time to engage an accountant or other expert to rebut Mr. Bosler's report as he represented to the Court he had. It also cannot be *in lieu* of cross-examination as it was not given in the form of questions to which Mr. Bosler had an opportunity

to answer or respond. Rather, the response was in the form of a sworn statement which the Court properly excluded as being, at its best, testimony and/or commentary on Mr. Bosler's report given by a person who is not an accountant or similarly qualified expert, who could not be cross-examined by Petitioner's counsel, and represents an attempt by Respondent to testify after he was given his right to do the same at the final hearing.

As a result of the above, the Court finds and concludes that the Court properly admitted Charles E. Bosler's report into evidence, excluded Respondent's response, and the same is not a reason for the Court to reconsider the Final Order.

F. Absence of Expert Testimony

Respondent has additionally argued the Court erred in its Final Order because Petitioner did not present expert testimony as to whether Respondent's breach of duties was the proximate cause of Petitioner's damages.

The Motion takes issue with Petitioner's two (2) expert witnesses. The first expert was Kathleen Palinski, Esq. who was qualified as an expert in fiduciary standards and who was appointed as Limited Special Trustee by Consent Order Appointing Special Trustee and Staying Case filed on February 23, 2017. Respondent argues Ms. Palinski never testified that Respondent's breach and/or breaches of duties under the Trust proximately resulted in Petitioner's damages. However, as noted in Dereede Living Trust dated December 17, 2013 v. Karp, 427 S.C. 336, 831 S.E. 2d 435, the South Carolina Court of Appeals found that a breach of trust makes a trustee liable to beneficiaries regardless of intention. Considering Ms. Palinski testified that Respondent did not comply with the terms of the Trust or fiduciary standards or duties, Respondent is and/or was liable to Petitioner for his breaches the Trust and fiduciary duties. In other words, his failure to comply with the Trust was the proximate cause of Petitioner's damages. As to the amount of damages, Mr. Bosler testified to same. He also testified as to the impact that Respondent's breach and/or

breaches of Trust had on the Trust's assets which resulted in Petitioner's damages that were granted in the Final Order. In particular, the damages being the amount of Trust funds and assets Respondent used to benefit and/or enrich himself to Petitioner's exclusion, the unequal distributions he made to himself and other beneficiaries to Petitioner's exclusion, and expenditures he made that were unaccounted for during the time Respondent was serving as co-trustee and/or successor trustee.

When viewed together and in light of the evidence presented, the Court finds and concludes that it had evidence in hand necessary to find and conclude Respondent was the direct and proximate cause of Petitioner's damages. As a result, this ground for reconsideration fails.

G. OTHER GROUNDS

In addition to the above grounds, the Court notes that the Motion contains several other grounds for reconsideration that are generally tied to the above. However, Respondent did not argue them at the final hearing, separately brief them, or argue them at the hearing on the Motion. The Court is left to assume that Respondent is abandoning these grounds. See Johnson v. Sonoco Products Co., 381 S.C. 172, 672 S.E. 2d 567 (2009); First Sav. Bank v. McLean, 314 S.C. 361, 444 S.E. 2d 513 (1994). . To the extent he is not, they are rejected as grounds for reconsideration.

ORDER

Based on the above Findings of Fact and Conclusions of Law, the Court has determined that the numerous grounds for reconsideration raised in the Motion do not rise to a level such that the Court is required reconsider, amend and/or vacate the Final Order.

Accordingly, **IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED** that Respondent's Motion is **DENIED**.

{JUDGE'S SIGNATURE APPEARS ON NEXT PAGE}



York Common Pleas

Case Caption: Vicki Lynn Vergeldt VS John Edward Vergeldt

Case Number: 2016CP4600820

Type: Order/Other

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2021-07-02 10:30:56 page 20 of 20

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ROA 00430



ELECTRONICALLY FILED - 2019 Jun 13 11:06 AM - YORK - COMMON PLEAS - CASE#2016CP4600820

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP4600820

Vicki Lynn Vergeldt,
PLAINTIFF(S)

John Edward Vergeldt,
DEFENDANT(S)

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Aug 02 2021

SC Court of Appeals

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), 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 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 me on May 30, 2019 on Defendant's Motion to Dismiss and Judgment on the Pleadings and Plaintiff's Motion to Amend the Pleadings. Present at the hearing: Daniel J. Ballou, attorney for Defendant and Taylor A. Peace, attorney for Plaintiff.

Rule 15 of the S.C. Rules of Civil Procedure states that "leave shall be freely given when justice so requires and does not prejudice any other party". The party opposing the amendment has the burden of establishing prejudice. *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993). I find and conclude that under the facts and circumstances of this case, there is no prejudice in granting leave to amend and the Defendant will have sufficient time to prepare its defense of these allegations.

Having granted Plaintiff leave to amend, Defendant's Motion to Dismiss and Judgment on the Pleadings is moot, and therefore denied. Plaintiff shall file and serve the amended pleading within 15 days of this order. The Defendant shall have 45 days from the date of service to file and serve any necessary response.

AND IT SO ORDERED.

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 _____.

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.

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York Common Pleas

Case Caption: Vicki Lynn Vergeldt VS John Edward Vergeldt

Case Number: 2016CP4600820

Type: Master/Order/Form 4

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2019-06-13 10:56:08 page 3 of 3

ROA 00433



STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
CASE NO. 2016-CP46-00820

Vicki Lynn Vergeldt, Individually, and as
Successor Trustee of the John Vergeldt, Jr.
Revocable Living Trust dated September
27, 1978

Petitioner,

vs.

John Edward Vergeldt,

Respondent.

ORDER

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Aug 02 2021
SC Court of Appeals

This matter comes before me regarding Defendant's objection to certain affidavits and an expert's report submitted at trial by the Plaintiff on January 31, 2020. Plaintiff is represented by attorney Taylor A. Peace. Defendant John Edward Vergeldt is pro se. This matter was taken under advisement and is being ruled upon without a hearing.

At trial, Plaintiff offered the following exhibits into evidence: (1) Plaintiff's exhibit 9, affidavit of Timothy Kelley; (2) Plaintiff's exhibit 10, affidavit of Thomas Hernick; (3) Plaintiff's exhibit 11, affidavit of Brian Carson; (4) Plaintiff's exhibit 12, affidavit of Tony Lee Jordan; and (5) Plaintiff's exhibits 13 and 14, Financial Statement and Pro forma Financial Statements as prepared by testifying expert witness Charles E. Bosler. Defendant objected stating he had not received a copy of these materials prior to trial. No other objection was made. Defendant requested additional time to file responding affidavits or for the court to deny the exhibits. This matter was deferred as the court needed further information regarding discovery requests and service of the exhibits.

After review of the additional filings, it appears Plaintiff mailed the exhibits to Defendant on January 16, two weeks prior to trial. Plaintiff confirmed in his memorandum filed on February 28, 2020 that he provided the exhibits as supplemental Answers to Interrogatories and Responses to Production. There was no scheduling order issued in this case and it appears Plaintiff's counsel promptly forwarded the exhibits upon receipt. However, I find Defendant did not receive these exhibits in time to prepare for trial. The rules of discovery are meant to give the parties the means

to be prepared for trial. *CEL Products, LLC v. Rozelle*, 357 S.C. 125, 591 S.E.2d 643 (Ct. App. 2004) (citation omitted).

THEREFORE, IT IS ORDERED that Defendant is granted thirty (30) days from the date of this order to file responding affidavits to the exhibits stated above. No other matters will be considered.

JUDGE'S SIGNATURE PAGE TO FOLLOW



York Common Pleas

Case Caption: Vicki Lynn Vergeldt VS John Edward Vergeldt

Case Number: 2016CP4600820

Type: Master/Order/Other

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2020-05-11 16:53:48 page 3 of 3

ROA 00436



IN THE STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

VICKI LYNN VERGELDT,)
)
Petitioner,)
)
vs.)
)
JOHN EDWARD VERGELDT,)
Individually and as Successor Trustee of the)
John Vergeldt, Jr. Revocable Living Trust)
dated September 27, 1978, as amended.)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO. 2016-CP-46-0820

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Aug 02 2021

SC Court of Appeals

ORDER

This matter came before the Court on May 9, 2018, upon Plaintiff's motion for partial summary judgment on her cause of action for removal of John Edward Vergeldt as Trustee. Present at the hearing were Plaintiff and her counsel, Adam T. Silvernail, Defendant and his counsel, Daniel J. Ballou.

Based on the entire record in this case, and after hearing arguments of counsel, and reviewing the parties' submissions in connection with this motion, I find that there are genuine issues of material fact which will require a full hearing, and the motion for partial summary judgment is therefore denied.

The evidence and allegations presented at the hearing do, however, give rise to a concern about preserving the remaining funds in the Trust. As a result, I find it appropriate and necessary at this time to restrain the Trustee pending a final disposition of this case to prevent further issues arising as to the use of Trust funds.

Therefore, it is ordered as follows:

1. Defendant is enjoined from making any expenditure of Trust funds without either written consent from Plaintiff's counsel, or an order of this court.

2. If consent is not given by Plaintiff's counsel, Defendant shall apply to this court for approval of any proposed expenditure. Such application shall include the amount of the proposed expenditure, an explanation of the necessity of the expenditure, and the bill, estimate, invoice or other documentation, evidencing the need for an expenditure. The application and supporting

documentation shall be served on Plaintiff's counsel, who shall have five business days to file any opposition.

3. Defendant may continue to deposit Trust funds into the Trust's accounts without prior consent by Plaintiff, or approval by this court.

4. These conditions shall continue until modified or removed by subsequent order of this court.

AND IT IS SO ORDERED.

JUDGE'S E-SIGNATURE TO FOLLOW



York Common Pleas

Case Caption: Vicki Lynn Vergeldt VS John Edward Vergeldt

Case Number: 2016CP4600820

Type: Order/Other

So Ordered

s/ S. Jackson Kimball 3063

Electronically signed on 2018-05-21 14:24:32 page 3 of 3



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) CIVIL ACTION NO.: 2016-CP-46-0820

Vicki Lynn Vergeldt, Individually, and as
Successor Trustee of the John Vergeldt, Jr.
Revocable Living Trust dated September
27, 1978,

Petitioner,

vs.

John Edward Vergeldt

Respondent.

ORDER GRANTING PETITIONER'S
MOTION TO ALTER OR AMEND

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Aug 02 2021

SC Court of Appeals

THIS MATTER came before the Court on June 17, 2020 for a hearing on the Motion to Alter or Amend ("Motion") filed on May 19, 2020 by Petitioner Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 ("Petitioner"). Petitioner sought the Court's clarification of various issues, motions, and other matters ruled upon by the Court in its Order filed May 12, 2020 ("May, 2020 Order") and/or the alteration thereof. Present at the hearing was Petitioner's counsel, Taylor A. Peace, Esq., and Respondent John Edward Vergeldt ("Respondent"), appearing *pro se*. Petitioner and Respondent are sometimes collectively referred to herein as "Parties".

BACKGROUND

On May 7, 2020, the Court held a status conference with Petitioner's counsel and Respondent to determine which of the Parties' pre-trial and post-trial motions could proceed without a hearing in light of the ongoing public health crisis caused by the COVID-19 pandemic. The specific motions discussed were Respondent's Motion for Contempt filed October 18, 2019, the Contempt of Court filed by Respondent on December 10, 2019, Respondent's verbal motion

for continuance/objection to evidence Petitioner presented the trial of this case on January 31, 2020, Petitioner's Motion for Sanctions filed on February 19, 2020, the Objection and Motion to Quash Subpoena filed by Teresa A. Shaw Vergeldt on March 13, 2020, and Respondent's Motion for Sanctions filed on April 15, 2020.

As a result of the telephone status conference, the Court ruled in the May, 2020 Order that Petitioner mailed the proposed exhibits to which Respondent objected in a timely manner as part of her supplemental Answers to Interrogatories and Requests for Production; however, Respondent did not receive them in time to prepare for trial. Accordingly, the May, 2020 Order gave Respondent an additional thirty (30) days from the entry thereof to file rebuttal affidavits and an expert's report. The May, 2020 Order stated that no other matters would be considered.

The documents in the Court's file indicates that that Respondent filed the following documents after entry of the May, 2020 Order: 1) a Motion to Exclude Bosler Report and Direct Testimony, 2) an Affidavit of John E. Vergeldt in Response to Motion of T. Peace dated May 19, 2020, and an Affidavit of Audry L. Scheible with exhibits. The Affidavit of Audry L. Scheible contains photographs that Respondent attempted to introduce at trial that were excluded at trial. The Court also notes that Respondent filed two (2) Affidavits of Robert T. Nirenberg after the trial of this matter but before the entry of the May, 2020 Order.

As to the Motion itself, Petitioner seeks clarification of the Court's rulings on the pre-trial and post-trial motions, whether Respondent was required to disclose his witnesses to Petitioner prior to submission of his affidavits and/or reports, and whether Petitioner would have an opportunity to respond thereto.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

With that background established and based upon the pre-trial and post-trial motions and other submissions by Petitioner and Respondent, the May, 2020 Order, and argument presented

at the hearing, Petitioner is entitled have the May, 2020 Order granted to alter or amend and clarify the Court's rulings on the pre-trial and post-trial motions and to rule on the various other filings and developments in the case since the issuance of the May, 2020 Order, and, as a result the Motion is **GRANTED**.

Accordingly, I find, conclude and order that the May, 2020 Order is restated and affirmed unless altered, amended, changed and/or added to by the following:

1. Respondent's Motion for Contempt filed October 18, 2019 should be and is hereby **DENIED**;
2. Respondent's Contempt of Court filed December 10, 2019 should be and is hereby **DENIED**;
3. Petitioner's Motion for Sanctions filed February 19, 2020 should be and is hereby **DENIED**;
4. The Objection and Motion to Quash Subpoena filed by Respondent and Teresa A. Shaw Vergeldt filed March 13, 2020 should be and is hereby **DENIED**;
5. Respondent's Motion or Sanctions filed on April 15, 2020 should be and is hereby **DENIED**; and
6. Neither party shall be entitled or allowed to submit other additional evidence not otherwise already submitted.

Concerning the submission of the Motion to Exclude Bosler Report and Bosler Direct Testimony, Affidavit of Audry L. Scheible, Affidavit of John E. Vergeldt in Response to Motion of T. Peace dated May 19, 2020, and Affidavits of Robert T. Nirenberg that were submitted after the trial of this matter, I find, conclude, and order as follows:

1. Respondent's Motion to Exclude Bosler Report and Bosler Direct Testimony is **DENIED**;

2. The Affidavit of Audry L. Scheible and exhibits attached thereto are **EXCLUDED**, and
3. The Affidavits of Robert T. Nirenberg will be **ALLOWED** by the Court and considered as evidence in this matter.
4. Respondent's objections as to the Affidavit of Timothy Kelley, Affidavit of Thomas Hernick, Affidavit of Brian Carson, Affidavit of Tony Lee Jordan and, and Financial Statement and Pro Forma Financial Statements prepared by Charles E. Bosler are **DENIED**.

IT IS SO ORDERED.

{JUDGE'S SIGNATURE PAGE TO FOLLOW}



York Common Pleas

Case Caption: Vicki Lynn Vergeldt VS John Edward Vergeldt

Case Number: 2016CP4600820

Type: Master/Order/Other

So Ordered

s/ Teasa K. Weaver 3084

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ROA 00444

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CIVIL ACTION NO.: 2021-CP-10-_____

Vicki Lynn Vergeldt, Individually, and as
Successor Trustee of the John Vergeldt, Jr.
Revocable Living Trust dated September
27, 1978,

Plaintiff,

vs.

John Edward Vergeldt and Teresa A. Shaw-
Vergeldt,

Defendants.

SUMMONS

TO THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscribers at their office at 135 Columbia Avenue, Chapin, South Carolina 29036 (Street Address) or P.O. Box 1000, Chapin, South Carolina 29036-1000 (Mailing Address), within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully Submitted,

HARRELL, MARTIN & PEACE, P.A.

/s/ Taylor A. Peace, Esq.

TAYLOR A. PEACE, ESQ. #100206
135 Columbia Avenue (Physical Address)
P.O. Box 1000 (Mailing Address)
Chapin, South Carolina 29036
Phone: (803) 345-3353
tpeace@hmp-law.com
Attorneys for Plaintiff

September 14, 2021
Chapin, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CIVIL ACTION NO.: 2021-CP-10-_____

Vicki Lynn Vergeldt, Individually, and as
Successor Trustee of the John Vergeldt, Jr.
Revocable Living Trust dated September
27, 1978,

Plaintiff,

vs.

John Edward Vergeldt and Teresa A. Shaw-
Vergeldt,

Defendants.

COMPLAINT

NOW COMES Plaintiff Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 (“Plaintiff”), who, complaining of Defendant John Edward Vergeldt (“John”) and Defendant Teresa A. Shaw-Vergeldt (“Teresa”), respectfully alleges and will show unto this Honorable Court as follows:

GENERAL ALLEGATIONS

1. Plaintiff is a citizen and resident of Birmingham, Michigan and is a qualified beneficiary of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 (“Trust”) and is the Successor Trustee thereof.

2. Upon information and belief, John is a citizen and resident of the County of Charleston, State of South Carolina.

3. Upon information and belief, Teresa is a citizen and resident of the County of Charleston, State of South Carolina.

4. John and Teresa were married as husband and wife at all times relevant herein, and they remain lawfully married to this day.

5. Plaintiff is informed and believes this Court has jurisdiction over the subject matter and parties, and venue is proper as most events described herein took place in Charleston County and Defendants reside in the same.

6. Heretofore, on February 1, 2016, Plaintiff filed a Summons and Petition for Removal of Trustee and Related Relief (“Petition”) against John, individually, and in his capacity as Successor Trustee of the Trust, in the Probate Court for York County (“York County Lawsuit”) seeking an accounting, injunctive relief, and his removal as Successor Trustee of the Trust resulting from his, then, perceived improprieties related to the Trust which included but were not limited to his failure to account and act impartially toward the Trust’s beneficiaries, his abusive actions toward Plaintiff, and the concealment of his activities as Successor Trustee. At the time it was filed, the York County Lawsuit was captioned as Vicki Lynn Vergeldt v. John Edward Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 and given Case No.: 2016-GC-46-00018.

7. Plaintiff was not seeking money damages or other similar relief when she filed the Petition.

8. The York County Lawsuit was subsequently removed to the Court of Common Pleas for York County, was given C/A No.: 2016-CP-4-00820, and was referred to the Master-in-Equity for York County.

9. Plaintiff is informed and believes that, at the time she filed the York County Lawsuit, Defendants maintained their residence at real property located in Charleston County commonly referred to as 12 Transom Court, Charleston, South Carolina 29407 and owned the same as joint tenants with rights of survivorship and not as tenants in common.

10. During the York County Lawsuit, Plaintiff discovered that John had, indeed, failed to act impartially toward her as one of the Trust’s beneficiaries, used the Trust’s assets and

income for his own personal benefit and gain, and distributed more Trust assets to himself than other Trust beneficiaries in violation of the Trust's distributive provisions. Plaintiff also discovered that John failed to keep appropriate records of the Trust's activities which were intended to conceal the same from Plaintiff to her detriment.

11. On March 29, 2019, John delivered to Plaintiff a Resignation of Successor Trustee indicating that he was resigning as Successor Trustee of the Trust, and his resignation would become effective as of April 30, 2019. At or around the same time, John filed a Notice of Motion and Motion to Dismiss the York County Lawsuit.

12. On April 15, 2019, Defendants purchased real property located in Charleston County commonly referred as 1523 Star Flower Alley, Johns Island, South Carolina 29455 ("Property") for the price of Four Hundred Two Hundred Twenty-Five Thousand and 88/100 (\$400,225.88) Dollars. Plaintiff has filed a *Lis Pendens* against the Property in the Clerk of Court for Charleston County, South Carolina.

13. On the same day, Defendants executed a Mortgage granting First Citizens Bank and Trust Company a purchase money mortgage over the Property in the amount of Three Hundred Five Thousand Five Hundred Thirty-Four and 00/100 (\$305,534.00) Dollars. The Mortgage was recorded in the Office of the Register of Deeds for Charleston County on April 24, 2019 in Book 791 at Page 294.

14. On May 14, 2019 and based upon the information discovered during the course of the York County Lawsuit, Plaintiff filed a Notice of Motion and Motion to Amend Petition ("Amended Petition") in which she sought to amend the Petition to allege entitlement to money damages.

15. About a month later, Defendants, on June 12, 2019, sold and transferred all of their right, title and/or interest in 12 Transom Court to Casa Del Palma, LLC for the sum of Five Hundred Ninety-Five Thousand and 00/100 (\$595,000.00) Dollars.

16. The same day, Defendants sold and transferred all their right, title, and interest in property known as Dock Unit E-18, Sunset Cay Marina Horizontal Regime for Thirty-Three and 00/100 (\$33,000.00) Dollars.

17. By Order dated June 13, 2019 (the day after 12 Transom Court sold), the Honorable Teasa Kay Weaver, as Master-In-Equity for York County, denied John's Motion to Dismiss and allowed Plaintiff to amend the Petition to assert claims for monetary damages.

18. Plaintiff filed the Amended Petition for Removal of Trustee and Other Related Relief on June 20, 2019.

19. Six (6) days later, on June 26, 2019, John made, executed, and delivered Teresa a Quit Claim Deed ("Quit Claim") transferring all of his right, title, and/or interest in the Property to Teresa for exactly Five and 00/100 (\$5.00) Dollars and no other consideration, said Quit Claim being recorded in the Office of the Register of Deeds for Charleston County in Book 807 at Page 426.

20. The Mortgage was satisfied by instrument dated July 11, 2019 and recorded in the Office of the Register of Deeds on August 9, 2019 in Book 0815 at Page 284. Plaintiff is informed and believes that the Property is free and clear of all mortgages, liens, charges and/or encumbrances.

21. A final hearing took place in the York County Lawsuit on January 30, 2020, and Judge Weaver issued her Final Order ("Judgment") in the York County Lawsuit on February 2, 2021 granting Plaintiff judgment and damages against John in the original principal sum of

Three Hundred Sixty One Thousand Ninety Two and 88/100 (\$361,092.88) Dollars as well other relief granted therein.

22. John filed a Motion to Reconsider on February 12, 2021 which Judge Weaver denied by Order Denying Motion to Reconsider filed July 2, 2021.

23. Teresa filed an action for separate maintenance and support and divorce against John ten (10) days later on July 12, 2021 in the Charleston County Family Court, said action having C/A.: 2021-DR-10-02081 ("Family Court Case").

24. John is appealing the Judgment and other interlocutory orders in the York County Lawsuit.

25. As of the date of the filing of this matter, John has made no payments toward the amount due under the Judgment, and Plaintiff is informed and believes that he has not answered or otherwise responded to the Family Court Case.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment-S.C. Code Ann. §27-23-10)

26. Plaintiff incorporates the previous allegations of this Complaint as if repeated herein verbatim.

27. Plaintiff is informed and believes that, at all times relevant prior to the issuance of the Judgment and during the course of their marriage, Defendants owned and held property and/or properties together as joint tenants with rights of survivorship and not as tenants in common.

28. Plaintiff is informed and believes Defendants changed and/or altered their course of dealing and business, marital or otherwise, because Judge Weaver allowed Plaintiff to amend the Petition and in preparation for Plaintiff obtaining the Judgment.

29. At the time the Quit Claim Deed was executed and the Mortgage satisfied, Plaintiff is informed and believes John was on notice: (1) of Plaintiff's claims against him, (2) that Plaintiff claimed he owed her a debt, and (3) that he, in fact, owed her a debt as shown by the discovery performed in the York County Lawsuit. In other words, John believed and/or knew himself to be indebted to Plaintiff at the time the Quit Claim was executed and his actions were intended to avoid her efforts to collect same.

30. Plaintiff is informed and believes Teresa is and/or was fully aware of the claims made by Plaintiff against John in the York County Lawsuit, that John executed the Quit Claim transferring his interest in the Property to her and that the Mortgage was satisfied in anticipation of Plaintiff obtaining judgment and damages against John.

31. Plaintiff is informed and believes John's transfer of his interest in the Property to Teresa is and/or was voluntary and not based on valuable consideration.

32. Plaintiff is informed and believes that the transfer of John's interest in the Property to Teresa was made with the actual intent to hinder and/or delay any attempt by Plaintiff to collect on any judgment she may have and/or has obtained in the York County Lawsuit.

33. Plaintiff is informed and believes that, as a result of John's execution of the Quit-Claim, he lacks sufficient assets and property to pay the Judgment, not merely at the time of transfer, but thereafter.

34. Plaintiff is informed and believes the Quit Claim is not the only time John has taken action to divest himself of assets and property since Plaintiff was given leave to file the Amended Petition to avoid any damages and/or judgment Plaintiff may have and/or was given in the York County Lawsuit.

35. Plaintiff is informed and believes the transfer of John's interest in the Property to Teresa by virtue of the Quit Claim should be declared a fraudulent transfer, set aside, and any and all right, title and/or interest that John had prior to the Quit Claim be restored so that Plaintiff can proceed with execution of the Judgment and/or collection of the damages awarded in the York County Lawsuit.

36. To the extent John has otherwise taken action to transfer assets, property, and funds to Teresa since Plaintiff was granted leave to file the Amended Petition, Plaintiff is informed and believes that the transfer of said property, assets, and/or funds should be declared fraudulent, set aside, and any and all of John's right, title, and/or interest therein be restored so that Plaintiff can proceed with execution against the Judgment and/or collection of the damages awarded in the York County Lawsuit.

37. To the extent Teresa has already disposed of and/or divested herself of assets, property and/or funds that were fraudulently conveyed to her by John, Plaintiff is informed and believes that the Court should issue a judgment against Teresa in the amount of the Judgment plus all accrued interest thereon.

FOR A SECOND CAUSE OF ACTION
(Conversion)

38. Plaintiff incorporates the previous allegations of this Complaint as if repeated herein verbatim.

39. Plaintiff is informed and believes that John and/or Defendants, jointly and severally, have divested themselves of property, funds and/or assets to include but not be limited to the Property since Plaintiff was granted leave to file the Amended Petition to divest themselves of same in an effort to avoid and/or frustrate Plaintiff's attempts to collect any damages she may have been and/or was granted

40. Plaintiff is informed that she has an interest in the Property and other assets, property, and funds which John, individually, and/or Defendants have diverted and/or divested to frustrate Plaintiff's attempts to collect damages she has and/or was given by virtue of the Judgment.

41. Plaintiff is informed and believes that John's and/or Defendants' actions constitute conversion.

42. Plaintiff is informed and believes Defendants' actions described herein were and/or are intentional, willful, wanton, reckless, and with conscious disregard for Plaintiff's rights.

43. As a direct and proximate result of Defendants' conversion of assets, property, and funds in which she has an interest, Plaintiff is informed and believes she has suffered damages and is entitled to judgment against Defendants, jointly and severally, in the amount of her actual damages to be more fully proven at the trial of this case, said amount being the value of the property, assets, and funds Defendants converted to Defendants' own use, plus consequential damages to be more fully proven at the trial of this case, plus pre-judgment interest, plus post judgment interest, plus punitive damages.

FOR A THIRD CAUSE OF ACTION
(Constructive Trust)

44. Plaintiff incorporates the previous allegations of this Complaint as if repeated herein verbatim.

45. As more fully set forth herein, John has transferred to Teresa and/or they have retained funds, assets, and property in which Plaintiff has or maintains an interest that they cannot withhold from her as she is beneficially entitled to same by virtue of the Judgment.

46. Plaintiff is informed and believes Defendants have retained and/or obtained the property, assets and/or funds through fraud, bad faith, and/or concealment which give- rise to an obligation to make restitution to Plaintiff.

47. Plaintiff is informed and believes she is entitled to the imposition of a constructive trust over the Defendants' property, funds, and assets of a value up to the amount of the Judgment, plus post-judgment interest at the published rate.

FOR A FOURTH CAUSE OF ACTION
(Civil Conspiracy)

48. Plaintiff incorporates the previous allegations of this Complaint as if repeated herein verbatim.

49. As more fully set forth hereinabove, John and/or Defendants have taken action in an attempt to prohibit and/or frustrate Plaintiff's ability to collect the damages that she was awarded in the York County Case.

50. Plaintiff is informed and believes Defendants actions described above constitute a combination or agreement of two or more persons to commit an unlawful act or lawful act by unlawful means.

51. Plaintiff is also informed and believes that Defendants' actions described herein constitute an overt act in furtherance of their agreement to prohibit Plaintiff from collecting damages from John to which Plaintiff is entitled.

52. Plaintiff is informed and believes Defendants' actions described above were willful, wanton, reckless, and in conscious disregard to Plaintiff's rights.

53. As a direct and proximate result of Defendants' civil conspiracy, Plaintiff is informed and believes she has suffered actual and consequential damages to be fully proven at the trial of this case.

54. Plaintiff is informed and believes she is entitled to judgment against Defendants in the amount of her actual and consequential damages to be more fully proven at the trial of this case, plus pre-judgment interest, plus post-judgment interest, plus punitive damages, and such other and further relief as this Court deems just and proper.

FOR A FIFTH CAUSE OF ACTION
(Injunctive Relief-Temporary Injunction)

55. Plaintiff incorporates the previous allegations of this Complaint as if repeated herein verbatim.

56. As more fully set forth herein, Plaintiff is informed and believes that John and/or Defendants, jointly and severally, have taken actions to frustrate Plaintiff's attempt and/or attempts to collect the damages Plaintiff was awarded in the York County Case.

57. Plaintiff is informed and believes that Defendants are currently and/or may continue to take actions to frustrate Plaintiff's ability to collect the amounts due under the Judgment.

58. Plaintiff is also informed and believes she will suffer irreparable harm if Defendants are able to continue to divest themselves of and/or divert property, funds, and assets pending a final hearing on this matter.

59. Plaintiff is further informed and believes that she is likely to succeed on the merits of the case based on the above.

60. Additionally, Plaintiff is informed and believes she has an inadequate remedy at law if Defendants are allowed to divest themselves of and/or divert assets, funds, and property pending a final hearing on this matter as money damages will not compensate her for Defendants' actions described above.

61. Plaintiff is informed and believes that she is entitled to a temporary injunction prohibiting Defendants from transferring, selling, mortgaging, placing a lien upon, or otherwise divesting themselves of any right, title, and/or interest in and to any property, asset, or fund in which they may have an interest or diverting the same, ordinary expenses excepting, pending a final hearing in this matter.

WHEREFORE, having set forth her Complaint against Defendants, Plaintiff prays that the Court issue an order that:

- a. Declares the execution of the Quit-Claim Deed to be a fraudulent transfer, that the same is null and void, and that vests John with all the right, title and/or interest in the Property he had prior to the Quit-Claim Deed's execution;
- b. Declares any transfer of property, assets, and/or funds from John to Teresa since the filing of the Amended Petition to be a fraudulent transfer, that the same be declared null and void, and all of John's right, title and/or interest in said property, assets and/or funds be restored to him;
- c. To the extent Teresa has disposed of any property, asset and/or fund John fraudulently conveyed to her, grants Plaintiff judgment against Teresa in the amount of the value thereof up to the amount of the Judgment plus any and all post judgment interest accrued;
- d. Grants Plaintiff injunctive relief against Defendants prohibiting them selling, transferring, mortgaging, hypothecating, allowing a lien to be placed upon, or taking such other and further action to divest and/or divert any other right, title and/or interest they may have in any asset, fund, or property they currently have or in which they become entitled other than the same being paid toward the satisfaction of Plaintiff's Judgment;

- e. Awards actual and consequential damages to be more fully proven at the trial of this case, plus pre-judgment interest and post judgment interest;
- f. Awards punitive damages; and
- g. Awards such other and further relief as this Court deems just and proper.

Respectfully Submitted,

HARRELL, MARTIN & PEACE, P.A.

/s/ Taylor A. Peace, Esq.

TAYLOR A. PEACE, ESQ. #100206

135 Columbia Avenue (Physical Address)

P.O. Box 1000 (Mailing Address)

Chapin, South Carolina 29036

Phone: (803) 345-3353

tpeace@hmp-law.com

Attorneys for Plaintiff

September 14, 2021
Chapin, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2021-CP-10-03640
Vicki Lynn Vergeldt, Individually, and as	)	
Successor Trustee of the John Vergeldt, Jr.	)	
Revocable Living Trust dated	)	PETITION FOR SUPPLEMENTAL
September 27, 1978	)	PROCEEDINGS
	)	
Plaintiff,	)	
	)	(Charleston County Judgment Roll
vs.	)	No.: 2021-CP-10-03640)
	)	
John Edward Vergeldt	)	(York County Judgment Roll
	)	No.: 2016-CP-46-00820)
Defendant.	)	
	)	

Plaintiff Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 ("Plaintiff"), by and through her undersigned counsel, respectfully allege and will show as follows:

1. That she obtained a Final Order/Judgment ("Judgment") against Defendant John Edward Vergeldt ("Defendant") in the case of Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 that was pending in the York County Court of Common Pleas under C/A No.: 2016-CP-46-00820 which awarded her and/or the John Vergeldt Jr. Revocable Living Trust dated September 27, 1978 ("Trust") damages against Defendant in the amount of Three Hundred Sixty One Thousand Three Hundred Ninety Two and 88/100 (\$361,092.88) Dollars plus interest at the legal post-judgment interest rate, said Judgment being filed by the Honorable Teasa Kay Weaver, Master-In-Equity for York County, on February 2, 2021.

2. That Plaintiff filed and transcribed the Judgment in the Office of the Charleston County Clerk of Court on August 6, 2021, and the same was given Judgment Roll No.: 2021-CP-10-03640.

3. That Plaintiff has failed and refused to pay any amounts toward the Judgment

4. That there is currently due and owing under the Judgment, after all credits and offsets have been given, the sum of Three Hundred Sixty-One Thousand Ninety-Two and 88/100 (\$361,092.88) Dollars with interest thereon from February 2, 2021 through the current date.

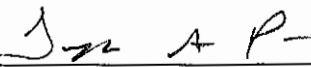
5. That, thereafter, an Execution Against Property was duly issued to the Sheriff of Charleston County against Defendant, and said Sheriff has returned same *Nulla Bona* as shown on the attached **Exhibit A**.

6. That, upon information and belief, Defendant has assets not exempt from levy which he has unjustly refused to apply toward satisfaction of the Judgment.

7. That Plaintiff is informed and believe that she is entitled under the laws and statutes of this State to have an examination of Defendant in supplementary proceedings to ascertain and discover any and all property and assets, real, personal, or mixed, and wheresoever situated, belonging to Defendant or in which Defendant could claim any interest, solely or in conjunction with any person, firm, corporation, or entity, and any or all of which is or should be made applicable by the Court to the payment of said debt represented by the Judgment. In addition, Plaintiff is informed and believes that she is entitled to the appointment of a Receiver of Defendant for any and all of the aforesaid property, assets, or effects which are so discovered or revealed in order to carry said Judgment into effect.

WHEREFORE, Plaintiff prays that this Court inquire into the matters hereinabove alleged and that it issue such Order or Orders granting the relief to which Plaintiff believes she is entitled, and for all expended and statutory costs allowable and which the Court may deem proper.

HARRELL, MARTIN & PEACE, P.A.

By: 

Taylor A. Peace, Esq., #100206
 135 Columbia Avenue (Physical Address)
 PO Box 1000 (Mailing Address)
 Chapin, South Carolina 29036
 Phone: (803) 345-3353
 Fax: (803) 345-9171
tpeace@hmp-law.com
 Attorneys for Vicki Lynn Vergeldt, Individually,
 and as Successor Trustee of the John Vergeldt, Jr.
 Revocable Living Trust dated September 27, 1978

SWORN to and subscribed before me
 this 12 day of May, 2022.



Notary Public for South Carolina
 My Commission Expires: 1/15/2030

WITNESS:

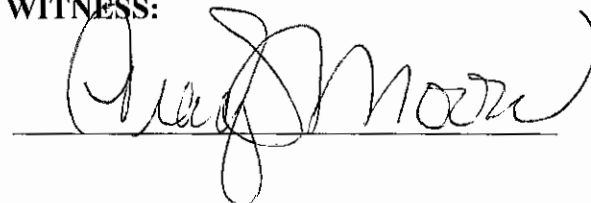


EXHIBIT A



County of Charleston, South Carolina

Sheriff Kristin R. Graziano

Service Number:
S22001537

Sheriff Number:

Attorney or Party without Attorney
HARRELL & MARTIN P.A.
P O BOX 1000
CHAPIN SC 29036
ATT: VICKI LYNN VERGELDT

Telephone Number:
(803) 345-3353

Court Use Only

Name and Address of Court

Charleston County
Court of Common Pleas
100 Broad St. Charleston, SC 29401

Hearing Date and Time

Case Number
2021CP1003640

Plaintiff: VICKI LYNN VERGELDT
Defendant: JOHN EDWARD VERGELDT

Return of Execution

I, Kristin R. Graziano, Sheriff of Charleston County, South Carolina; do hereby certify that I received the annexed on the 28th day of February, 2022 the following:

Judgement

An investigation was completed on the 8th day of March, 2022 within the County of Charleston, State of South Carolina. The judgement above is NO REAL PROPERTY FOUND, NO PERSONAL PROPERTY FOUND, NULLA BONA

Attest of Certified True Copy

[Signature]
Notary Public State of South Carolina
My Commission Expires: 7/27/2027

I am a South Carolina Sheriff and I certify that the foregoing is true and correct.
Kristin R. Graziano, Sheriff of Charleston County State of South Carolina
Date: 03/08/2022

By Deputy

[Signature]

Administrative Office

3691 Leeds Avenue
N. Charleston, SC 29405
~ Sheriff ~
Voice (843) 554-2230
Fax (843) 554-2243

Law Enforcement Division

3691 Leeds Avenue
N. Charleston, SC 29405
~ Patrol ~
Voice (843) 202-1700
Fax (843) 554-2234

Al Cannon Detention Center

3841 Leeds Avenue
N. Charleston, SC 29405
Voice (843) 529-7300
Fax (843) 529-7406

Judicial Center

100 Broad Street, Suite 381
Charleston, SC 29401
Voice (843) 958-2100
Fax (843) 958-2128



HARRELL, MARTIN
& PEACE, P.A.
ATTORNEYS AT LAW

L.K. "Trey" Harrell, III
Jeremy C. Martin
M. Alan Peace **
Taylor A. Peace
Andrea "Andi" Cornelison
Erik T. Norton

Robert W. Dibble, Jr. *
William Jennings (Bill) Buchanan *
Donald W. Tyler *
Thomas B. Jackson, III *

*Of Counsel
**Certified Mediator/Arbitrator

February 17, 2022

Charleston County Sheriff's Department
Attn: Civil Process
100 Broad Street, Suite 381
Charleston, SC 29401

Re: Vicki Lynn Vergeldt, et al. v. John Edward Vergeldt
Docket No.: 2021-CP-10-03640
HMP File No.: 3490.00001/TAP

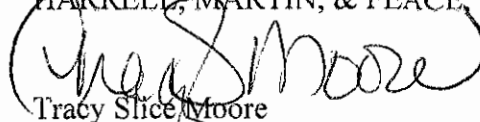
Dear Sir or Madam:

Enclosed please find the original and one copy of the *Execution Against Property* with regard to the above-captioned matter together with our check in the sum of \$25.00 which represents the execution fee for same. I have also enclosed documentation related to assets owned by the Defendant, John Edward Vergeldt. I would appreciate your fulfilling the Execution against the Defendant at the following address:

John Edward Vergeldt
1523 Star Flower Alley
Johns Island, SC 29455

Please call me should you have any questions concerning this matter. Your help is greatly appreciated.

Sincerely,
HARRELL, MARTIN, & PEACE, P.A.


Tracy Slice Moore
Paralegal to Taylor A. Peace

/tsm
Enclosures

ROA 00463

STATE OF SOUTH CAROLINA)
) EXECUTION AGAINST PROPERTY
COUNTY OF CHARLESTON)

TO THE SHERIFF OF THE COUNTY OF CHARLESTON:

WHEREAS, a Final Order ("Judgment") was entered by the Honorable Teasa K. Weaver, Master in Equity for York County, on February 2, 2021 in the Court of Common Pleas for York County, South Carolina, in a case styled as Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt Jr. Revocable Living Trust dated September 27, 1978 v. John Edward Vergeldt, Civil Action No. 2016-CP-46-00820, in favor of Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 ("Plaintiff/Judgment Creditor") against John Edward Vergeldt ("Judgment Debtor") awarding her damages in the amount of Three Hundred Sixty One Thousand Ninety Two and 88/100 (\$361,092.88) Dollars;

WHEREAS, a Transcript of the above referenced Judgment was docketed and filed in the Court of Common Pleas for Charleston County, South Carolina on the 6th day of August, 2021, was given Judgment Roll No.: 2021-CP-10-03640, and the sum of Three Hundred Sixty One Thousand Ninety Two and 88/100 (\$361,092.88) Dollars is now actually due thereon by John Edward Vergeldt, together with interest and costs as allowed by law;

THEREFORE, WE COMMAND YOU, that you satisfy the amounts due under the Judgment out of the personal property of the Judgment Debtor within your County; or if insufficient personal property cannot be found, then out of the real property in your County belonging to such Judgment Debtor on the day when the said judgment was so docketed in your County, or at any time thereafter in whose hands soever the same may be, and duly return this

Execution according to the law to the Clerk of the Court of Common Pleas for the County of Charleston.

This Execution Against Property is duly signed and attested to on behalf of the Office of the Clerk of Court, Charleston County Court of Common Pleas, at Charleston, South Carolina, this 14th day of February, 2022 and subscribed to by the below listed attorneys for Plaintiff/Judgment Creditor.

Office of the Clerk of Court
Charleston County Court of Common Pleas

HARRELL, MARTIN, & PEACE, P.A.

By: /s/Taylor A. Peace
Taylor A. PEACE, ESQ.
135 Columbia Ave
P.O. Box 1000
Chapin, South Carolina 29036
(803) 345-3353
Attorneys for Plaintiff/Judgment Creditor

Chapin, South Carolina

STATEMENT

Amount of Judgment	\$ <u>361,092.88</u>
Sheriff	\$ <u>25.00</u>
TOTAL	\$ <u>361,117.88</u>

The State of South Carolina,

County of Charleston

Vicki Lynn Vergeldt, Individually, and as Successor Trustee
of the John Vergeldt, Jr. Revocable Living Trust dated September 17, 1978

Plaintiff/Judgment Creditor

against

John Edward Vergeldt

Defendant/Judgment Debtor.

Execution Against Property

Sheriff of County of Charleston

Levy and Collect \$361,092.88
with interest from February 2, 2021

besides your fees, etc.

Attorney for Plaintiff/Judgment Creditor.

Received _____, 2022.

Sheriff

ROA 00466



Common Pleas

Case Caption: Vicki Lynn Vergeldt , plaintiff, et al VS John Edward Vergeldt

Case Number: 2021CP1003640

Type: Execution/Issued

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of
Court, by BLC

Electronically signed on 2022-02-17 12:07:20 page 4 of 4

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CIVIL ACTION NO.: 2021-CP-10-04257

Vicki Lynn Vergeldt, Individually, and as)
Successor Trustee of the John Vergeldt, Jr.)
Revocable Living Trust dated)
September 27, 1978)

**NOTICE OF MOTION AND
MOTION TO COMPEL**

Plaintiff,)

vs.)

John Edward Vergeldt and Teresa A. Shaw-)
Vergeldt,)

Defendants.)

**TO: DESA BALLARD, ESQ. AND HALEY A. HUBBARD, ESQ., BALLARD & WATSON
ATTORNEYS FOR DEFENDANT JOHN EDWARD VERGELDT**

**F. MILES ADLER, ESQ., ADLER LAW FIRM LLC
ATTORNEYS FOR DEFENDANT TERESA A. SHAW-VERGELDT**

YOU WILL PLEASE TAKE NOTICE that Plaintiff Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 (“Plaintiff”), by and through the undersigned counsel, will move before this Honorable Court ten (10) days after service hereof, or as soon thereafter as counsel may be heard, pursuant to Rule 37, SCRCPP, for an Order compelling Defendant John Edward Vergeldt (“John”) and Defendant Teresa A. Shaw-Vergeldt (“Teresa”) to produce the real property owned by them located at 1523 Star Flower Alley, Johns Island, South Carolina 29455 and to allow for the interior and exterior inspection thereof as well as all personal property identified therein as more fully described in *Plaintiff’s Second Set of Requests for Production to Defendant John Edward Vergeldt* and *Plaintiff’s Second Set of Requests for Production to Defendant Teresa A. Vergeldt* which were served on Defendants and/or their counsel on February 16, 2023, copies of which are attached hereto as **Exhibit A.**

This motion is made on the grounds that John has responded to the aforementioned discovery requests on March 20, 2023 by serving upon Plaintiff's counsel *Defendant John Edward Vergeldt Response to Second Set of Requests for Production* ("Response") in which Defendant objected to the requested discovery on the grounds there is no real property that is the subject of this action, there has been no order that addresses any particular property subject to execution, and examination of the real estate is not permitted at this stage. Copies of John's Response is attached hereto as **Exhibit B**. Plaintiff has not yet received any responses from Teresa although it is assumed she has the same or similar objections.

Plaintiff is informed and believes Teresa's failure to respond and John's objections are not proper and/or without basis as the pleadings in this matter directly relate to the above-named Defendants actions leading up to and during the pendency of this action regarding the Property and other assets and who has possession of same, the discovery of which is relevant to this matter under Rule 26, SCRPC and is not otherwise privileged.

Upon information and belief, Plaintiff is entitled to an Order of the Court requiring John and Terry to pay Plaintiff's attorney fees and costs related to this motion.

The motion will be based upon additional case and statutory law that may be applicable plus such other argument of counsel as may be appropriate.

The undersigned affirms, pursuant to Rule 11, SCRPC, that he spoke with John's counsel on May 2, 2023 in a good faith attempt to resolve the subject of the motion; however, no resolution could be obtained, and he has attempted to contact Teresa's counsel but received no reply (and assumes no resolution could be had anyway). The undersigned remains willing to communicate with opposing counsel to resolve this motion.

HARRELL, MARTIN & PEACE, P.A.

/s/ Taylor A. Peace, Esq.

Taylor A. Peace, Esq., S.C. Bar No. 100206
135 Columbia Avenue (Physical Address)
P.O. Box 1000 (Mailing Address)
Chapin, South Carolina 29036
(803) 345-3353
Attorneys for Plaintiff

May 3, 2023
Chapin, South Carolina

HMP HARRELL, MARTIN
& PEACE, P.A.
ATTORNEYS AT LAW

L.K. "Trey" Harrell, III
Jeremy C. Martin
M. Alan Peace **
Taylor A. Peace
Erik T. Norton
Jamie Anna Weller
George "Mick" Lusk, III

Robert W. Dibble, Jr. *
William Jennings (Bill) Buchanan *
Donald W. Tyler *
Thomas B. Jackson, III **

*Of Counsel
**Certified Mediator/Arbitrator

February 16, 2023

VIA E-mail and Regular First-Class Mail

Desa Ballard, Esq.
Haley A. Hubbard, Esq.
Ballard & Watson
P.O. Box 6338
West Columbia, South Carolina 29171

**Re: Vicki Lynn Vergeldt, as Successor Trustee of the John Vergeldt, Jr.
Revocable Living Trust dated September 27, 1978 v. John Edward
Vergeldt et. al.
C/A No.: 2021-CP-10-04257
HMP File No.: 3490.00001/TAP**

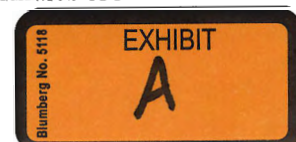
Dear Desa and Haley,

Per our e-mail correspondence on February 14, 2023, I understand your client has rejected Mrs. Vergeldt's informal request to inspect the real property at 1523 Star Flower Alley, Johns Island, South Carolina 29455 and its improvements and contents. Accordingly, please find enclosed *Plaintiff's Second Set of Requests for Production to Defendant John Edward Vergeldt* which is being issued pursuant to Rule 34, SCRPC and which are hereby served upon you.

At your earliest convenience, please provide me with some dates and times within the next thirty (30) days that the Property and its improvements and contents can be made available for inspection or let me know if your client will continue to object and refuse to do same. To the extent your client intends to object, please consider this my consultation under Rule 11, SCRPC to resolve the objections in good faith which I believe were set for in your e-mail correspondence referenced above.

Mailing Address: Post Office Box 1000, Chapin, South Carolina 29036
Physical Address: 135 Columbia Avenue, Chapin, South Carolina 29036
Telephone: 803-345-3353 • Fax: 803-345-9171
harrellmartinpeace.com

ROA 00471

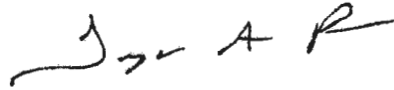


Ltr. regarding property inspection
February 16, 2023
Page 2

I look forward to hearing from you, and please feel free to reach out with any questions or concerns you may have.

Sincerely,

HARRELL, MARTIN & PEACE, P.A.

A handwritten signature in black ink, appearing to read 'Taylor A. Peace', with a stylized flourish at the end.

Taylor A. Peace, Esq.

cc: F. Miles Adler, Esq.
Enclosures

ELECTRONICALLY FILED - 2023 May 03 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2021CPI1004257

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CIVIL ACTION NO.: 2021-CP-10-04257

Vicki Lynn Vergeldt, Individually, and as)
Successor Trustee of the John Vergeldt, Jr.)
Revocable Living Trust dated)
September 27, 1978)

Plaintiff,)

vs.)

John Edward Vergeldt and Teresa A. Shaw-)
Vergeldt,)

Defendants.)

**PLAINTIFF'S SECOND SET OF
REQUESTS FOR PRODUCTION TO
DEFENDANT JOHN EDWARD
VERGELDT**

**TO: DESA BALLARD, ESQ. AND HALEY A. HUBBARD, ESQ., BALLARD & WATSON
ATTORNEYS FOR DEFENDANT JOHN EDWARD VERGELDT**

Pursuant to Rules 26(b) and 34(a)(2) of the South Carolina Rules of Civil Procedure, Plaintiff Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 ("Plaintiff") requests that Defendant John Edward Vergeldt ("Defendant") produce the following property and lands within thirty (30) days from the date hereof for physical inspection, measuring, surveying, photographing, and/or appraisal by Plaintiff and/or her agent or representative:

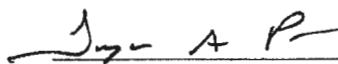
REQUESTS FOR PRODUCTION

1. The real property subject of this action located in the County of Charleston, State of South Carolina commonly referred to as 1523 Star Flower Alley, Johns Island, South Carolina 29455 ("Property").

2. The interior and exterior of the single-family residence located on the Property and any attendant fixtures, appurtenances and other improvements located thereon.

3. Any personal property in the possession and/or control of the Defendant located on or in the Property as of the date of service of this request including, but not limited to, motor vehicles, water or other recreational vehicles, equipment, guns, jewelry, tools, artwork, furniture, electronic devices (i.e. televisions, sound systems, gaming systems, etc...), coin collections, and other collectibles and memorabilia.

HARRELL, MARTIN & PEACE, P.A.



TAYLOR A. PEACE, ESQ.
135 Columbia Avenue (Physical Address)
P.O. Box 1000 (Mailing Address)
Chapin, South Carolina 29036
Phone: (803) 345-3353
Fax: (803) 345-9171
tpeace@hmp-law.com

February 16, 2023
Chapin, South Carolina

CERTIFICATE OF SERVICE

I, Tracy Slice Moore, paralegal to Taylor A. Peace, Esq., of the firm of Harrell, Martin & Peace, P.A., do hereby certify that I have served a copy of the below named document(s) upon the parties listed below by U.S. Mail, postage prepaid, and addressed as follows:

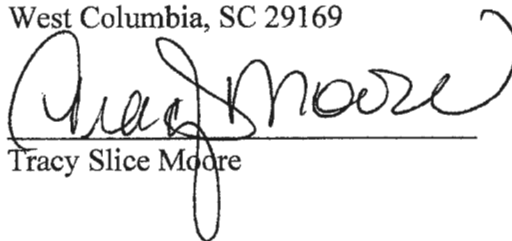
DOCUMENTS SERVED:

**PLAINTIFF'S SECOND SET OF REQUESTS FOR
PRODUCTION TO DEFENDANT JOHN EDWARD
VERGELDT**

SERVED:

F. Miles Adler, Esq.
Via Email: miles@adlerlaw.partners

Desa Ballard, Esq.
Haley A. Hubbard, Esq.
Ballard & Watson
226 State Street
West Columbia, SC 29169



Tracy Slice Moore

February 16, 2023



HARRELL, MARTIN
& PEACE, P.A.
ATTORNEYS AT LAW

L.K. "Trey" Harrell, III
Jeremy C. Martin
M. Alan Peace **
Taylor A. Peace
Erik T. Norton
Jamie Anna Weller
George "Mick" Lusk, III

Robert W. Dibble, Jr. *
William Jennings (Bill) Buchanan *
Donald W. Tyler *
Thomas B. Jackson, III **

*Of Counsel
**Certified Mediator/Arbitrator

February 16, 2023

VIA E-mail and Regular First-Class Mail

F. Miles Adler, Esq.
Adler Law Firm, LLC
P.O. Box 4743
Pawleys Island, South Carolina 29585

**Re: Vicki Lynn Vergeldt, as Successor Trustee of the John Vergeldt, Jr.
Revocable Living Trust dated September 27, 1978 v. John Edward
Vergeldt *et. al.*
C/A No.: 2021-CP-10-04257
HMP File No.: 3490.00001/TAP**

Dear Miles,

Per our e-mail correspondence on February 14, 2023, I understand your client has rejected Mrs. Vergeldt's informal request to inspect the real property at 1523 Star Flower Alley, Johns Island, South Carolina 29455 and its improvements and contents. Accordingly, please find enclosed *Plaintiff's Second Set of Requests for Production to Defendant Teresa A. Shaw-Vergeldt* which is being issued pursuant to Rule 34, SCRPC and which are hereby served upon you.

At your earliest convenience, please provide me with some dates and times within the next thirty (30) days that the Property and its improvements and contents can be made available for inspection or let me know if your client will continue to object and refuse to do same. To the extent your client intends to object, please consider this my consultation under Rule 11, SCRPC to resolve the objections in good faith which I believe were set for in your e-mail correspondence referenced above.

Mailing Address: Post Office Box 1000, Chapin, South Carolina 29036
Physical Address: 135 Columbia Avenue, Chapin, South Carolina 29036
Telephone: 803-345-3353 • Fax: 803-345-9171
harrellmartinpeace.com

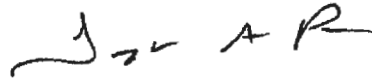
ROA 00476

Ltr. regarding property inspection
February 16, 2023
Page 2

I look forward to hearing from you, and please feel free to reach out with any questions or concerns you may have.

Sincerely,

HARRELL, MARTIN & PEACE, P.A.

A handwritten signature in black ink, appearing to read 'T. A. R.', likely representing Taylor A. Peace.

Taylor A. Peace, Esq.

cc: Desa Ballard, Esq.
Enclosures

ELECTRONICALLY FILED - 2023 May 03 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1004257

ROA 00477

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CIVIL ACTION NO.: 2021-CP-10-04257

Vicki Lynn Vergeldt, Individually, and as)
Successor Trustee of the John Vergeldt, Jr.)
Revocable Living Trust dated)
September 27, 1978)

Plaintiff,)

vs.)

John Edward Vergeldt and Teresa A. Shaw-)
Vergeldt,)

Defendants.)

**PLAINTIFF'S SECOND SET OF
REQUESTS FOR PRODUCTION TO
DEFENDANT TERESA A. SHAW
VERGELDT**

**TO: F. MILES ADLER, ESQ., ADLER LAW FIRM, LLC
ATTORNEYS FOR DEFENDANT TERESA A. SHAW-VERGELDT**

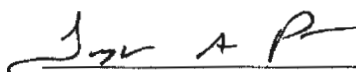
Pursuant to Rules 26(b) and 34(a)(2) of the South Carolina Rules of Civil Procedure, Plaintiff Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 ("Plaintiff") requests that Defendant Teresa A. Shaw-Vergeldt ("Defendant") produce the following property and lands within thirty (30) days from the date hereof for physical inspection, measuring, surveying, photographing, and/or appraisalment by Plaintiff and/or her agent or representative:

REQUESTS FOR PRODUCTION

1. The real property subject of this action located in the County of Charleston, State of South Carolina commonly referred to as 1523 Star Flower Alley, Johns Island, South Carolina 29455 ("Property).
2. The interior and exterior of the single-family residence located on the Property and any attendant fixtures, appurtenances and other improvements located thereon.

3. Any personal property in the possession and/or control of the Defendant located on or in the Property as of the date of service of this request including, but not limited to, motor vehicles, water or other recreational vehicles, equipment, guns, jewelry, tools, artwork, furniture, electronic devices (i.e. televisions, sound systems, gaming systems, etc...), coin collections, and other collectibles and memorabilia.

HARRELL, MARTIN & PEACE, P.A.



TAYLOR A. PEACE, ESQ.

135 Columbia Avenue (Physical Address)

P.O. Box 1000 (Mailing Address)

Chapin, South Carolina 29036

Phone: (803) 345-3353

Fax: (803) 345-9171

tpeace@hmp-law.com

February 15, 2023
Chapin, South Carolina

CERTIFICATE OF SERVICE

I, Tracy Slice Moore, paralegal to Taylor A. Peace, Esq., of the firm of Harrell, Martin & Peace, P.A., do hereby certify that I have served a copy of the below named document(s) upon the parties listed below by U.S. Mail, postage prepaid, and addressed as follows:

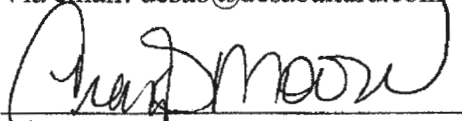
DOCUMENTS SERVED:

**PLAINTIFF'S SECOND SET OF REQUESTS FOR
PRODUCTION TO DEFENDANT TERESA A. SHAW-
VERGELDT**

SERVED:

F. Miles Adler, Esq.
Adler Law Firm
PO Box 4743
Pawleys Island, SC 29585

Desa Ballard, Esq.
Via email: desab@desaballard.com



Tracy Slice Moore

February 16, 2023



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M Watson III
Haley Hubbard

226 State Street West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

March 20, 2023

Via Electronic Mail (tpeace@hmp-law.com)
Taylor Peace, Esquire
Harrell, Martin & Peace, P.A.
Post Office Box 1000
Chapin, South Carolina 29036

Re: *Vicki Lynn Vergeldt, et al. v. John Edward Vergeldt, et al.*
Case No: 2021-CP-10-04257

Dear Taylor:

Please find enclosed and hereby served upon you is Defendant John Edward Vergeldt's Response to Second Set of Requests for Production. If you have any questions, please do not hesitate to call. With warm personal regards, I am,

Sincerely yours,

Haley A. Hubbard

Haley Hubbard
haley@desaballard.com

Enclosures

cc: Via Electronic Mail
F. Miles Adler, Esquire
John Vergeldt

ELECTRONICALLY FILED - 2023 May 03 4:10 PM - CHARLESTON - COMMON PLEAS - CASE#2021CPI1004257



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CIVIL ACTION NO.: 2021-CP-10-04257

Vicki Lynn Vergeldt, Individually, and as)
Successor Trustee of the John Vergeldt, Jr.)
Revocable Living Trust dated)
September 27, 1978)

Plaintiff,)

vs.)

John Edward Vergeldt and Teresa A. Shaw-)
Vergeldt,)

Defendants.)

**DEFENDANT JOHN EDWARD
VERGELDT RESPONSE TO
SECOND SET OF REQUESTS FOR
PRODUCTION**

TO: TAYLOR PEACE, ESQ., ATTORNEY FOR PLAINTIFFS

REQUESTS FOR PRODUCTION

1. The real property subject of this action located in the County of Charleston, State of South Carolina commonly referred to as 1523 Star Flower Alley, Johns Island, South Carolina 29455 ("Property").

RESPONSE: Defendant objects to this request. There is no real property that is the subject of this action. This is an action for collection. There has been no order that addresses whether any particular property is subject to execution. Examination of a particular piece of real estate is not permitted at this stage, if at all, in an action for collection. Furthermore, this request is premature since it has not been determined whether Plaintiff has any right to the Property.

2. The interior and exterior of the single-family residence located on the Property and any attendant fixtures, appurtenances and other improvements located thereon.

RESPONSE: Defendant objects to this request. There is no real property that is the subject of this action. This is an action for collection. There has been no order that addresses whether any particular property is subject to execution. Examination of a particular piece

of real estate is not permitted at this stage, if at all, in an action for collection. Furthermore, this request is premature since it has not been determined whether Plaintiff has any right to the Property.

3. Any personal property in the possession and/or control of the Defendant located on or in the Property as of the date of service of this request including, but not limited to, motor vehicles, water or other recreational vehicles, equipment, guns, jewelry, tools, artwork, furniture, electronic devices (i.e. televisions, sound systems, gaming systems, etc...), coin collections, and other collectibles and memorabilia.

RESPONSE: Defendant objects to this request. There is no real property that is the subject of this action. This is an action for collection. There has been no order that addresses whether any particular property is subject to execution. Examination of a particular piece of real estate is not permitted at this stage, if at all, in an action for collection. Furthermore, this request is premature since it has not been determined whether Plaintiff has any right to the Property or personal property therein.

Respectfully submitted,

s/ Desa Ballard

Desa Ballard (SC Bar No. 498)

Harvey M. Watson III (SC Bar No. 74053)

Haley Hubbard (SC Bar No. 103195)

BALLARD & WATSON

226 State Street

West Columbia, South Carolina 29169

Telephone 803.796.9299

Facsimile 803.796.1066

desab@desaballard.com

harvey@desaballard.com

haley@desaballard.com

ATTORNEYS FOR DEFENDANT
JOHN EDWARD VERGELDT

March 20, 2023

I, Beth Cogan, an employee of the Ballard & Watson Attorneys at Law certify that I have this date served a copy of Response to 2nd RFP on all counsel of record and Pro Se parties by electronic mail.
Date: 3/20/2023 Signed: Beth K Cogan