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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Hon. Dale Van Slambrook, Master in Equity

Case No.: 2023-CP-0801531
Appellate Case No.: 2024-000867

Michael L. Woods, Appellant

vs.

Wyman Jean Woods, Jr., Trustee of the Wyman and Marguerite Woods Family Trust utd 01/16/98, Respondent

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FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Did the Circuit Court err by affirming the Probate Court's ruling that Bank of America accounts titled jointly between Appellant and the Decedent constituted assets of the Decedent's Trust?

II. Did the Circuit Court err by affirming the Probate Court's ruling that the Respondent's counterclaims for setoff to the Appellant's Trust Distribution for sums the Appellant received from Bank of America accounts titled jointly between Decedent and Appellant were claims that belonged to the Decedent's Trust?

STATEMENT OF THE CASE

This case was originally heard at the trial level by the Berkeley County Probate Court on November 8, 2022, and the Final Order of the Probate Judge was entered April 17, 2023. The Probate Judge denied the Appellant's Motion to Alter or Amend Judgment, and the case was appealed to the Court of Common Pleas pursuant to §62-1-308, S.C. Code Ann. The matter was subsequently referred to the Master in Equity for adjudication and to enter final judgment on the appeal. By consent of the parties, the Master in Equity considered the appeal on the Briefs without oral argument, and the parties further stipulated to the contents of the Record. On April 26, 2024, the Master in Equity entered an Order affirming the decision of the Probate Court. Appellant now appeals to the South Carolina Court of Appeals.

The subject matter of the controversy giving rise to these proceedings is the Wyman and Marguerite Woods Family Trust utd 01/16/98 ("Trust") (R.pp. 374-424), which is a trust established by the parties' parents in 1998 and later twice amended. At trial, the Appellant and Respondent agreed that they are bound by the trust instrument, as amended, and its terms are not in dispute. The parties' disagreement is primarily about money and what each is entitled to receive. Their inability to come to a meeting of the minds stems from a serious difference of opinion as to the Respondent Trustee's accounting of trust funds and the methodology used by the Respondent

Trustee to construct a proposal for distribution, particularly as it related to certain in-kind allocations to the Appellant and values assigned to them, as well as whether certain other monies received by the Appellant should be considered in the calculations regarding final distributions and deemed an advance to him from trust assets.

The case commenced with the filing of a Summons and Petition by the Appellant, Michael L. Woods ("Michael"), for Judicial Settlement of Trustee Accounting, wherein Michael sought the Probate Court's review of a proposed final distribution and accounting provided by the Respondent, Wyman Jean Woods, Jr., ("Jean") as Trustee of the Trust, and a directive from the Court as to how distributions should be made. (R.pp. 11-36). Jean, as Trustee, Answered the Petition and Counterclaimed for a declaratory judgment as to the relative rights and relations of the parties generally and specifically as it relates to monies Jean alleged were owned by the Trust, but which he claimed were appropriated by Michael for his personal use from certain Bank of America accounts. (R.pp. 37-120).

On April 17, 2023, the Probate Judge entered his Final Order wherein the Probate Court (i) accepted an interim accounting and an amended proposal for distribution that Jean had produced at trial, (ii) declared that certain multi-party Bank of America accounts held by Michael and Wyman Jean Woods, Sr. ("Decedent") were assets of the Trust, (iii) directed calculation of certain offsets from Michael's Trust distribution commensurate with funds he received from the multi-party Bank of America accounts while Decedent was living, (iv) directed distribution of the sums then due and owing to Michael pursuant to the Judge's findings and conclusions, and (v) declared an amount of the "all in" total distribution that both Jean and Michael were due from the Trust by virtue of the Court's findings and the added inclusion of certain sums from the Bank of America accounts Michael received prior to Decedent's death. (R.pp. 1-9).

On April 27, 2023, Michael served a Motion pursuant to Rules 52 and 59, SCRCP, to Alter or Amend or for New Trial wherein he requested the Probate Court to withdraw, reconsider, or alter or amend findings of fact and conclusions of law (i) that the multi-party Bank of America accounts held by Michael and the Decedent constituted trust assets, and (ii) that there was no evidence of any intent by Decedent to change his absolute ownership of all monies in said accounts. (R.pp. 121-125). Michael's Motion further requested the Court reconsider or otherwise rule upon Michael's arguments that Jean's counterclaim regarding the Bank of America accounts constituted claims that would have to be brought by an Estate of the Decedent and not by Jean as either Trustee of the Trust or individually. Jean served his Return to Michael's Motion to Alter or Amend on May 16, 2023 (R.pp 126-136), after which the Probate Court entered its Order on May 23, 2023, dismissing Michael's Motion without hearing (R.p. 10). On appeal to the Court of Common Pleas, and following reference to the Master in Equity, the Master in Equity entered an Order affirming the Order of the Circuit Court. (R.pp. 1402-1416).

STANDARD OF REVIEW

"If the proceeding in the probate court is in the nature of an action at law, the [appellate] court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." *Howard v. Mutz,* 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). "On the other hand, if the probate proceeding is equitable in nature, the [appellate] court, on appeal, may make factual findings according to its own view of the preponderance of the evidence." *Id.* at 361-62, 434 S.E.2d at 257-58. To make this determination, the appellate court must look to the essential character of the cause of action alleged by the petitioner in the court below. *Dean v. Kilgore*, 313 S.C. 257, 437 S.E.2d 154 (Ct.App. 1993). If the essential character of the petitioner's cause of action is grounded on equitable rights and equitable relief is sought,

the case is regarded as equitable and the appellate court has jurisdiction to make findings in accordance with its own view of the preponderance of the evidence. *Eagles v. South Carolina Nat'l Bank*, 301 S.C. 402, 408 392 S.E.2d 187, 191 (Ct.App. 1990).

The essential character of Michael's cause of action is an action for an accounting. An action for accounting lies in equity and seeks a calculation and judgment of the account balances between the parties. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 427, 673 S.E.2d 448, 453 (2009). Accordingly, the Master in Equity applied the *de novo* standard of review, which standard also applies on appeal to the Court of Appeals.

ARGUMENT

I. The multi-party Bank of America accounts established between the Decedent and Michael did not constitute assets of the Trust for which any sums Michael withdrew from the account(s) while Decedent was living should be offset from Michael's final Trust distribution after the Decedent's death.

On January 16, 1998, the Decedent and his wife, Margeurite, executed the Wyman and Marguerite Woods Family Trust. As cited by the Probate Court's Final Order, Article Three of the Trust described assets the Decedent and his wife intended to transfer or assign into their trust at that time:

> After this trust is duly executed, we will execute and deliver all deeds, assignments, bills of sale, written instructions and other legal documents necessary to convey and register all of our assets that we choose to place in trust under this trust to be owned by the trustee(s) of this trust and held and administered under the terms and conditions of this trust. Assets which are evidenced by titles or deeds currently being transferred to the trustee(s) of this trust are listed on Schedule A, which is attached to this trust and made a part of this trust. We hereby transfer to this trust all assets not requiring titles or deeds, including but not limited to our furniture, wearing apparel, and personal possessions. Additionally, the grantor(s) are now holding and will hold, solely and exclusively for and on behalf of such trust, the following: any and all properties of all kinds, whether presently owned or hereafter acquired including, without limitation:

> bank accounts, certificates of deposit, mutual and money market funds of all kinds, securities, agency and custody accounts, notes, and real estate wherever located.
>
> All such property is hereby transferred to and the same shall be owned by such trust.
>
> This declaration shall apply even though record ownership or title, in some instances, may, presently or in the future, be registered in the individual name or names of either of us, in which event such record ownership shall hereafter be deemed held in trust even though such trusteeship remains undisclosed.
>
> All assets transferred to the trustee(s) of this trust, whether now or at a later date, shall become part of the trust estate and be subject to all terms and provisions of this trust document.
>
> (R.pp. 3-4; R.p. 391)

Following trial, the Probate Court concluded that certain Bank of America accounts which the Decedent established between himself and Michael as joint, multi-party accounts on January 30, 2017, still remained solely the assets of the Decedent during his lifetime, and thus constituted assets of the Trust pursuant to the general and blanket declaration cited above. (R.p. 8). The trial court held that there was no evidence before it of any intent by the Decedent to change his absolute ownership of all monies within the Bank of America accounts during his lifetime in proportion to the Decedent's contributions. (R.p. 8). As a result, the trial court concluded that monies Michael received from the joint Bank of America accounts during the Decedent's lifetime were chargeable as a set-off to his final distributive share from the Trust. (R.p. 8). On appeal, the Master in Equity agreed with the Probate Court and adopted the Findings of the Probate Court, including the finding that there was "no evidence . . . of an intent by Wyman Woods to change his absolute ownership of all monies within the Bank of America accounts during his lifetime in proportion to the Decedent's contributions, which was 100%." (R.pp. 1407-1408).

Michael contends, however, that the Record before the court is replete with evidence of actions by the Decedent and various circumstances attendant thereto that are indicative of an intent

to possess the accounts in a form and manner that, contractually and operatively, resulted in their removal from the Trust's purview. Chief among this body of evidence are the express contractual terms that governed ownership of the accounts between the Decedent and Michael, as well as their respective entitlement to payments therefrom. When the express contractual terms and declarations made by the Decedent on January 30, 2017 when he established the joint accounts at issue are considered in conjunction with the entire body of evidence—particularly the circumstances surrounding the creation of the accounts and the dynamics of the familial relationship which led to the initiation of this lawsuit—the trial court's findings and conclusions regarding the Decedent's intent and the ownership of those accounts, and the Master's affirmation of the same, are respectfully in error.

A. Michael's objection to the Trustee's accounting was the genesis of the Trustee's sudden desire to qualify and include joint Bank of America accounts as Trust assets, diverting attention from the erroneous and self-serving distribution scheme he initially wanted to impose upon Michael, and clouding the full body evidence of Decedent's actual intent and contractual arrangements.

Following the deaths of both the Decedent and Marguerite, the Trust—as twice amended—directed the outright equal distribution of all trust assets between Michael and Jean. Jean is the Trustee of the Trust. Through a cover letter from his attorney dated October 26, 2020, Jean provided an accounting cover sheet/proposal for distribution, along with various other documents in support of his calculations. (R.pp. 44-120). As more fully outlined in Michael's objection letter (R.pp. 24-26) and in his Petition to the Probate Court (R.pp. 11-38), Michael claimed that Jean's accounting and proposal for distribution employed an erroneous and improper method of calculation that amounted to a "double-dip" that resulted in the value of Jean's total distribution being $71,000.00 more than the total value of both the cash and in-kind distributions that Jean proposed and elected to assign solely unto Michael. (R.pp. 136-138).

Of the in-kind distributions that Jean elected to place solely in Michael's distribution column, one item was a nearly twenty-year-old promissory note from 2011 (the "Ferira Note") to which Jean assigned the note's original face value of $50,000.00 as a reduction to Michael's cash distribution. (R.pp. 87-88). Through counsel, Michael objected to not only his brother's disparate method of calculation, but also to the values Jean assigned to the various in-kind distributions, including whether the Ferira Note was even an asset capable of collection. (R.pp. 24-26). Jean's response to Michael's objections resulted in only a slight concession of $4,856.44 to the valuation Jean was willing to assign to certain chattels. (R.pp. 30-32). Jean's reply unabashedly refused to acknowledge any form of error in the unbalanced method of calculation that had been brought to his attention and made no concessions regarding the Ferira Note. (R.pp. 30-32).

As a result of Michael's November 2020 objection to the proposed accounting and distribution, Jean retained Michael's share in the Trust. However, from October 2020 through the date of trial on November 8, 2022, Jean proceeded to distribute to himself at least $702,917.32. (R.p. 327, line 25 – p. 328, line 7; p. 344, line 15 – p. 346, line 19).[1] With his objections to the accounting uncorrected and his share of the Trust being withheld, Michael ultimately filed his petition with the Probate Court seeking judicial review, direction, and instruction regarding the Trustee's accounting and how distributions should be made. Jean answered the petition counterclaiming, *inter alia*, that "there were bank accounts belonging to Wyman J. Woods, Sr. funded with monies of [Wyman J. Woods, Sr.] which were declared and intended to be trust assets pursuant to the terms and provisions of the trust, as amended, which assets were accessed by [Michael] and appropriated and spent for his personal uses and purposes, without permission of authority" and that Michael should be made to account for the same. (R.p. 41). Jean's

[1] It was not until entry of a consent order in March 2022 that Michael eventually received a partial distribution of $200,000.00 pending final trial. (R.p. 323, line 22 – p. 324, line 3).

counterclaim was the first time Jean had actually claimed that any such funds or accounts constituted property of the actual Trust itself. Although Jean's letter rebuffing Michael's initial objections to the accounting did allude to funds which Jean alleged had passed through Michael's hands, and that Jean knew $124,000.00 was in the Decedent's checking account when Michael was named as the Decedent's agent under durable power of attorney, he did not claim they were funds of the Trust. (R.pp. 32-34).

The Record is clear that although Jean's initial Trust accounting and proposal for distribution raised no claim to any such funds or attempted to qualify such funds or accounts as belonging to the Trust, and although Jean had been a sole or co-Trustee since at least 2012 through the *entire* period of the joint account's existence without making any actual claim or assertion of control or ownership of the account as Trustee[2], Jean suddenly wanted the Decedent and Michael's joint Bank of America accounts to constitute Trust assets now that his incorrect accounting methods were called into question and would not result in the "double-dip" cash windfall he had wanted. (R.p. 340, line 5 – p. 342, line 8). Jean testified his only reason for not pursuing a claim to the Bank of America funds any earlier than his 2021 counterclaim was that Jean simply did not want to sue his brother and he did not feel he had sufficient knowledge of the Bank of America accounts or how those funds were being used in order to make such a claim. (R.p. 302, line 6 – p. 306, line 23; R.p. 342, line 24 -p. 344, line 14).

Jean's professed ignorance of the accounts, however, squarely contradicts the contents of his December 2020 reply to Michael's accounting objections wherein Jean expressly claimed knowledge that the Decedent's Bank of America account held at least $124,000.00 when Jean alleged Michael became the Decedent's agent under power of attorney in 2017. Jean's letter also

[2] (R.p. 342, line 24 – p. 344, line 21; R.p. 346, line 21 – p. 347, line 12).

further claimed that at least $450,000.00 "passed through [Michael's] hands over the last 44 months." (R.p. 33). This evidence reflects Jean clearly knew of significant funds passing through the Bank of America accounts, yet he still did not qualify or claim those funds as assets of the Trust or even bother to investigate the same until his self-serving accounting was going to be subjected to court review.

Rather, Jean's only prior interest in the accounts came through a letter from his attorney dated December 26, 2019, wherein Jean asked for an itemized accounting of all receipts and disbursements made by Michael <u>as the Decedent's agent on behalf of the Decedent</u> from the date of April 18, 2017 to present—with the date of April 18, 2017 representing the date the Decedent appointed Michael as his agent under power of attorney. (R.p. 1287). Jean's request for that information, however, was only made in response to a letter from an attorney that Michael had hired to request, in part, an accounting from Jean and production of other information as to Jean's activities involving the sale of trust assets. (R.pp. 1285-1286). Notably, at the time of Michael's letter to Jean, Michael was not even aware that Jean was the sole acting Trustee of the Trust and that Jean had been the sole acting Trustee for quite some time. (R.p. 219, line 25 – p. 221, line 5).

Although the December 2019 letters between Michael and Jean requested certain accounting information referencing their respective fiduciary or agency capacities, those requests were only made approximately six months preceding the Decedent's death in June 2020. Neither Jean nor Michael provided the requested information to the other at that time, and no such competing requests or demands had ever been made in the years preceding. Again, it was not until Michael sought court review of Jean's clearly erroneous double-dip accounting method and the perceived inequities of assigning all questionably valued in-kind distributions to Michael's

distribution column that Jean looked to other accounts and funds that the Decedent and Michael had maintained outside of the Trust for years. (R.p. 342, line 24 – p. 347, line 5).

By trying to lay a trust claim upon funds passing through the Bank of America account held jointly between the Decedent and Michael, Jean was able to obfuscate the glaring accounting inequities he had initially attempted to foist upon his brother, ultimately delaying distributions to Michael for nearly two years while otherwise distributing to himself and enjoying $702,000.00 free from the trust. The obfuscation worked, and the trial court set aside the errors and inequities of Jean's initial accounting without any comment as to the impropriety of his attempted double-dip and his unwavering insistence to assign the Ferira Note to Michael. Notably, the trial court's conclusion to include the Bank of America funds as Trust assets, and affirmed by the Master, nearly equaled the total cash sum Jean had originally tried to deduct from Michael's final distribution and add to his own under the initial and erroneous accounting method. Michael respectfully contends that the trial court's findings and conclusions, as affirmed by the Master, regarding funds of the multi-party accounts that he held with his father are in error on the basis the accounts and the funds therein constituted the joint property of both Michael and his father to which they held joint entitlement to withdraw by virtue of the plain language of their contractual agreement with Bank of America.

B. There exists clear and convincing evidence of intent that the Bank of America multi-party account(s) were not funds of the Trust and that funds were intended to be owned by both the Decedent and Michael, regardless of source.

The trial Judge concluded "[t]here is no evidence before me of any intent by Wyman Woods to change his absolute ownership of all monies in the Bank of America accounts during his lifetime in proportion to his contributions, which was 100%." (R.p 8). The trial court further concluded that "[Michael] withdrew monies from the Bank of America during the lifetime of

Wyman Woods for non-Trust uses without authority" and "[t]he language of the Trust cited above and otherwise is plain and specific by its terms that the Bank of America monies were Trust assets." (R. p. 8). On appeal, the Master adopts these findings and conclusions, generally holding that the signature card agreements entered by Michael and the Decedent do not constitute clear and convincing evidence of an intent by the Decedent to alter the statutory presumptions of ownership of joint accounts. (R.pp. 1410-1414). Appellant respectfully argues that these conclusions are contrary to the total body and weight of the evidence presented, especially the plain language of the contracts executed by Michael and the Decedent with Bank of America when establishing the accounts.

On January 30, 2017, the Decedent and Michael executed signature cards for various accounts then held by the Decedent with Bank of America. (R.pp. 451-458). The signature cards designated the ownership of the accounts as joint with rights of survivorship, constituting a multi-party account. With regard to multi-party accounts, S.C. Code Ann. § 62-6-103, provides:

> (a) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to Section 62-6-202(c), either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.
>
> (b) An account established after January 1, 2014, whether in the form prescribed in Section 62-6-104 or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship, and with or without a POD designation or an agency designation, within the meaning of this subpart, and is governed by this article.

The multi-party ownership created by the Decedent and Michael did not designate any form of agency between them, nor did the accounts designate a pay on death beneficiary. Pursuant to statute, and by the express terms of the acknowledgment and agreement section of the signature cards (located immediately below each ownership designation section of the forms), each joint

account with right of survivorship was payable to "…the surviving co-owner(s) if a co-owner dies." (R.pp. 451, 453, 455).

Neither Jean as the Trustee nor the trial court asserted that any funds remaining on deposit at the time of the Decedent's death were due to the Trust. In other words, the contract terms agreed to between the Decedent and Michael and Bank of America within the Signature Card Agreement controlled the disposition of the funds at that point in time, and it appears to be the position of both Jean and the trial court that any funds in the account lost any characterization as trust assets when the Decedent died. However, Jean and the court contend that the funds in the account while the Decedent was living belonged solely to the Decedent, and thus to the Trust, and that Michael had no rights to withdraw or receive any funds contributed by the Decedent despite the joint account designation. While this view comports with the statutory presumption of ownership during the joint lives account holders as detailed more fully below, it fails to give effect to the express terms of the Bank of America account agreement which in and of itself altered the statutory presumption through clear and unambiguous terms by declaring that the accounts were "…the property of each co-owner and payable to either co-owner…" (R.pp. 451, 453, 455). When considered in conjunction with the Decedent's changes and alterations to his agency relationships under durable power of attorney as more fully detailed below, the overall body of evidence lends credence to the Decedent's intent.

Both the Probate Court Order and the Master's Order cite S.C. Code Ann. § 62-6-201(A) regarding account ownership during the lifetime of the account owners: "During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent." (R.p. 7). Each

Court further cites portions of the Reporter's Comments, particularly in Footnote 1 of the Probate Court's Final Order:

> This section reflects the assumption that a person who deposits funds in an account normally does not intend to make an irrevocable gift of all or any part of the funds represented by the deposit. Rather, the person usually intends no present change of beneficial ownership. The section permits parties to accounts to be as definite, or as indefinite, as they wish in respect to the matter of how beneficial ownership should be apportioned between them. The theory of these sections is that the basic relationship of the parties is that of individual ownership of values attributable to their respective deposits and withdrawals, and not equal and undivided ownership that would be an incident of joint tenancy.
>
> (R.p. 7).

Absent from the Probate Court Order's Footnote, however, is the following language from the Reporter's Comments: "The assumption that no present change of beneficial ownership is intended may be disproved by showing that a gift was intended." The Master's Order likewise does not address this portion of the Reporter's Comment as to intent. In the case before the Court, on *de novo* review, there are several key items of evidence within the Record that show the Decedent's intent to share beneficial ownership with Michael, thus removing claims of ownership of the Bank of America funds from the Trust via the Trust's blanket assignment and declaration from 1998.

1. **Each Signature Card Agreement contains an express acknowledgment and agreement by the Decedent and Michael to unequivocal terms, conditions, and statements of intent therein that all funds on deposit belonged to each party as the owners thereof, and making no distinction between the parties' entitlement beginning January 30, 2017.**

The evidence reflects that for many years, the Decedent maintained his accounts as individual personal accounts with Bank of America (R.pp. 807-1,136). On July 27, 2016, the Decedent executed a durable power of attorney naming Jean as the Decedent's agent. (R.pp. 457-464). Shortly thereafter, Jean began executing checks from the Decedent's accounts, designating "attorney-in-fact" below most of his signatures on the checks. (R.pp. 1,181-1,135). On November

15, 2016, Jean executed at least one Signature Card Agreement at Bank of America adding himself to Decedent's account number ending in 4951, but specifically and solely in the capacity of an agent under power of attorney and leaving the account as an individually owned account of the Decedent. (R.pp. 455-456). In and around the same time, the bank statements for Decedent's other account numbers ending in 6145 and 4342 also began reflecting Jean's name preceded by his agency designation of "POA". (R.pp. 1,121-1,138). The bank statements also began reflecting Jean's mailing address in Moncks Corner, South Carolina, instead of the Decedent's mailing address on Johns Island, South Carolina.

However, the Decedent subsequently presented to his estate planning attorney, Michael Sgobbo, several months later on December 29, 2016, where he proceeded to revoke all outstanding powers of attorney, specifically citing the agency he had granted to Jean just five months earlier. (R.p. 463). Importantly, when he revoked the power of attorney appointing Jean, the Decedent did not execute a new power of attorney naming either Michael or any other person to serve as an agent. (R.p. 202, line 21 – p. 204, line 24). In fact, it was not until April 18, 2017, that the Decedent executed a new power of attorney in favor of Michael. (R.p. 204, line 25 – p. 206, line 7).

From December 29, 2016 until April 18, 2017, the Decedent acted without any form of an agent. The Record reflects that it was during this intervening period of time on January 30, 2017 that the Decedent initiated changes in the form of ownership for his longstanding Bank of America accounts from his individual ownership to that of multi-party, joint ownership with Michael. In order to make the change, both the Decedent and Michael had to execute new Signature Card Agreements with Bank of America. (R.pp. 451, 453, 455). Based on his actions of having granted a power of attorney to Jean, having revoked the power of attorney to Jean, and then later granting a new power of attorney to Michael, the Record is clear that the Decedent understood the concept

and role of agency, particularly with regard to his accounts. If the Decedent intended for Michael's role as a joint owner of the Bank of America accounts to equate to nothing more than an agent, the option was available to the Decedent to do so directly on the account agreement, yet he chose to make Michael a joint owner where the funds constituted the property of each of them and payable to either of them. (R.pp. 451, 453, 455).

Each Signature Card Agreement contains the following acknowledgements, agreements, terms and conditions:

> **By signing below, I/we acknowledge and agree** that this account is and will be governed by the terms and conditions set forth in the account opening documents, including the Deposit Agreement and Disclosures and the Personal Schedule of Fees. **I/we acknowledge** the receipt of these documents. **I/we understand and agree** that the Bank may change these documents at any time by adding new terms, or deleting or amending existing terms. The Deposit Agreement includes a provision for jury trial waiver or reference to a judicial referee. A joint account with right of survivorship is the property of each co-owner and payable to either co-owner or to the surviving co-owner(s) if a co-owner dies.

(R.pp. 451, 453, 455). (Emphasis added by underline).

When enacting Article 6 of Title 62 of the South Carolina Code of Laws governing nonprobate transfers and operation of multi-party accounts, the South Carolina Legislature provided banking institutions with a general form that account owners could utilize to establish the type of account and beneficial ownership they desired. S.C. Code Ann. § 62-6-104 provides the form as follows:

> (a) A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of this subpart applicable to an account of that type:
>
> UNIFORM SINGLE-OR MULTIPLE-PARTY ACCOUNT FORM
>
> PARTIES [Name One or More Parties]:
>
> OWNERSHIP [Select One And Initial]:
>
> __SINGLE-PARTY ACCOUNT

__MULTIPLE-PARTY ACCOUNT

Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent.

RIGHTS AT DEATH [Select One And Initial]:

If Single-Party Account is chosen above, choose one of following:

__SINGLE-PARTY ACCOUNT

At death of party, ownership passes as part of party's estate.

__SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

[Name One Or More Beneficiaries]:

At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

If Multiple-Party Account is chosen above, choose one of following:

__MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

At death of party, ownership passes to surviving parties. The last surviving party owns the entire account. (Note: This can be overridden by clear and convincing evidence of a contrary intent.)

__MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION

[Name One Or More Beneficiaries]:

At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

__MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

DESIGNATION OF AGENT FOR ACCOUNT [Optional]

Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.

> [To Add Agency Designation To Account, Name One Or More Agents]:
>
> [Select One And Initial]:
>
> ______AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES
>
> ______AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES
>
> (b) A contract of deposit that does not contain provisions in substantially the form provided in subsection (a) is governed by the provisions of this article applicable to the type of account that most nearly conforms to the depositor's intent.

The Bank of America Signature Card Agreements signed by Michael and the Decedent are in substantially the form as provided by the Legislature. The Signature Card Agreements set forth options for account owners to designate the type of ownership for the account: individual (i.e. single-party), fiduciary (i.e. single-party with agency designation), and joint with right of survivorship (i.e. multi-party with right of survivorship). (R.pp. 451, 453, 455). However, the Bank of America Signature Card Agreements differ from the general statutory form in one key and fundamental aspect by setting forth a declaration that the account constitutes the joint property of both parties that is payable to either of them as opposed to the declaration within the statutory form that ownership is proportional to contribution. It is, respectfully, the Appellant's contention that the Probate Court and Master erred by not concluding that the language of the Bank of America account signature agreement controls the disposition and ownership of the account's funds, and that the express language of the agreement alone alters the statutory presumption of ownership.

With regard to the selection of a multi-party account and its ownership, the general statutory form states that "Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent." S.C. Code Ann. § 62-6-104(a). Bank of

America's multi-party account selection, however, alters this presumption and directs that its customers' ownership of a multi-party account is equal and undivided in that "A joint account with right of survivorship **is the *property* of *each* co-owner and *payable* to *either* co-owner** or to the surviving co-owner(s) if a co-owner dies." (R.pp. 451, 453, 455). By signing the Signature Card Agreement for a multi-party account with Bank of America, each party to the account acknowledges and agrees to express terms governing ownership and use of the accounts during their joint lifetimes that is different than the statute's proportional limitations to ownership. This clear and convincing evidence of intent—embodied by clear and unambiguous contract terms—was either wholly disregarded by the trial court's analysis, or was later discounted by the Master as only constituting "some evidence" of an intent to alter the statutory presumption of ownership, thus falling short of the clear and convincing standard. (R.pp. 1412-1413).

Such an analysis and conclusion fails to adhere to the tenets of contractual review by the courts. When a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used. *B.L.G. Enterprises, Inc. v. First Financial Ins. Co.,* 334 S.C. 529, 514 S.E.2d 327 (1999). The judicial function of a court of law is to enforce a contract as made by the parties, and not to rewrite or to distort, under the guise of judicial construction, contracts, the terms of which are plain and unambiguous. *S.S. Newell & Co. v. American Mut. Liab. Ins. Co.,* 199 S.C. 325, 19 S.E.2d 463 (1942).

By creating multi-party bank accounts with his son, the Decedent designated the accounts as the property of both himself and Michael with the express proviso within the bank's contract that the account was payable to either co-owner during their lifetimes (as well as to the survivor upon the death of one of them). By the very terms of the Signature Card Agreement creating the multi-party account(s) in question—which expressly stated such accounts were "the property of

each co-owner" and "payable to *either* co-owner" without any restrictive or qualifying language as to proportionality of contribution—the trial court (and the Master's concurrence) erred when concluding (i) "There is no evidence before me of any intent by Wyman Woods to change his absolute ownership of all monies in the Bank of America accounts during his lifetime in proportion to his contributions, which was 100%", (ii) "Plaintiff withdrew monies from the Bank of America during the lifetime of Wyman Woods for non-Trust uses without authority", and (iii) "The language of the Trust cited above and otherwise is plain and specific by its terms that the Bank of America monies were Trust assets." (R.pp. 3-4, 1408). The trial court failed to address these contracts and the effect of their explicit terms governing account ownership between the parties and to whom payable. On appellate review, the Master's analysis also inadvertently rewrites or distorts the contracts, the terms of which are plain and unambiguous that the funds on deposit constituted the property of <u>each</u> owner and were payable to <u>either</u> owner without any qualification otherwise.

It was the Appellant's argument at trial—and now on appeal—that the Signature Card Agreements themselves constitute clear and convincing evidence that the accounts at issue were not only rendered the *property of both* the Decedent *and* Michael by virtue of their contract with the bank, but that the accounts were also *payable to either* of them effective January 30, 2017. The contracts alone, however, are not the only evidence of intent disregarded or overlooked.

Aside from the express contractual provisions of the Signature Card Agreements, the Record further contains substantial evidence that the Decedent elected to alter absolute ownership of his Bank of America accounts in a manner that removed them from any form of individual, trust, or other agency arrangements. The trial court was correct to the extent it is undisputed that the Decedent individually maintained his accounts at Bank of America for many years and that in

1998 the Decedent and his wife indicated an intent within their trust to place all of their property at that time, including after-acquired bank accounts, in their trust:

> After this trust is duly executed, we will execute and deliver all deeds, assignments, bills of sale, written instructions and other legal documents necessary to convey and register all of our assets that we choose to place in trust under this trust to be owned by the trustee(s) of this trust and held and administered under the terms and conditions of this trust. Assets which are evidenced by titles or deeds currently being transferred to the trustee(s) of this trust are listed on Schedule A, which is attached to this trust and made a part of this trust. We hereby transfer to this trust all assets not requiring titles or deeds, including but not limited to our furniture, wearing apparel, and personal possessions. Additionally, the grantor(s) are now holding and will hold, solely and exclusively for and on behalf of such trust, the following: any and all properties of all kinds, whether presently owned or hereafter acquired including, without limitation:
>
>> bank accounts, certificates of deposit, mutual and money market funds of all kinds, securities, agency and custody accounts, notes, and real estate wherever located.
>
> All such property is hereby transferred to and the same shall be owned by such trust.
>
> This declaration shall apply even though record ownership or title, in some instances, may, presently or in the future, be registered in the individual name or names of either of us, in which event such record ownership shall hereafter be deemed held in trust even though such trusteeship remains undisclosed.
>
> All assets transferred to the trustee(s) of this trust, whether now or at a later date, shall become part of the trust estate and be subject to all terms and provisions of this trust document.
>
> (R.pp. 3-4; R.p. 391).

However, both the trial court and Master erred when concluding this blanket assignment applied to the Decedent's Bank of America accounts after he established them as joint accounts in 2017, and that there was no evidence of an intent to remove the accounts from the Trust's purview or absolute ownership by the Decedent. As reflected by the bank statements admitted into evidence, the Decedent held the Bank of America accounts individually in his name from at least 2013 through January 29, 2017. (R.pp. 805-1,136). The only apparent change during that time was

when Jean added himself to the accounts in his capacity as Decedent's agent under durable power of attorney in November of 2016. (R.pp. 455-456; R.pp. 1,121-1,138). Shortly thereafter, however, the Decedent met with his attorney on December 29, 2016 and revoked the power of attorney previously granted to Jean, severing Jean's agency authorizations. (R.pp. 463-464). The accounts remained individually in the Decedent's name for another month thereafter until he added Michael as a co-owner.

Based on the language of the Trust's blanket assignment, it is undisputed that the Decedent's individual accounts could reasonably be considered Trust assets for the period of 2013 through January 29, 2017. However, when the Decedent executed the new Signature Card Agreements with Bank of America, he altered the ownership of those accounts in a manner that removed them from the Trust's purview as of January 30, 2017. By the express terms of his contract with the bank, the accounts then became "the *property of each* [Decedent and Michael] *and payable to either* [Decedent and Michael]." (R.pp. 451, 453, 455). These Signature Card Agreement forms, together with other corroborative evidence presented at trial reflect that the Decedent could have easily designated the accounts as fiduciary accounts at any time (i.e. trust accounts), or he could have added Michael to the accounts in some form of agency capacity by designating as such on the bank's form. In fact, if the Decedent desired an agency relationship with regard to his assets, he also could have granted Michael a power of attorney when the Decedent met with legal counsel to revoke Jean's power of attorney at the end of 2016. Instead, the Record reflects that on January 30, 2017, the Decedent did none of the above in any manner indicative of a desire to limit Michael's ownership and use of the account to that of an agency relationship or to proportionality of their respective contributions. Instead, the Decedent executed documents with the bank expressly declaring the accounts were the property of both the Decedent

and Michael, and payable to either of them. Any other interpretation by the trial court or the Master rewrites the very terms of the contracts that governed the accounts' ownership and use.

Corroborating this evidence of intent, the Decedent waited nearly three additional months before undertaking any further efforts with his attorney to create a new power of attorney in favor of Michael. (R.p. 204, line 25 – p. 206, line 7). If the Decedent had intended to limit Michael's actual ownership or use of the accounts, the Decedent obviously knew he could do so given the prior granting of Jean's power of attorney and the appearance of Jean's agency status within and upon the Bank of America accounts and checks Jean was writing. The Record is clear that the Decedent also knew he could limit agency relationships and revoke them altogether as evidenced by his revocation of Jean's power of attorney. If the Decedent did not want Jean to access or use the Bank of America accounts as an agent, it is a fair and reasonable interpretation from the evidence that perhaps the Decedent also did not want Jean having ownership or access of the accounts by virtue of his position as a Trustee, and thus changed their ownership accordingly.

Cumulatively, all of the evidence and the timing of the acts of the Decedent are indicative of intent, all of which was amplified by the *actual* and contractual statements of ownership that the Decedent both acknowledged and agreed to when he and Michael executed the Bank of America Signature Card Agreements in 2017. Looking solely to the 1998 Trust assignment, however, the trial court never addressed these specific statements of intent embodied by the newer terms of the Signature Card Agreements executed by the Decedent on January 30, 2017—each of which were specific to the accounts so stated and contained the Decedent's acknowledgment and affirmation that the accounts constituted "the property of each co-owner and payable to either co-owner" during their joint lives or to the surviving co-owner upon the death of one of them. (R.pp. 451, 453, 455). Nor did the trial court address the significance or weight of the Decedent's acts

with regard to his granting and removal of agency designations. Rather, the trial court looked solely to the general Trust assignment as evidence of the Decedent's intent, resting its decision upon the provisions of S.C. Code Ann. § 62-6-201(A)[3] and an opinion of the South Carolina Supreme Court issued in 2001. In review, the Master adopted the Probate Court's findings and conclusions, resting its decision heavily upon the "financial protection" assumption espoused in *Vaughn v. Bernhardt*, 345 S.C. 196, 547 S.E. 2d 869 (2001).

In its Final Order, the trial court cited to *Vaugh* wherein the South Carolina Supreme Court affirmed lower court rulings that joint account funds that had been removed by a non-contributing party prior to the contributing party's death constituted property of the contributing party's estate. However, the *Vaughn* case is highly distinguishable from the case currently before the court in several ways. In *Vaughn*, the Decedent established joint accounts in both her name and her nephew's name that contained right of survivorship provisions. The Decedent was sole contributor of funds to the accounts. Immediately preceding the Decedent's death, her nephew transferred all funds from the joint accounts into a new account titled solely in the nephew's name. Decedent's Personal Representative demanded that nephew return all funds to the Decedent's estate, to which nephew refused. However, unlike the full and total record developed in the case currently before this court, the *Vaughn* case was decided solely upon stipulations of fact. As noted by both the Court of Appeals and the Supreme Court, the nephew provided <u>no evidence</u> within the stipulations of fact as to the Decedent's intent regarding ownership of the accounts at issue. When the case was heard and decided by the South Carolina Court of Appeals, the following striking analysis was made as to what evidence would have otherwise rebutted the statutory presumption that ownership of a joint account is proportional to sums contributed during the lifetimes of the parties:

[3] § 62-6-201(A) During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

> This case was tried in the probate court based upon a written stipulation of facts. Those facts are scant, providing nothing beyond that which is recited in this opinion. Having no further information upon which to base a decision, the probate court was well within the evidence in concluding that there was no clear and convincing proof of an *inter vivos* gift to John. Therefore, during her lifetime, Mary had a cause of action against John to recover the funds. *See Trotter v. First Federal Sav. and Loan Ass'n*, 298 S.C. 85, 378 S.E.2d 267 (Ct. App. 1989) (noting joint account holder may have brought an action against other party to account to recover funds the second party withdrew). Her personal representative "has the same standing to sue and be sued in the courts of this State and the courts of any other jurisdiction as [her] decedent had immediately prior to death." S.C. Code Ann. § 62-3-703 (1987) (emphasis added). We also conclude the probate court properly refused to apply a presumption of ownership through the survivorship provisions because there were no sums remaining on deposit in joint accounts at the death of Mary Henrietta Bernhardt.
>
> **We note however that our decision is limited to the facts of this case and does not address what evidence John could have presented to overcome the presumption of ownership during the lifetime of the parties as established under section 62-6-103(a).** The Probate Code recognizes the parties' authority to contractually alter a statutory presumption. *See, e.g.,* S.C. Code Ann. § 62-6-104(a) (1987) (stating that "[s]ums remaining on deposit at the death of a party to a joint account belong to the surviving party or parties as against the estate of the decedent *unless* there is a writing filed with the financial institution at the time the account is created ... which indicates a different intention." (emphasis added)). **Therefore, the parties could have contractually altered the presumption of ownership under section 62-6-103(a). A provision in the instrument establishing a joint account indicating that each party is a co-owner or joint tenant is evidence tending to rebut the presumption that the parties intended ownership to remain solely with the contributing party.** In the present case, however, the record omits any documentation surrounding the establishment of the joint account and provides no other evidence of an *inter vivos* gift. Accordingly, we are constrained by the general presumption in section 62-6-103 and are compelled to reach this unfortunate result.
>
> *Vaughn v. Bernhardt,* 339 S.C. 125, 132-133, 528 S.E.2d 82 (Ct.App. 2000) (**emphasis added**).

The general presumption in section 62-6-103 cited by the Court of Appeals refers to the 1987 version of the code which provided that ownership of joint accounts were proportional to a party's contributions during the joint lives of the parties. Amendments to the code were adopted in 2014

that renumbered that section as 62-6-201, and the language of that current statute remains identical to the language analyzed by both of the appellate courts in *Vaughn*.

While also noting the absence of any evidence indicative of the *Vaughn* Decedent's intent regarding ownership of funds during the life of both parties to the joint accounts at issue, the Supreme Court further provided: "While the Decedent may well have intended for Bernhardt to receive the Joint Accounts' funds after her death, Bernhardt chose to rely solely on the statutory presumption and did not present other evidence of intent." *Vaughn*, 345 S.C. at 200. The presumption to which the Supreme Court referred in this instance is the survivorship presumption of former code section 62-6-104(a) which provided "Any sums "remaining on deposit" at the time of the death of one of the parties to the account belongs to the surviving party or parties as against the estate of the decedent."[4] At each stage of the *Vaughn* case, the deciding courts all held that the nephew was not entitled to rely solely upon the survivorship presumption because the funds he wished to keep were removed by him prior to the Decedent's death, and the survivorship presumption only applied to funds on deposit at the time of Decedent's death. Therefore, in order for the nephew to keep funds he withdrew from the account while the Decedent was living, the nephew needed to provide the courts with evidence that the Decedent intended for the nephew to have <u>concurrent ownership and entitlement</u> to funds that were contributed by the Decedent during their joint lives. In other words, the nephew needed to show that the Decedent intended that funds she placed into the accounts would also become joint property of the nephew when deposited and concurrently payable to him.

While the nephew in *Vaughn* provided no such evidence of intent, the Record currently before this court contains ample evidence of actual intent by Wyman J. Woods, Sr. to make

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[4] Citing to code section then numbered 62-6-104(a), which was amended and renumbered as section 62-6-202 by amendments adopted in 2014.

Michael Woods a joint owner with concurrent authority to withdraw. The Signature Card Agreements executed by Wyman J. Woods, Sr. and Michael Woods contain nearly the exact declaration of co-ownership and joint tenancy that the Court of Appeals in *Vaughn* would have considered as evidence rebutting the statutory presumption that Mr. Woods, Sr. may have intended for ownership to remain solely with himself as the contributing party. In fact, those Signature Card Agreements expressly state that the joint accounts actually constitute the *property of each* co-owner and are *payable to either* co-owner.

Pursuant to S.C. Code Ann. § 62-6-203, rights at the death of a party under § 62-6-202 are determined by the terms of the account unless otherwise altered by a signed notice received by the financial institution during a party's lifetime, or by clear and convincing evidence of a different intent, including express provisions in a will. In other words, if the terms of the parties' contract with the financial institution establishes the account as a multiple-party account, the statutory presumption of survivorship under § 62-6-202 will control *unless* there is a writing delivered to the financial institution or clear and convincing evidence of an intent to alter the presumption of survivorship. Logically by way of corollary, the presumption of proportional ownership of joint accounts during the lifetimes of the parties under § 62-6-201 can also be altered by a writing delivered to the financial institution that expressly states such accounts constitute the property of each owner and are payable to either of them.

In the case before the court, the terms of the Bank of America Signature Card Agreements executed by the Decedent on January 30, 2017, not only establish the accounts as multiple-party accounts payable on death to the surviving account holder (i.e. the § 62-6-202 presumption), but the terms also expressly alter the statutory presumption of proportional ownership under § 62-6-201 to that of true joint tenancy and concurrent entitlement. The terms of the Bank of America

accounts as embodied within the Signature Card Agreements are clear and convincing evidence of the Decedent's intent, and the terms and declarations of those contracts must be considered by the court in this case.

In *Vaughn*, the Supreme Court further addressed certain policy concerns with regard to joint accounts and the statutory presumption of ownership by stating "accounts with right of survivorship provisions are often set up to allow caretakers to assist elderly people with the management of their finances. Their financial protection can best be honored by adhering to the statutory presumption." *Id*. at 200. In the total absence of any evidence that the *Vaughn* Decedent intended that her nephew would have concurrent ownership and entitlement to the funds he withdrew while the Decedent was still living, the presumption of survivorship rights *alone* was not enough to overcome the other statutory presumption that ownership during their joint lives was proportional to their contributions per the plain meaning of the statute, and thus a matter of public policy. Unlike *Vaughn* however, there exists more than substantial evidence in the case now before the court of not only the express contractual declarations of joint ownership and entitlement to payments contained in the Signature Card Agreements executed by the Decedent, but also the body of corroborative evidence surrounding the Decedent's clearly apparent knowledge and understanding of agency appointments (*and* their revocations) both before and after his independent creation of the joint accounts at issue. While the 1998 blanket assignment language of the Trust was the statement of intent upon which the trial court relied, it cannot overcome the exact opposite evidence of intent embodied by the clear and unmistakable terms of the Bank of America Signature Card Agreements executed by the Decedent in 2017. Contrary to the trial court's conclusion and the Master's affirmation of the same, it instead appears that there is actually no evidence before the Court that Wyman Jean Woods, Sr. intended to alter the terms of the Bank

of America accounts in a manner that they would ***not*** be the "***property*** of ***each*** and ***payable*** to ***either*** [Wyman Jean Woods, Sr. *or* Michael Woods]."

The terms of the Signature Card Agreements constituted the contract of ownership and use between the Decedent, Michael, and Bank of America. When a contract is unambiguous, clear and explicit, it must be construed according to the terms the parties have used, to be taken and understood in their plain, ordinary and popular sense. *Warner v. Weader*, 280 S.C. 81, 83, 311 S.E. (2d) 78, 79 (1983). Extrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible. *Superior Automobile Insurance Co. v. Maners*, 261 S.C. 257, 263, 199 S.E. (2d) 719, 722 (1973). Courts are without authority to alter a contract by construction or to make new contracts for the parties. Their duty is limited to the interpretation of the contract made by the parties themselves "... regardless of its wisdom or folly, apparent unreasonableness, or failure to guard their rights carefully." *Gilstrap v. Culpepper*, 283 S.C. 83, 320, S.E. (2d) 445 (1984) (citing *Blakeley v. Rabon,* 266 S.C. 68, 72, 221 S.E. 2d 767 (1976); *McPherson v. J.E. Sirrine & Co., et al*, 206 S.C. 183, 204, 33 S.E. (2d) 501 (1945)). In the case now before the court, the trial court failed to address or consider the terms of the Bank of America Signature Card Agreements, and the court's resulting conclusions impermissibly alter the terms of the contracts of account ownership and use that were entered between the Decedent, Michael, and Bank of America. Those contracts are the sole and true statement of the intent of the Decedent to which the trial court was bound to honor, and which the Master on appeal, pursuant to *Gilstrap*, was duty bound to interpret "... regardless of [the contracts'] wisdom or folly, apparent unreasonableness, or failure to guard [the contracting parties'] rights carefully."

Accordingly, sums received by Michael Woods from the joint Bank of America accounts held with his father did not constitute assets of the Trust to which claims could be made for a set-

off from his final Trust distribution following the death of Wyman Jean Woods, Sr. In its Final Order, the trial court reduced Michael's share of the final cash distribution by $129,424.17 for rents he received from a property owned by the Trust in 2018 and 2019, as well as the Bank of America funds that are currently at issue. (R.p. 5). The sum total of rent proceeds received by Michael in 2018 and 2019 was $14,300.00. (R.pp. 241, line 23 – 253, line 20). Thus, the trial court's Final Order should be reversed as to setoff for Bank of America funds that Michael received prior to his father's passing such that Michael shall instead receive an additional $115,124.17 from the Trust's final distribution.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Probate Court as affirmed by the Master in Equity as to the Bank of America accounts and setoff of funds from Michael's share of final Trust distributions.

Respectfully submitted,

January 16, 2025

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