

PARTIAL MEDIATED AGREEMENT

The following real property in Anderson County, South Carolina is what remains from the real property transferred to John D. Sitton, Jr. and Ruth R. Sitton as Trustees under the Last Will and Testament of John D. Sitton, Sr., their successors and assigns as set forth in the deed of distribution recorded in deed book 1981 at page 046 in the Register of Deeds Office for Anderson County, South Carolina:

12.58 acres: TM#188-00-06-021

6.44 acres: TM#188-00-11-008

Both tracts being a part of:

ALL that piece, parcel or tract of land containing 57.00 and situate lying and being in the Brushy Creek Township of Anderson County, South Carolina and lying along a surface treated road, which road leaves S.C. Highway #8 near the W.A. Tripp farm and runs by way of J.O. Rosman home place to State Highway #81, and being described according to a plat prepared by J. Coke Smith, Surveyor, in May 1951 as follows: BEGINNING at an iron pin, the SE corner of J.C. Sitton land running thence along the said J.C. Sitton line N 18-00 W 26,50 chains to a point, along W.A. Pickens and Newt Cantrell line N 88-45 E 35.26 chains to an iron pin; thence, along W.F. Laboon property line S 10-15 W 13.67 chains to the aforementioned surface treated road; thence, along said road S 81-25 W 6.50 chains; thence, with road S 63-25 W 2.40 chains; thence, continuing along said road S 57-00 W 19.32 chains to the BEGINNING corner.

LESS HOWEVER: Those conveyances made by John D. Sitton.

This is the remainder of the property conveyed John D. Sitton by Deborah M. Sitton by deed dated May 10, 1951, and recorded May 14, 1951, in Deed Book 9-F, Page 4, in the Office of the Clerk of Court for Anderson County, South Carolina.

ALSO: "All that certain piece, parcel or tract of land lying and being situate in the State of South Carolina, County of Anderson, about 6 miles south of Easley, S.C. and being more fully described as follows, to-wit:

“BEGINNING in center of surface treated highway which point is also corner of W.D. Sitton Estate; thence S58-30W 8.90 chains along road; thence leaving road and running N33-45W 15,40 chains to an iron pin; thence S43-25W 23.57 chains to an iron pin; thence N27W 5.85 chains; thence N23-20E 31 chains; thence N88-45E 14.50 chains; thence S18E 26.50 chains to point of BEGINNING, and containing 61.1 acres, more or less, according to plat of J. Coke Smith, Surveyor, dated August, 1941, reference to which is hereby made for a more complete and accurate description and being bounded on the north by Bill Pickens Estate, bounded on the east by W.D. Sitton Estate, bounded on the south by highway and property of Eugene Wyatt and bounded on the west by property of J.M. Carpenter, according to said plat.

LESS HOWEVER: Those conveyances made by John D. Sitton.

This is the remainder of the property conveyed to John D Sitton by J.C. Sitton by deed dated October 13, 1965, and recorded June 9, 1967, in Deed Book 15-D, Page 599, in the Office of the Clerk of Court for Anderson County, South Carolina.

LESS PROPERTY CONVEYED BY TRUSTEES:

TRACT 1:

ALL that certain piece, parcel or lot of land lying and being situate in the State of South Carolina, County of Anderson, and being located about five (5) miles south of the City of Easley, containing 2.95 acres, more or less, and being more fully described as follows, to-wit:

BEGINNING at point in Syracuse Road which point is also corner of James Hawkins, thence along Syracuse Road in southerly direction 309 feet to point in road; thence continuing along Syracuse Road South 25-30 West approximately 219 feet to point in road, which point is also corner of Robert Dickard; thence along Robert Dickard line North 69-21 West 290.83 feet to point in center of stream; thence following meanderings of same on a traverse North 44-54 East 106 feet to point in stream; thence continuing along center of stream in a northerly direction approximately 265 feet to point in stream, which point is also corner of James Hawkins property; thence along James Hawkins property line in an easterly direction approximately 302 feet to the point of BEGINNING. Being bounded on the north by Hawkins, on the east by Syracuse Road; on the south Dickard, and on the west by Lyles and Watson.

This is the identical property conveyed unto John D. Sitton, Sr., by deed of Sitton Furniture, Inc. dated January 17, 1991 and recorded February 15, 1991 in Deed Book 1132 at Page 11 and a portion of the property conveyed to the grantors by deed of distribution from the Estate of John D. Sitton, Sr., October

20, 1994 and recorded October 31, 1994 in Deed Book 1981 at Page 46, Anderson County records.

Anderson County Tax Map Parcel # 1880006103

It is the intent of this to also quitclaim to the grantee any property that the grantor owns on the east side of Syracuse Road across from the above described tract of 2.95 acres.

ALSO:

All that certain piece, parcel or lot of land and being situate in the State of South Carolina, County of Anderson, and being located about five (5) miles south of the City of Easley, on the northwest side of Old Mill Road, and being more fully described as follows, to-wit:

BEGINNING at a point in Old Mill Road, common corner with property now or formerly of Stevenson, and running thence along property of Stevenson North 13-30 West 241 feet to a point; thence continuing along property of Stevenson North 67-30 East 214.19 feet to a point on line of property of Ghizzonie, thence along line of property of Ghizzonie North 00-30 West 482.20 feet to other property of Grantee; thence turning and running along other property of Grantee North 81-00 West 30 feet to point on common line of property of grantee and portion of Tract 2, property pf Richard White, et al., South 00-30 East approximately 483 feet; thence turning and continuing along property of Wright South 67-30 West approximately 215 feet; thence turning and continuing along property of Wright South 13-30 East approximately 271 feet to point in center of Old Mill Road; thence along center of Old Mill Road North 69-00 East 30 feet to the point of BEGINNING.

THIS is a portion of the property conveyed to the grantors by deed of distribution from the Estate of John D. Sitton, Sr., October 20, 1994 and recorded October 31, 1994 in Deed Book 1981 at Page 46, Anderson County records.

Anderson County Tax Map Parcel # 1880011004

The property in Tract 1 was conveyed by the trustees in deed recorded in deed book 10162 at page 00275.

TRACT 2:

ALL that certain piece, parcel or lot of land situate, lying and being in the County of Anderson, State of South Carolina, being shown and designated as containing 0.84 of an acre, more or less, as shown on a plat prepared by Ray

Dun, PLS #19400, dated February 20, 2006, and signed February 21, 2006, of record in the Office of the Register of Deeds for Anderson County, South Carolina, in Plat 118 at Page 154, and having such metes and bounds, courses and distanced as upon said plat appear. For a more complete and accurate description of the lot herein conveyed, reference is invited to said plat, and the description contained thereon is incorporated herein by reference.

This is a portion of the property conveyed unto John D. Sitton, Jr. and Ruth R. Sitton, as trustees under the Last Will and Testament of John D. Sitton by deed of distribution from the Estate of John D. Sitton, dated October 20, 1994, recorded October 31, 1994, in the Office of the Register of Deeds for Anderson County, South Carolina, in Record Book 1982 at Page 46.

This conveyance is specifically made subject to any and all recorded rights of way, easements, encroachments, conditions, restrictions, and zoning ordinances pertaining to the property herein conveyed and, in addition, is subject to any of the foregoing which may appear from an inspection of the premises and/or which appear according to a current survey.

TMS NUMBER: 188-00-11-004

The property in Tract 2 was conveyed by the trustees in deed recorded in deed book 07381 at page 00115.

TRACT 3:

ALL that certain piece, parcel or tract of land containing 1.00 acre more or less, situate, lying and being in the county of Anderson, State of South Carolina, As shown on that certain plat prepared by Perry Ray Dunn, PLS#19400, Dated 4-18-05 and recorded in the Office of the Register of Deeds for Anderson County, South Carolina in Book 117 at Page 820 for a more particular description as to metes and bounds, courses and distances, reference is hereby made to aforesaid plat of record.

This being the same property conveyed unto John D. Sitton and Ruth R. Sitton as trustees by deed of distribution in the matter of John D. Sitton (probate case# 93ES0400324) deed dated 10-20-94 and recorded 10-31-94 in the Office of the Register of Deeds for Anderson County, SC in Book 1981 at Page 46.

TMS: 188-00-11-008

The property in Tract 3 was conveyed by the trustees in deed recorded in deed book 06711 at page 00195.

TRACT 4:

ALL that certain piece, parcel or lot of land lying and being situate in the County of Anderson, State of South Carolina and being shown as 0.62 acres, more or less, located on Syracuse Road on a plat prepared by Spearman Surveying dated March 2, 2005 for James S. Smith and Thomas Duncan as recorded in Plat Book 1527 at Page 2-B in the Register of Deeds Office for Anderson County, South Carolina. Reference to said plat is hereby made for a more complete and accurate description thereof.

THIS being a portion of the same property to John D. Sitton, Jr. and Ruth R. Sitton as Trustees under the Last Will and Testament of John D. Sitton by deed of distribution of the estate of John D. Sitton as recorded in Deed Book 1981 at Page 046 in the Anderson County Register of Deeds Office on 10-31-94.

TMS #: 1880006021

The property in Tract 4 was conveyed by the trustees in deed recorded in deed book 06689 at page 00234.

TRACT 5:

ALL that certain piece, parcel or lot of land situate and being in the State of South Carolina, County of Anderson, on Syracuse Road, and according to a plat by Ray Dunn Land Surveyor, dated October 28, 2004, said lot contains 0.982 acres, including all rights of way, and is more particularly described as follows, to-wit:

BEGINNING at an iron pin in the center of Syracuse Road, which point is 1500 feet, more or less, to Old Mill Road; thence along the center of Syracuse Road North 25-16-54 East 125.00 feet to an iron pin; thence leaving Syracuse Road South 65-53-56 East 265.59 feet to an iron pin; thence South 15-56-56 East 163.54 feet to an iron pin; thence North 65-52-00 West 373.40 feet to an iron pin in the center of Syracuse Road, the point of BEGINNING.

THIS is a portion of the property conveyed to John D. Sitton, Jr. and Ruth R. Sitton as Trustees under the Last Will and Testament of John D. Sitton by deed of distribution dated October 20, 1994 and recorded October 31, 1994 in at Register of Deeds for Anderson County, South Carolina in Deed Book 1981 at Page 46.

The property in Tract 5 was conveyed by the trustees in deed recorded in deed book 6497 at page 170.

The Trust established by the Will of John D. Sitton, Sr., Pickens County

Probate file #1993ES3900259-2 has been terminated by order of the Pickens

County Probate Court filed on September 27, 2022. The Partial Mediation Agreement requires the transfer of this real property back to the Estate of John D. Sitton, Sr. for purposes of sale. This real property is now an asset of the Estate of John D. Sitton, Sr. The heirs of John D. Sitton Sr. were his five children: James C. Sitton, II, Dorothy Sitton Ashley, Betty A. Sitton, Dale Sitton Rogers, and John D. Sitton, Jr. Betty A. Sitton is now deceased, intestate, unmarried, and without children. Her heirs are her surviving four siblings of James C. Sitton, II, Dorothy Sitton Ashley, Dale Sitton Rogers, and John D. Sitton, Jr. Therefore, the current heirs of the Estate of John D. Sitton, Sr. are James C. Sitton, II, Dorothy Sitton Ashley, Dale Sitton Rogers, and John D. Sitton, Jr. As a result of the termination of the Trust of John D. Sitton, Sr. September 27, 2022, James C. Sitton, II as personal representative of the Estate of John D. Sitton, Sr., estate #1993ES3900259-2, is authorized to sign and record a deed for the above real property to the estate of John D. Sitton, Sr. 1993ES3900259-2.

By the second cause of action, the Plaintiffs requested an accounting by John D. Sitton, Jr., for the John D. Sitton Trust and, by their third cause of action, the Plaintiffs alleged a breach of fiduciary duties by John D. Sitton, Jr.

Betty A. Sitton was a named Plaintiff, and she is now deceased, having died during the pendency of this action in 2024.

The Defendant John D. Sitton, Jr., individually and as former Trustee of the John D. Sitton Trust, (hereinafter “Defendant Sitton”, or “Defendant” John D. Sitton, Jr.) timely filed and served his answer and counterclaim. Defendant

Sitton asserted a number of affirmative defenses including the Statute of Limitations, Laches, Waiver and Estoppel, and Unclean Hands. The Plaintiffs timely filed and served a reply to Defendant's Counterclaim.

By a consent order of reference dated October 20, 2024, this matter was referred to me for trial, to make Findings of Fact, Conclusions of Law, and to render a final order with any appeal to be made directly to the South Carolina Supreme Court or Court of Appeals as appropriate.

The matter came before me for trial on January 29, 2025, at 10:30 a.m. The Plaintiff, James C. Sitton, II, was present with his attorney, James C. Alexander. The Defendant, John D. Sitton, Jr., was present with his attorney, James S. Eakes. Brian K. James, Defendant, was present, and he was released since he was not a necessary party.

STATEMENT OF ISSUES

- 1.) Whether or not the Plaintiff James C. Sitton, II., individually and as Personal Representative of the Estate of John D. Sitton, (hereinafter "Plaintiff Sitton", or "Plaintiff" "James C. Sitton, II.") is entitled to an accounting?
- 2.) Whether or not Defendant Sitton breached his fiduciary duties as Co-Trustee of the John D. Sitton Trust?

STATEMENT OF THE CASE

John D. Sitton ("John D. Sitton, Sr.") died testate on February 16, 1993, and, at the time of his death, he was a citizen and resident of Pickens County,

South Carolina. His estate was probated in the Pickens County Probate Court under Case Number: 1993-ES-04-00324. Ruth R. Sitton and John D. Sitton, Jr. were appointed as Co-Personal Representatives of his estate. This estate was closed around November, 1994, after the issuance of deeds of distribution by the Personal Representatives. After litigation involving an alleged trust deed, the Estate of John D. Sitton, Sr. was reopened on December 9, 2021, and James C. Sitton, II was appointed as Successor Personal Representative.

John D. Sitton, Sr., was survived by his wife, Ruth R. Sitton, and his five (5) children, to-wit: John D. Sitton, Jr.; Dorothy Sitton Ashley; Betty A. Sitton; Dale Sitton Rogers; and James C. Sitton, II.

The handwritten Last Will and Testament of John D. Sitton dated December 6, 1991, was admitted to probate without contest. By his Last Will and Testament dated December 6, 1991, John D. Sitton created a testamentary trust which is the subject of this action.

By ITEM VI of his Last Will and Testament, John D. Sitton appointed John D. Sitton, Jr., and Ruth R. Sitton "... as Personal Representatives of my Last Will and Testament, to hereby serve without bond... ." John D. Sitton, Jr., and Ruth R. Sitton were duly appointed as Personal Representatives and served until the estate was closed in 1994.

By ITEM III, ITEM IV, and ITEM V of his Last Will and Testament, John D. Sitton made specific bequests and devises to Ruth R. Sitton, John D. Sitton, Jr, and James C. Sitton, II.

ITEM VII of the Last Will and Testament of John D. Sitton devised his entire residuary estate, in trust, to the John D. Sitton Trust. He named his son, John D. Sitton, Jr., and his wife, Ruth R. Sitton, as Trustees, to serve without bond, and with full power to sell real or personal property. It further provided for a ten (10%) percent commission for the Trustees on all sales of real property and a ten (10%) percent commission on all rental property owned by the Trust.

ITEM VII of the Last Will and Testament of John D. Sitton further provides, in part, as follows: “I direct my said Trustees to provide support for my daughter, Betty Sitton; and secondly to provide support for my son, James C. Sitton, II, if and when the need arises for food, shelter, clothing, and medical expenses. ... My Trustees shall make disbursements to all beneficiaries but the provisions set forth above for all **three named beneficiaries** of the Trust shall always be given a priority.” (emphasis added).

ITEM VII of the Last Will and Testament of John D. Sitton further provided: “At such time as Betty A. Sitton and Ruth R. Sitton depart this life, if there be any remaining assets in said Trust, my remaining heirs: namely, my daughter, Dorothy Sitton Ashley, my daughter, Dale Sitton Rogers, my son, James C. Sitton, II., and my son, John D. Sitton, Jr., shall share and share alike in said Trust and said Trust can then be terminated if the four (4) heirs named herein give their approval. ...”.

ITEM VIII of the Last Will and Testament of John D. Sitton named and appointed Dale Sitton Rogers as alternate Trustee for the John D. Sitton Trust.

The decedent made no provision for one of the Trustees to act alone, and Dale Sitton Rogers did not act as co-trustee after the death of Ruth R. Sitton.

ITEM VIII further provides, in part, as follows: My Trustees and/ or Alternate Trustee shall have unquestioned and unlimited authority to use their discretion in investing and re-investing and using any part of the Corpus and/ or interest they deem necessary or advisable for the comfortable maintenance, support, health, and well being of **Betty Ann Sitton and Ruth R. Sitton.**, and shall supplement with food, shelter, and clothing for James C. Sitton, II.” (Emphasis Added).

The paramount consideration in the construction of every will is to determine and carry out the intentions of the testator unless in conflict with some rule of law. The rules of construction are subservient to the primary consideration of ascertaining what the testator meant by the terms used in the written instrument itself, and each item of a will must be considered in relation to the other portions . *Estate of Gill ex.Rel. Grant v. Clemson University Foundation*, 397 S.C. 419, 725 S.E.2d 516 (SC. App. 2012). The law relating to discerning the drafter’s intent is identical for wills and trusts. *Epworth Children’s Home v. Beasley*, 365 S.C. 157, 616 S.E.2d 710 (2005). This is codified under **S.C. Code Ann.** §62-1-102(b)(2) (2021) relating to the underlying purposes and policies of the South Carolina Probate Code which states: “to discover and make effective the intent of a decedent in the distribution of his property... .”

Betty A. Sitton died prior to the trial of this case and is no longer a party. Brian K. James, as Personal Representative of the Estate of Ruth R. Sitton, did not participate in the trial and is not a real party in interest. All references to Plaintiff are to James C. Sitton, II., individually, and all references to Defendant are to John D. Sitton, Jr.

FINDINGS OF FACT

Based upon a careful review of the record in this case, including the pleadings, evidence submitted at trial, testimony of the parties, arguments advanced in trial and in post-trial briefs, as well as the Court's trial notes, the Court makes the following findings of fact.

1. John D. Sitton, Sr., died testate on February 16, 1993, and his estate was probated in the Pickens County Probate Court under Case Number: 1993-ES-04-00324.

2. Based upon a reading of the entire Last Will and Testament of John D. Sitton dated December 6, 1991, it is clear that the primary beneficiaries of the testamentary trust created under his will were his wife, Ruth R. Sitton, and his disabled daughter, Betty Ann Sitton, who lived at the home and was supported by her father, John D. Sitton, and her mother, Ruth R. Sitton, during their lifetimes. Item VIII of the will provides that "... the **three** named beneficiaries of this Trust shall always be given priority." Item VIII of the will states that the Trustees had "unquestioned and unlimited authority" to use "any part of the Corpus and/ or interest they deem necessary or advisable for the comfortable maintenance, support, health, and wellbeing of Betty Ann Sitton and Ruth R.

Sitton, and shall supplement will food, shelter, and clothing for James C. Sitton, II. Therefore, the primary trust beneficiaries were Ruth R. Sitton and Betty Ann Sitton with James C. Sitton, II to be supplemented with “food, shelter, and clothing.” (**i.e.**, the three named beneficiaries of the Trust to be given a priority.)

3. The only residuary probate assets transferred to the John D. Sitton Trust consisted of the real estate owned by John D. Sitton at his death and not specifically devised to named beneficiaries by specific bequests in the will. (The decedent devised and bequeathed to his wife, Ruth R. Sitton, specific real estate and other assets by Item III of his will, and he devised to his son, John D. Sitton, Jr., three acres of land located on Sitton Road in Anderson County, South Carolina. By Item VI, he devised to his son, James S. Sitton, II debt forgiveness and an automobile.)

4. John D. Sitton, Jr. and Ruth R. Sitton, as Personal Representatives, executed a statutory deed of distribution dated October 20, 1994, and recorded on October 31, 1994, in the Office of the Register of Deeds for Anderson County in Record Book 1981 at Page 46 conveying all real estate owned by the decedent at his death in Anderson County to John D. Sitton, Jr and Ruth R. Sitton, as Trustees under the Last Will and Testament of John D. Sitton.

5. In 1998, pursuant to an agreement between Ruth R. Sitton and her five (5) children, each of the five (5) children were deeded a tract of land by John D. Sitton, Jr., and Ruth R. Sitton, as Trustees under the Last Will and Testament of John D. Sitton, without consideration. The Trustees deeded Tract #1

containing 9.686 acres to Dorothy S. Ashley, by deed dated March 31, 1998, and recorded in Record Book 2923 at Page 159. The Trustees deeded Tract #4 containing 9.690 acres to John D. Sitton, Jr. by deed dated September 1, 1999, and recorded in Record Book 3536 at Page 232. The Trustees deeded Tract #3 containing 9.684 acres to Dale S. Rogers by deed dated September 1, 1999, and recorded in Record Book 3588 at Page 87. The Trustees deeded Tract #5 containing 9.685 acres to James C. Sitton, II by deed dated September 1, 1999, and recorded in Record Book 3588 at Page 89. Betty Ann Sitton, a.k.a Betty A. Sitton, received Tract #2 containing 9.688 acres and/ or the proceeds from the sale of this tract from the Trustees. These tracts were a part of the real estate described in the deed of distribution, and the five (5) tracts are shown on a plat by Robert R. Spearman, PLS #3615, dated December 16, 1997, and recorded in/ on Plat Slide 876 at Pages 3 & 4. There was no specific language in the testamentary trust for these transfers of trust assets to the five (5) siblings, and it was evidently a product of a family agreement between Ruth R. Sitton and her five (5) children and to carry out the wishes of John D. Sitton, Sr. According to the testimony of John D. Sitton, Jr., "Daddy gave each one of us equal shares." James C. Sitton, II confirmed this in his testimony. All of the siblings sold the respective tracts of real estate which were deeded to them.

6. Between 2004 and 2006, John D. Sitton, Jr and Ruth R. Sitton, as Trustees Under the Last Will and Testament of John D. Sitton, sold the following four (4) tracts of real estate to third parties:

- A.) On November 23, 2004, the Trustees sold a parcel of land on Syracuse Road to James K. Clinkscales and Kenneth W. Clinkscales for \$11,000.00. The deed was recorded on December 9, 2004, in Record Book 6497 at Page 170.
- B.) On March 23, 2005, the Trustees sold 0.62 of an acre of land on Syracuse Road to James S. Smith and Thomas Duncan for \$12,300.00. The deed was recorded on April 15, 2005, in Record Book 6689 at Page 234.
- C.) On April 22, 2005, the Trustees sold 1.00 acre of land to Travis J. Davis for \$13,500.00. The deed was recorded on April 29, 2005 in Record Book 6711 at Page 195.
- D.) On March 22, 2006, the Trustees sold 0.84 of an acre of land to Kenneth W. Clinkscales for \$12,000.00. The deed was recorded on May 25, 2006, in Record Book 7381 at Page 115.

7. Finally, on September 1, 2011, John D. Sitton, Jr. and Ruth R. Sitton, as Trustees Under the Last Will and Testament of John D. Sitton, conveyed certain real estate to John D. Sitton, Jr. by deed dated September 1, 2011, and recorded on September 23, 2011, in the Office of the Register of Deeds for Anderson County, South Carolina, in Record Book 10162 at Page 275.

8. The deed of September 11, 2011, was the final deed executed and issued by the Co-Trustees. There is no evidence that there has been any activity in the Trust since that time, and the Trust became dormant and inactive after September 11, 2011.

9. Ruth R. Sitton died on May 25, 2013, and she was still living in the family home she shared with her husband at 303 North B Street, Easley, South Carolina. Her disabled daughter, Betty Ann Sitton, was still residing with her at the time of her death. There has been almost constant litigation in the Estate of Ruth R. Sitton since her death. The Estate of Ruth R. Sitton is being probated in the Pickens County Probate Court under Case Number: 2013-ES-39-00478.

10. On July 17, 2013, James S. Sitton, II filed for formal appointment as personal representative of his late mother's estate. John D. Sitton, Jr. filed an answer and counterclaim on August 9, 2013, seeking formal appointment as Personal Representative and, also, formal probate of a copy of the Last Will and Testament of Ruth R. Sitton dated July 17, 2009. Pursuant to a hearing held on October 28, 2014, Judge Kathy P. Zorn, Pickens County Probate Judge, issued an order dated November 10, 2014, finding that Ruth R. Sitton died intestate since her original will had not been found and that it was in the best interests of all parties involved "to appoint a disinterested person as Personal Representative, preferably a member of the South Carolina Bar, due to the animosity between the parties."

11. On July 6, 2015, the original Last Will and Testament of Ruth R. Sitton dated July 17, 2009, was found and delivered to the Pickens County Probate Court on July 7, 2015. On September 22, 2015, John D. Sitton, Jr. filed a petition for formal probate of the will and formal appointment as Personal Representative. This was contested by James C. Sitton, II, who filed an answer and counterclaim again seeking appointment as Personal

Representative. Pursuant to a hearing in the Pickens County Probate Court, Judge Kathy P. Zorn issued a consent order dated March 14, 2016, admitting the original Last Will and Testament of Ruth R. Sitton to probate and confirming the appointment of a third-party personal representative, Kenneth Roper, of the Pickens County Bar, to continue to serve as Personal Representative of the Estate of Ruth R. Sitton “due to the severe animosity between the parties”.

12. Even though James C. Sitton, II is now seeking an accounting of the John D. Sitton testamentary trust and alleging a breach of the fiduciary duties by the Trustees, he did not file a statutory creditor’s claim in the Estate of Ruth R. Sitton even though she was one of the Co-Trustees. Ruth R. Sitton and John D. Sitton, Jr. signed all deeds out of the Trust as Co-trustees. Neither could act independently, and Dale Sitton Rogers never acted as trustee in place of her deceased mother, Ruth R. Sitton.

13. On December 18, 2017, James C. Sitton, II., individually and as Successor Trustee of Ruth R. Sitton, and Dorothy Sitton Ashley, individually and as Primary Trustee of Ruth R. Sitton, Dale Sitton Rogers, and Betty Ann Sitton filed an amended summons and petition with the Pickens County Probate Court against John D. Sitton, Jr. and Kenneth Roper for approval of a trust, for partition of the 303 North B Street property, and for waste. This litigation arose out of a corrective deed by John D. Sitton executed prior to his death on July 9, 1987, where he attempted to convey his undivided one-half (1/2) interest in the 303 North B Street property to “Dorothy Sitton Ashley,

Trustee for Ruth R. Sitton, with authority to convey”. Pursuant to a motion to dismiss filed by John D. Sitton, Jr., for lack of jurisdiction over the subject matter, Judge Kathy P. Zorn issued her order dated October 31, 2018, finding it was appropriate to transfer the issue to clarify the deed to Circuit Court to be determined. Therefore, the action was removed to the Pickens County Court of Common Pleas.

14. The action over the alleged trust deed came to be heard before the Honorable Perry H. Gravely, Circuit Court Judge for Pickens County, on April 3, 2020. Judge Gravely issued his order dated May 18, 2020, and he found that the two deeds attempting to convey the undivided one-half (1/2) interest of John D. Sitton in the 303 Noth B Street property to “Dorothy Sitton Ashley, Trustee” were to a non-existing grantee at the time the deeds were executed and anytime since then. Therefore, he found that the original deed and the corrective deed were “void *ab initio* ,and no trust was created by said deeds.” He remanded the case back to the Probate Court for any further proceedings. This order was not appealed. Therefore, the undivided one-half (1/2) interest of John D. Sitton in and to the 303 North B Street, Easley, South Carolina, property was a probate asset of the Estate of John D. Sitton, Sr., and this resulted in the re-opening of his estate and the appointment of James C. Sitton, II as successor Personal Representative.

15. Brian K. James has been appointed as successor Personal Representative of the Estate of Ruth R. Sitton in place of Kenneth Roper, and he is still acting in this capacity.

16. The primary initial beneficiaries of the John D. Sitton Testamentary Trust were his wife, Ruth R. Sitton, and his disabled daughter, Betty Ann Sitton. His son, James C. Sitton, II was mentioned as a beneficiary, and the Co-Trustees were directed to "... supplement with food, shelter, and clothing for James C. Sitton, II." The named Trustees were decedent's wife, Ruth R. Sitton, and his son, John D. Sitton, Jr. They were named as co-trustees, and neither could act unilaterally.

17. At the time of his death in 1993, John D. Sitton lived at 303 North B Street, Easley, South Carolina, with his wife, Ruth R. Sitton, and his disabled daughter, Betty Ann Sitton, who had always lived with her parents. Betty Ann Sitton continued to live with her mother, Ruth R. Sitton, until her mother died on May 25, 2013, and Ruth continued to provide support for Betty.

18. The primary asset of the testamentary trust consisted of real estate in Anderson County, South Carolina, as evidenced by the statutory deed of distribution. There is no evidence of any other assets, money or otherwise, that were transferred into the trust. The only money ever in the trust was generated by the sale of real estate. (Per the mediated agreement approved by the Court, all remaining real estate titled in the John D. Sitton Trust is to be transferred to the Estate of John D. Sitton.)

19. Up until November 23, 2004, there was no evidence of any money to account for in the Trust. On this date, the Trustees sold the first of four (4) separate parcels of real estate to third-party purchasers. The final of the four

parcels was sold on March 22, 2006. The total proceeds from the sale of real estate was \$48,000.00. Ruth R. Sitton and John D. Sitton, Jr., signed all four (4) deeds as Co-Trustees.

20. John D. Sitton, Jr., never handled any of the money from these sales of real estate. He deferred to his mother. Regarding the money, he testified "I gave it to my mother and she put it into her bank account." John D. Sitton, Jr further testified that all of the money from the sales of real estate "... went into my mother's bank account". He further testified that he did not specifically know where his mother put the money or how she spent it. Ruth R. Sitton deposited the money into her own account, and she handled her own account, deciding how to spend the money. John D. Sitton, Jr., did not have access to his mother's account. Ruth's children deferred to her, and the money was primarily for her needs and Betty's needs.

21. James C. Sitton, II was living in the home with his mother and sister Betty when his father died in 1993. His mother, Ruth R. Sitton, was seventy-four (74) years old when her husband died. He continued to live with his mother until around 1997, when he moved to Atlanta, and he helped her with finances. James C. Sitton, II testified that he set up a file cabinet and folders – showed her where to put documents and how to file. John D. Sitton, Jr., testified that his brother, James C. Sitton, II, was the bookkeeper and helped his mother with finances until he moved to Atlanta in 1997.

22. James C. Sitton, II further confirmed that Ruth R. Sitton handled her own finances and made her own decisions after 1997. When asked if he

helped his mother with her own financial affairs after 1997, he testified: “I mean absolutely I was forbidden to. She told me Johnny was over the house and she was over the finances and she did not want to hear anything from me about it.”.

23. John D. Sitton, Jr. did not handle the finances – his mother did. He, therefore, has no records from almost twenty years ago. Again, Ruth R. Sitton and Betty Ann Sitton were primary beneficiaries of the Trust. Ruth was supporting her daughter, Betty. The Trustees were given broad powers and discretion in handling the limited trust monetary assets.

24. The final paragraph of the Last Will and Testament of John D. Sitton, Sr., is informative on this point. It states: “It is my desire that my Personal Representatives herein named complete the settlement of my estate with the Probate Court as soon as practical after my death and then to continue in their capacity as trustees as hereinafore mentioned without accounting being required of them to any Courts as to the Management of the Trust Estate set out herein.”

25. The final evidence of any money being received by the Trustees is the fourth deed dated March 22, 2006, and recorded on March 25, 2006. James C. Sitton, II did not file his action for an accounting until April 27, 2023, seventeen (17) years later and ten (10) years after his mother died. He did not file a claim in his mother’s estate. He knew when his mother died there was no money in her account. The limited funds were obviously spent for Ruth R. Sitton and her daughter, Betty.

26. The Plaintiff's claim of a breach of fiduciary duty arises primarily out of a deed executed by John D. Sitton, Jr. and Ruth R. Sitton, as Co-Trustees under the Last Will and Testament of John D. Sitton, deceased, to John D. Sitton, Jr. conveying certain real estate in the Trust. The deed was dated September 1, 2011, and recorded on September 23, 2011, in the Anderson County Register of Deeds Office in Record Book 10162 at Page 275.

27. The execution of this deed was the last known act of the Trustees, and occurred almost twelve (12) years before the Plaintiff filed his action for an alleged breach of fiduciary duty. After September 1, 2011, no other actions were ever taken by the Trustees, and the Trust was dormant. Ruth R. Sitton died on May 25, 2013, ten (10) years before the Plaintiff filed this action, and he filed no statutory creditor's claim in his mother's estate. Ruth R. Sitton had broad discretion and signed all trust deeds. The Trustees were, also, entitled to a ten percent (10%) commission.

28. John D. Sitton, Jr testified that it was his mother's decision to deed this property to him for all he had done for the family. Again, the Trustees had broad discretion and powers. John D. Sitton, Jr further testified that his brother, James C. Sitton, II ("Jimmy") found this deed in a dresser drawer around September of 2012, and "he was furious".

29. James C. Sitton, II was aware as early as 2012 that this deed had been executed to John D. Sitton, Jr. In his testimony John D. Sitton, Jr. reaffirmed that Jimmy knew about this deed in 2012 and that "he was acting pretty ugly about it at the house" and "he went to my mother and fussed".

When asked about this, James C. Sitton, II testified twice “I do not recall that” and “no, I do not recall”. He never denied finding the deed.

30. All five (5) of the Sitton children/ siblings were each deeded comparable tracts of land by the Trustees in 1998 and 1999. These five (5) deeds were executed by the Trustees and were part of the Trust real property. All were aware of the deeds, and no one objected. Each of the siblings were deeded approximately 9.7 acres from the Trust property which they subsequently sold and benefited from.

31. It is apparent that all five (5) of Ruth Sitton’s children deferred to her regarding the trust real estate and money derived from the sale of trust real property. Again, the Trustees had full and broad powers and discretion

32. The Court is compelled to include its observations on the credibility of the respective parties. The Defendant presented as completely forthcoming and freely acknowledged his actions of one kind or another. On the other hand, the Plaintiff was evasive in many instances and not believable on other instances such as his claim that he did not recall finding the deed to the Defendant in 2012. The Defendant asserted that the Plaintiff had a deep rooted ill-will, almost hatred, of his Defendant-Brother.

33. I find that both the accounting cause of action and the breach of fiduciary duty cause of action are time barred by the statute of limitations based upon the established facts of this case. On the accounting issue, all actions took place between 2004 and 2006, long before this action was commenced in 2023. It is clear that the Plaintiff was well aware of the various

deeds executed by both trustees, and yet he raised no question for an extremely long time of seventeen (17) years – way too long. Regarding the breach of fiduciary duty cause of action, the Plaintiff had constructive notice of the deed from the Trustees to Defendant when it was recorded on September 23, 2011. The evidence further leads to the inescapable conclusion that the Plaintiff learned of this deeds when he found it at his Mother’s home in 2012. Yet no action was filed until 2023, a period of eleven (11) years.

34. The basis of the Plaintiff’s claim for an accounting is that the trust beneficiaries (of which he was a secondary one) were entitled to an accounting under decedent’s will within seventy-five days from the year end beginning upon activation of the trust after John D. Sitton’s death in 1994 which were never provided. The Plaintiff, as a beneficiary, could have brought an action for an accounting, at any time over the life of the trust, but failed to do so until 2023. It is again noted that no money was received from the sale of the trust real estate after March 22, 2006. James C. Sitton, II admitted in his testimony that he knew about the deeds to the third-party buyers. Therefore, even under Plaintiff’s theory of the case, he is barred by the statute of limitations.

35. I further find that the Plaintiff’s causes of action for an accounting and for breach of fiduciary duty are barred by the affirmative defense of “laches”. The Plaintiff neglected for an unreasonable and unexplained length of time to file his action resulting in a loss of records, witnesses, the death of a co-trustee, and loss of evidence. He unreasonably failed to assert his claims in a timely fashion.

36. I further find that the affirmative defenses of waiver and estoppel are applicable to this case and would bar the Plaintiff's recovery.

37. Even if the Plaintiff was not barred by the time and other defenses, the testimony provided by the Defendant at trial provides as complete of an accounting as the Defendant is able to provided based upon the death of his mother and the loss of her records due to the passage of time caused by Plaintiff's unreasonable delay. In short, the money from the sales of real estate went into his mother's account and were used by her for the maintenance and support of herself and her daughter, Betty, who lived with her, both of whom were beneficiaries of the trust. At one point for a considerable period of time, the Plaintiff assisted his mother with her records and bank account, and he had access to her records and bank account long before this action and claims were asserted against his brother, the Defendant herein. The Plaintiff even acted as his mother's attorney-in-fact under a durable power-of-attorney prior to her death in 2013, at least ten (10) years before he asserted his claims. As to the breach of fiduciary duty claim, the deed to the Defendant, John Sitton, Jr., in 2011 was an act of his mother and the Defendant acting as co-trustees. There are a number of reasons why the deed was issued to the Defendant, including his right to a commission and his various assistance to his mother, Ruth D. Sitton, and his sister, Betty Sitton over a considerable period of time.

CONCLUSIONS OF LAW

Based upon the findings of salient facts, the Court finds the following conclusions of law to be applicable.

1. Pursuant to Rule 53(b), **S.C.R.C.P.**, this matter has been properly referred to me by consent of the parties to make findings of fact and conclusions of law and to issue a final order on the cause of action pertaining to an accounting and the cause of action pertaining to breach of fiduciary duty.
2. Pursuant to Rule 53(e), **S.C.R.C.P.**, any appeal shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.
3. The current South Carolina Trust Code (“S.C.T.C.”) was enacted into law in 2013 with an effective date of January 1, 2014. **S.C. Code Ann.** § 62-7-1005 (2021) established a statute of limitations especially applicable to trustees’ liabilities to trust beneficiaries for breach of trust or breach of fiduciary duties. This section is similar in content to the former South Carolina Probate Section 62-7-307.

This Code section establishes two limitation periods pertaining to the commencement of a proceeding against a trustee for breach of trust.

S.C. Code Ann. § 62-7-1005 (a)(b) sets the limit for commencement of an action against a trustee by a beneficiary at one year after receiving a report from the trustee that provides sufficient information so that the beneficiary should know or be on inquiry notice of a possible claim. **S.C. Code Ann.** § 62-7-1005 (c) provides that, in other cases, a three year statute of limitation applies.

4. The common law of trusts and principals of equity, supplement the **South Carolina Trust Code**. (“S.C.T.C.”) **S.C. Code Ann.** §62-7-106 (2021). An act done and any right acquired or accrued before the effective date of S.C.T.C are not affected by the act. Unless otherwise provided by the act, any right in a trust accrues in accordance with the law in effect on the date of the creation of the trust and a substantive right in the decedent’s estate accrues in accordance with the law in effect on the date of the decedent’s death. 2013 Act No. 100 of the South Carolina Legislature.
5. The principal of “laches” is in effect an equitable statute of limitations. White v. Warby, 176 S.C. 36, 179 S.E. 671 (1935). Laches is an equitable doctrine, which “arises upon the failure to assert a known right. **“EX parte” Stokes**, 256 S.C. 260, 182 S.E.2d 306 (1971). Laches has been defined as:
- “Neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage the other party; delay alone in assertion of a right does not constitute laches. Hallums v. Hallums, 296 S.C. 195, 198-199, 371 S.E.2d 525, 527 (1988). Simply put, to prove laches, a party must establish (1) delay; (2) unreasonable delay; and (3) prejudice.

The 1961 Supreme Court Case of Byars v. Cherokee County, 237 S.C. 548, 559, 118 S.E.2d 324, 330 defined laches as follows: “Laches is the neglect for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do in law what should have been done, **or neglecting or omitting to do what in law should have been done for an unreasonable and unexplained length of time and in circumstances which afforded opportunity for diligence.**” (Emphasis added).

6. Under the doctrine of equitable estoppel, a person’s acts or conduct, or silence when it is his duty to speak, may prevent him from asserting a right that he otherwise would have had against another person who relied on that voluntary action. (**i.e.**, “when his own conduct renders assertion of those rights contrary to equity.”) American Bankers Insurance Group, Inc. v. Long, 453 F.3d 623 (C.A.S.C. 2006) and Premium Investment Corporation V. Green, 283 S.C. 464, 324 S.E.2d 72 (S.C. App. 1984)
7. “Waiver” is a voluntary and intentional abandonment or relinquishment of a known right. Mac Papers, Inc. v. Genesis Press, Inc., 426 S.C. 393, 826 S.E.2d 874 (S.C. App. 2019). The equitable doctrine of “laches” is the equivalent to the legal doctrine of waiver, which is the voluntary and intentional relinquishment or abandonment of a known right. Equitable estoppel focuses on a party’s detrimental reliance on another party’s conduct while a waiver analysis focuses on a party’s unequivocal intent

to relinquish a known right Strickland v. Strickland, 375 S.C. 76, 650 S.E.2d 465 (2007).

IT IS, THEREFORE, HEREBY ORDERED, ADJUDGED AND DECREED:

- 1.) That the Plaintiff's cause of action for an accounting is hereby time barred by the applicable statute of limitations and laches.
- 2.) That the Plaintiff's cause of action for an alleged breach of fiduciary duty is hereby barred by the applicable statute of limitations and laches.
- 3.) That the Plaintiff's causes of action for an accounting and for an alleged breach of fiduciary duty are hereby barred by the affirmative defenses of waiver and estoppel.
- 4.) That the Plaintiff's causes of action for an accounting and for an alleged breach of fiduciary duties are hereby dismissed with prejudice.

IT IS SO ORDERED.

Anderson, South Carolina
September __, 2025

Steven C. Kirven, Master-In-Equity
For Anderson and Oconee Counties,
Tenth Judicial Circuit

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2023CP0400846**

James C Sitton II John D Sitton Betty A Sitton	John D Sitton Estate Betty A Sitton Estate James C Sitton II Prs	John D Sitton Jr Ruth R Sitton Estate John D Sitton As Former Trustee	Ruth R Sitton Brian K James Prs
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Steve Eakes

Attorney for: Plaintiff Defendant
 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. Nonst);
 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)

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.



Anderson Common Pleas

Case Caption: James C Sitton II , plaintiff, et al VS John D Sitton Jr , defendant, et al

Case Number: 2023CP0400846

Type: Order/Other

And it is so ordered

s/ Steven C. Kirven, Master in Equity, #3081