

**EXHIBIT A**

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE PROBATE COURT  
CASE NO. 2022-ES-10-00235

IN RE: ESTATE OF )  
JAMES L. STROBEL, Deceased, )

DANIEL LLOYD STROBEL; )  
JAMES ANDREW STROBEL; JOHN )  
ANTHONY STROBEL; and )  
PETER NICHOLAS STROBEL, )  
Plaintiffs, )

**ORDER DENYING  
MOTION TO AMEND ANSWER  
AND DENYING MOTION TO  
FOR JURY TRIAL**

vs. )

PAULA M. STROBEL, as Personal )  
Representative of the Estate of James L. )  
Strobel and individually; DOROTHY )  
ELIZABETH STROBEL BELL, as an )  
interested person; and ZOIE P. )  
OGLETREE, as an interested person, )  
Defendants. )

**RECEIVED**  
**Jan 27 2026**  
**SC Court of Appeals**

This matter came before the undersigned on August 27, 2025, for a hearing involving (1) Defendant Paula M. Strobel’s (hereinafter “Defendant Strobel”) Motion to Amend Answer, which motion was originally filed in the Probate Court on May 13, 2024, and was later refiled in the Circuit Court on June 23, 2025, and (2) Defendant Strobel’s Motion for Jury Trial, which motion was originally filed in the Probate Court on June 24, 2024, and was later refiled in the Circuit Court on June 23, 2025.

Participating at the hearing were Daniel F. Blanchard, III, Esquire of Rosen Hagood, LLC, as counsel for Plaintiffs Daniel L. Strobel, James A. Strobel, John A. Strobel, and Peter N. Strobel’s (hereinafter “Plaintiffs”); J. Ashley Twombly, Esquire of Twenge + Twombly Law Firm and Bijan K. Ghom, Esquire of Saxton & Stump, LLC, as counsel for Defendant Strobel; and Mr. Twombly as counsel for Defendant Dorothy E.S. Bell (hereinafter “Defendant Bell”).

After careful consideration of the motions, pleadings, and memoranda of the parties, the arguments of counsel, and the other matters of record, the Court hereby finds that the Motion to Amend Answer and the Motion for Jury Trial should be DENIED for the reasons stated herein.

### **BACKGROUND**

This case involves the Estate of James L. Strobel, who died on January 3, 2022. The case originated in the Probate Court and was removed to the Circuit Court. Defendant Strobel is the personal representative for the estate. Plaintiffs are the Decedent's four sons. Their mother is Defendant Zoie P. Ogletree (hereinafter "Defendant Ogletree"). Defendant Bell is the Decedent's daughter. Her mother is Defendant Strobel.

On December 6, 2022, Plaintiffs commenced this action by filing their Petition in the Probate Court naming as parties Defendant Strobel (individually and as personal representative of the estate) and Defendant Bell. The Petition does not demand a jury trial. It also does not seek any affirmative relief against Defendant Bell. Paragraph 13 states: "[Defendant Bell] is named as a party to this action solely because, upon information and belief, she is a potential heir and an interested person with respect to Decedent's estate, and her interest may be adversely affected by this Action."

In their Petition, Plaintiffs seek to enforce the provisions of a written separation agreement that Decedent executed with Defendant Ogletree dated March 4, 1977. The Petition contends that the separation agreement required the Decedent to make an irrevocable will leaving a portion of his estate to Plaintiffs in equal shares. Decedent's Last Will & Testament dated March 24, 2003 (hereinafter "Will"), which Defendant Strobel filed for probate after Decedent's death, does not devise or leave any portion of Decedent's estate to his four sons (the Plaintiffs) or his daughter (Defendant Bell). Rather, the Will would leave the Decedent's entire estate to Defendant Strobel.

The Petition asserts claims for (1) Declaratory Judgment; (2) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Specific Performance; (3) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Actual Damages; (4) Breach of Fiduciary Duty; (5) Unjust Enrichment/Constructive or Resulting Trust; and (6) attorneys’ fees pursuant to S.C. CODE ANN. § 62-1-111.

On February 3, 2023, Defendant Strobel filed her Answer to the Petition. The Answer did not make a demand for a jury trial. Defendant Bell was served with the Petition on January 6, 2023. However, she did not answer or respond to the Petition.

On September 8, 2023, Plaintiffs filed an Amended Petition, which again does not demand a jury trial. The Amended Petition adds Defendant Ogletree as an interested person, adds a cause of action for Defendant Strobel’s removal as personal representative of the estate, and seeks a declaratory judgment that the Decedent’s divorce from Defendant Ogletree obtained in the Dominican Republic is invalid, thus Defendant Ogletree was the Decedent’s surviving spouse at his death and the Decedent’s marriage to Defendant Strobel is bigamous and void under state law. The Amended Petition does not seek any affirmative relief against Defendants Bell or Ogletree. Paragraph 22 states: “[Defendants Ogletree] and [Bell] are named as parties to this action solely because, upon information and belief, they are potential heirs and are interested persons with respect to Decedent’s estate, and their interest may be adversely affected by this Action.”

The Amended Petition raises claims for (1) Declaratory Judgment; (2) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Specific Performance; (3) Breach of Contract/Breach of Covenant of Good Faith & Fair Dealing—Actual Damages; (4) Breach of Fiduciary Duty; (5) Unjust Enrichment/Constructive or Resulting Trust; (6) Removal of Personal Representative; and (7) attorneys’ fees pursuant to S.C. CODE ANN. § 62-1-111.

On September 21, 2023, Defendant Ogletree was served with the Amended Petition. However, she did not answer or otherwise respond to the Amended Petition.

On November 17, 2023, Defendant Strobel filed her Answer to the Amended Petition. The Answer did not make a demand for a jury trial. On December 18, 2023, Defendant Strobel then filed her Amended Answer to the Amended Petition, which adds a counterclaim for Unjust Enrichment and also adds a demand for a jury trial for the first time.

On January 2, 2024, Plaintiffs filed their reply to Defendant Strobel's counterclaim. Paragraph 30 of the reply requests that Defendant Strobel's demand for a jury trial be stricken on the basis that she is not entitled to a jury trial and because she has waived any right to a jury trial.

On February 23, 2024, through her legal counsel, Defendant Bell accepted service of the Amended Petition and appeared in the case for the first time. Her attorneys also represent Defendant Strobel. On April 15, 2024, Defendant Bell filed her Answer to the Amended Petition even though it makes no claim against her. Her Answer also alleges counterclaims against the Plaintiffs for Unjust Enrichment, Civil Conspiracy, and Partition and Contribution and cross-claims against Defendant Ogletree for Unjust Enrichment and Civil Conspiracy.

Defendant Bell's Answer did not demand a jury trial. Nevertheless, on April 25, 2024, Defendant Bell filed a motion for removal asking the Probate Court to grant mandatory removal of the case to the Circuit Court on the basis that "claims have been raised entitling parties to a jury trial ...." See Motion for Removal filed 4.25.24. Defendant Bell apparently treated this as a demand for a jury trial.

On May 2, 2024, Plaintiffs filed a motion to strike Defendant Bell's demand for a jury trial and a separate motion to strike Defendant Strobel's demand for a jury trial. On May 13, 2024, Plaintiffs also filed a motion to dismiss Defendant Bell's counterclaims.

On June 24, 2024, Defendant Strobel filed a Motion for Jury Trial. On July 5, 2024, Plaintiffs filed a memorandum in opposition to Defendant Strobel's Motion for Jury Trial.

On August 16, 2024, the Probate Court entered an order removing the case to the Circuit Court. The Probate Court did not resolve or decide the parties' pending motions.

On October 15, 2024, following removal of the case, Plaintiffs refiled their pending motions with the Circuit Court, including their motion to dismiss Defendant Bell's counterclaims, their motion to strike Defendant Bell's demand for a jury trial, and their motion to strike Defendant Strobel's demand for a jury trial.

On July 31, 2025, following a hearing conducted on June 5, 2025, Circuit Judge S. Bryan Doby granted Plaintiff's motion to dismiss Defendant Bell's counterclaims and granted Plaintiffs' motion to strike Defendant Bell's demand for a jury trial.<sup>1</sup> On August 25, 2025, Judge Doby denied Defendant Bell's Motion to Alter or Amend his prior Order.

## LAW AND ANALYSIS

### 1. Motion to Amend Answer.

Defendant Strobel seeks leave to amend her Answer to add a new counterclaim against Plaintiffs for "civil conspiracy." Plaintiffs oppose the motion on the basis, *inter alia*, that

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<sup>1</sup> Although Plaintiffs' Motion to Strike Defendant Strobel's demand for a jury trial was also set for a hearing before Judge Doby on June 5, 2025, he deferred that motion and directed that it be rescheduled for another hearing to be held simultaneously with Defendant Strobel's Motion to Amend Answer, which she had not yet refiled after the case was removed to the Circuit Court.

Despite Judge Doby's Order, Plaintiffs' Motion to Strike Defendant Strobel's demand for a jury trial was not placed on the August 27, 2025, motions roster along with Defendant Strobel's Motion to Amend Answer and her Motion for Jury Trial, which motions had since been refiled in the Circuit Court. Consequently, even though Plaintiffs' Motion to Strike Defendant Strobel's demand for a jury trial involves the same issues and arguments as Defendant Strobel's Motion for Jury Trial, which was heard on August 27, the undersigned did not take up Plaintiffs' Motion to Strike Defendant Strobel's demand for a jury trial at that hearing. Plaintiffs' Motion to Strike will be scheduled for a future hearing date.

Defendant Strobel did not provide a proposed amended pleading with her motion and, even if such a document had been provided, the proposed amendment would be futile.

Defendant Strobel's motion does not attach or provide a proposed amended pleading or set forth any other information regarding the proposed new counterclaim. The motion merely states that Defendant Strobel wants to add a new counterclaim for "civil conspiracy." Nothing other than a label is given. The Court is left to speculate as to the factual basis for the proposed counterclaim. Simply reciting a label is insufficient to state a valid cause of action as a matter of law. A proper pleading "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." McCleary-Evans v. Maryland Dep't of Transp., State Highway Admin., 780 F.3d 582, 585 (4th Cir. 2015).

Courts have denied motions to amend pleadings where a copy of the proposed new pleading was not attached to or filed with the motion to amend. See, e.g., Johnson v. Roach, No. CV 0:18-996-HMH-PJG, 2018 WL 5458692, at \*2 (D.S.C. Oct. 29, 2018) (denying motion to amend for failure to attached proposed amendment where it is unclear what claims, if any, plaintiff was seeking to bring). Pet Helpers, Inc. v. Frisco, No. 2022-000775, 2025 WL 1650100, at \*1 (S.C. Ct. App. June 11, 2025) ("[W]e hold the circuit court did not abuse its discretion [in denying motions to amend] because Frisco did not provide a proposed amended pleading with either her second or third motions to amend, which would have been necessary to enable the circuit court—and this court—to determine if Pet Helpers would suffer prejudice as a result of the amendment.").

This case was initially filed in the Probate Court on December 6, 2022, and has been pending for almost three years. Defendant Strobel has had more than ample opportunity to obtain discovery, develop the facts, and prepare a pleading that properly states the factual basis for her proposed new counterclaim. She has not given a reason justifying her failure to file a proposed

amended pleading with her motion. This failure compels the denial of her motion.<sup>2</sup>

Without this document, the Court cannot determine the factual bases upon which the new counterclaim would be asserted, which “severely handicaps [the] court’s ability to determine whether or not the amendment would be proper.” D.R. Horton, Inc. v. Landbank Fund VIII, LLC, No. 4:08-CV-1711-TLW-TER, 2009 WL 10678195, at \*1 (D.S.C. Mar. 31, 2009) (denying motion to amend and citing to cases interpreting Rule 15 to require party seeking to amend to attach a copy of the proposed amendments to the motion); Duncan v. Clarke, 2015 WL 2218240, at \*2 n.1 (E.D. Va. May 11, 2015) (denying motion for leave to amend where plaintiff “failed to submit his proposed amended complaint with the Rule 15 motion”). The Court denies Defendant Strobel’s motion based on her failure to attach a copy of her proposed new counterclaim to her motion.

Even if Defendant Strobel had provided a proposed amended pleading, the Court still finds that her attempt to raise a counterclaim for civil conspiracy would be futile. Our state law holds that a motion to amend the pleadings should be denied when the proposed amendment would be futile. Patton v. Miller, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017). In Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry, 403 S.C. 623, 743 S.E.2d 808 (2013), the supreme court affirmed the circuit judge’s denial of the plaintiff’s motion to amend its complaint seeking to add new causes of action for civil conspiracy on the basis the amendments would be “futile.” Id. at 632-33, 743 S.E.2d at 813; see also Couram v. Davis, No. 2015-UP-065, 2015 WL 477266, at \*1 (S.C. Ct. App. Feb. 4, 2015) (finding circuit court properly denied plaintiff’s motion to amend her

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<sup>2</sup> It is noteworthy that Plaintiffs’ memorandum in opposition to Defendant Strobel’s Motion for Jury Trial, which was filed on July 5, 2024, while the case was in the Probate Court, specifically pointed out that the motion should be denied due to Defendant Strobel’s failure to attach a copy of her proposed amended counterclaim to her motion. Despite this fact, Defendant Strobel did not attach a proposed amended pleading to her motion when she refiled it in the Circuit Court on June 23, 2025, nor did she submit such a document at any prior to the August 27, 2025, hearing.

complaint on the grounds the amendment would be futile).

In the present case, allowing Defendant Strobel to amend her pleading would be futile because this Court does not have subject matter jurisdiction over her proposed claim for civil conspiracy. As discussed above, this case originated in the Probate Court and was later removed to this Court pursuant to S.C. CODE ANN. § 62-1-302. This Court is only exercising derivative jurisdiction based on the removal of the case from the Probate Court.

As Judge Doby previously ruled in this case in his Order filed on July 31, 2025, the Probate Court “is not a constitutional court,” but is vested with only such specific and limited subject matter jurisdiction as is granted to it by statute. See Judge Doby Order filed 7.31.25 p.9; Judy v. Judy, 393 S.C. 160, 169, 712 S.E.2d 408, 412 (2011); Still v. Vaughn, No. 2018-000500, 2021 WL 5232311, at \*2 (S.C. Ct. App. Nov. 10, 2021), reh'g denied (Dec. 16, 2021); see also S.C. CODE ANN. § 62-1-302. Judge Doby’s Order observed that the Probate Court has no subject matter jurisdiction over *in personam* tort claims that Defendant may wish to assert against Plaintiffs in their individual capacities. See Judge Doby Order filed 7.31.25 p.9; see also In re Guardianship of Gibbs, 253 S.W.3d 866, 872-73 (Tex. Ct. App. 2008) (dismissing claims of restitution and breach of fiduciary duty brought in probate court by one sibling trust beneficiary against other sibling trust beneficiaries alleging that defendants had wrongfully induced mother to withdraw funds from her trust because of probate court’s lack of subject matter jurisdiction over *in personam* claims); Stauffer v. Nicholson, 438 S.W.3d 205, 213 (Tex. Ct. App. 2014) (dismissing plaintiff’s *in personam* claims filed against defendant in probate court seeking recovery of damages for plaintiff personally because probate court lacked subject matter jurisdiction over such claims); Roll v. Edwards, 805 N.E.2d 162, 168 (Ohio Ct. App. 2004) (holding that probate court lacks subject matter jurisdiction over *in personam* claim for intentional interference with expectancy of

inheritance); In re Morgan, 833 S.W.2d 776 (Ark. 1992) (dismissing counterclaim for negligence stemming from injuries sustained in a football game that was filed in probate court action because probate court lacked subject matter jurisdiction over such an *in personam* counterclaim); Eddleman v. Estate of Farmer, 740 S.W.2d 141 (Ark. 1987) (dismissing claim for personal injuries stemming from alleged sexual abuse that was filed in probate court because the probate court did not have subject matter jurisdiction over the action).

As Judge Doby held, the Probate Court lacks subject matter jurisdiction over an *in personam* tort claim against Plaintiffs. Jurisdiction over such a claim properly lies in the Circuit Court *in the first instance*, not a claim filed in the Probate Court and then removed to the Circuit Court under § 62-1-302. See Judge Doby Order filed 7.31.25 p.9; see also Still, 2021 WL 5232311 at \*3 (“Although a will contest action may be removed to circuit court under certain circumstances, the Probate Code requires that a will contest action be initiated in the probate court.... Therefore, the circuit court lacked subject matter jurisdiction over the will contest action in the Original Case because it was not initially filed in the probate court.”).

The undersigned concurs with Judge Doby. Defendant Strobel’s counterclaim for civil conspiracy is not within this Court’s subject matter jurisdiction as delineated in § 62-1-302.

Further, although the precise allegations of Defendant Strobel’s proposed counterclaim are unknown given the absence of a proposed amended pleading, her counsel expressed at the hearing that her proposed new claim is based on theories that the Decedent and Defendant Ogletree supposedly conspired with each other in 1977 or acted *in pari delicto* to obtain an illegal divorce from a court in the Dominican Republic. These arguments are not stated in Defendant Strobel’s motion and were raised for the first time at the hearing. Even assuming *arguendo* these arguments were properly raised, Plaintiffs’ counsel pointed out in response that the separation agreement

between Decedent and Defendant Ogletree which they seek to enforce was executed prior to any divorce between Decedent and Defendant Ogletree in the Dominican Republic and the agreement does not provide it is dependent or contingent upon the parties ever obtaining a valid divorce. Plaintiffs assert the separation agreement is valid even if the divorce is illegal or invalid.

Settled law recognizes an important caveat to the general rule that courts will not enforce an illegal contract. In Nelson v. Bryant, 265 S.C. 558, 220 S.E.2d 647 (1975), the court held that despite the rule that the courts will not enforce an illegal transaction, “the principle is recognized that, if there is an independent contract, not forbidden by law, on which the action is brought, the independent contract is enforceable even though it be with respect to the proceeds of an illegal transaction.” Nelson v. Bryant, 265 S.C. 558, 561, 220 S.E.2d 647, 648 (1975); see also Graham v. Graham, 276 S.C. 341, 343, 278 S.E.2d 345, 346 (1981) (holding that subsequent agreement to sell portions of property obtained through an illegal scheme to chill bids at a judicial sale was valid and enforceable contract despite the invalidity of the prior scheme); Cherry v. Thomasson, 276 S.C. 524, 527, 280 S.E.2d 541, 542 (1981) (“Equity will allow a party to recover on an enforceable, legal contract as long as the right to be vindicated arises under that contract and not under an independent illegal agreement.”). In this case, even if the divorce between Decedent and Defendant Ogletree is illegal or void for some reason, the separation agreement is independent and separate from any divorce between them. It is enforceable despite an invalid divorce.

Defendant Strobel’s Motion to Amend Answer is denied because the proposed new counterclaim for civil conspiracy would be futile.

**2. Motion for Jury Trial.**

Defendant Strobel’s motion requests a jury trial “in accordance with [South Carolina Rule of Civil Procedure] 39(b).” See Def. Strobel’s Motion for Jury Trial p.1. Her motion further states

that she has “demanded a jury trial on all issues so triable as a matter of right pursuant to ... Rule 38.” Id. Her motion does not address the provisions of the South Carolina Probate Code (SCPC).

The SCPC applies to Defendant Strobel’s jury demand because this case originated in the Probate Court. SCPC § 62-1-306, which is entitled “Jury trials,” provides as follows:

- (a) If duly demanded, a party *is entitled to trial by jury* in any proceeding involving an issue of fact in an action for the recovery of money only or of specific real or personal property, *unless waived as provided in the rules of civil procedure for the courts of this State*. The right to trial by jury exists in, but is not limited to, formal proceedings in favor of the probate of a will or contesting the probate of a will.
- (b) If there is no right to trial by jury under subsection (a) or the right is waived, the court in its discretion may call a jury to decide any issue of fact, *in which case the verdict is advisory only*.

S.C. CODE ANN. § 62-1-306(a)-(b) (emphasis added).

The right to a jury trial provided in subsection (a) may be waived as provided in the South Carolina Rules of Civil Procedure. See Matter of Howard, 315 S.C. 356, 362 n.6, 434 S.E.2d 254, 258 n.6 (1993) (tracing history of § 62-1-306(a)). Rules 38(b) & (d) specifically deal with a party’s waiver of the right to a jury trial. They state in pertinent part as follows:

**(b) Demand.** Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action *and not later than 10 days after the service of the last pleading directed to such issue*. Such demand may be endorsed upon a pleading of the party. . . .

**(d) Waiver.** *The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5(d) constitutes a waiver by him of trial by jury. . . .*

S.C. R. CIV. PRO. 38(b), (d) (emphasis added). Taken together, the SCPC and the rules make clear that a party’s failure to serve a demand for a jury trial within ten days of the service of the last pleading directed to such issue constitutes a waiver of the right to a trial by jury.

In the instant case, Defendant Strobel is not entitled to a jury trial as a matter of right under § 62-1-306(a) and Rule 38(b) because she waived this right by not making a timely demand for a

jury trial in her pleadings. Additionally, the Court denies her invitation to exercise its discretion to conduct a jury trial for advisory purposes only under § 62-1-306(b) or Rule 39(b) because there are no special or exceptional circumstances warranting a jury trial in this case.

**(a) Jury Trial as a Matter of Right – § 62-1-306(a) and Rule 38(b):**

A party's failure to serve a demand for a jury trial within ten days of the service of the last pleading directed to such issue constitutes a waiver of the right to a trial by jury. See S.C. CODE ANN. § 62-1-306(a); S.C. R. CIV. PRO. 38(b), (d). Plaintiffs filed their Amended Petition on September 8, 2023. While Defendant Strobel filed her initial Answer to the Amended Petition on November 17, 2023, she did not make a demand for a jury trial in that pleading. Consequently, her ten days in which to demand a jury trial expired on November 27, 2023. She did not make a demand for a jury trial until December 18, 2023, which is when she filed and served her Amended Answer to the Amended Petition and raised a new Counterclaim for Unjust Enrichment.

The fact that Defendant Strobel filed an Amended Answer and Counterclaim did not revive her right to demand a jury trial. Our Court of Appeals addressed this situation in Zurich Am. Ins. Co. of Illinois v. Palmetto Cont. Servs., Inc., 434 S.C. 104, 862 S.E.2d 714 (Ct. App. 2021). In that case, the court held that “a party's right to a jury trial is not revived based solely on the fact that the party asserts a counterclaim for the first time in an amended pleading, without also introducing new factual issues that were not previously in dispute.” Id. at 112, 862 S.E.2d at 718. On December 11, 2005, Zurich sued Palmetto for breach of contract. Palmetto answered on February 16, 2006, denying the allegations in the complaint and raising various affirmative defenses. Neither party demanded a jury trial in its initial pleading.

On July 12, 2016, Palmetto moved to amend its answer to assert additional affirmative defenses and to assert counterclaims for negligent misrepresentation/fraud and breach of contract.

After the motion was granted, Palmetto filed its amended answer and counterclaims on September 27, 2017, which included a demand for a jury trial for the first time. Zurich moved to strike the jury trial demand “arguing Palmetto waived its right to a jury trial when it did not demand a jury trial following its initial answer and that the amended answer and counterclaim did not revive the right to a jury trial because it was not based upon new issues of fact.” Zurich, 434 S.C. at 108, 862 S.E.2d at 715. “Zurich contended Palmetto’s allegations were based upon the same issues and facts raised in Zurich’s complaint and Palmetto’s initial answer.” Id.

On appeal from the circuit court’s order striking Palmetto’s request for a jury trial pursuant to Rule 38(d), the court of appeals in Zurich affirmed the circuit judge’s decision that Palmetto’s amended answer and counterclaim did not create new issues of fact and that Palmetto’s demand for a jury trial was untimely because it had not been made within ten days after the service of its initial answer. Id. at 113, 862 S.E.2d at 718 (“Both the breach of contract and negligent misrepresentation counterclaims involve essentially the same facts as previously pled, as does the request for damages.”). The court rejected Palmetto’s argument that “its right to a jury trial was revived because it asserted affirmative claims against Zurich *for the first time* in its amended answer and counterclaim.” Id. at 110, 862 S.E.2d at 717. It held “the act of asserting counterclaims for the first time in an amended pleading does not automatically revive the right to a jury trial.” Id. at 113, 862 S.E.2d at 718.

The Zurich opinion cites to the prior case of King v. Shorter, 291 S.C. 501, 354 S.E.2d 402 (Ct. App. 1987). In King, the plaintiff sued over a note he co-signed as endorser and had to pay for the defendant. Id. at 502, 354 S.E.2d at 402. The defendant answered, asserting fraud and coercion defenses, and counterclaimed for malpractice, fraud and deceit, and breach of trust and fiduciary relationship. Id. The defendant did not make a demand for a jury trial. Id. Thereafter, the

defendant amended his answer and added an additional counterclaim for outrage. Id. at 502, 354 S.E.2d at 402-03. The defendant later made another motion to amend his answer and counterclaim to assert an action for unfair trade practices and to transfer the case to the jury calendar. Id. The circuit court denied the motion to transfer but allowed the defendant to amend his answer and counterclaim. Id.

The court of appeals in King affirmed the circuit court's order that allowed the defendant to amend his pleading, but which simultaneously denied the defendant's request for a jury trial on the grounds it was untimely made under Rule 38(b) and thus was waived. The court followed federal cases holding that "a litigant's entitlement to a jury trial on the issues presented by an amended pleading, when no prior demand for a jury trial has been made, turns on whether the amended pleadings create new issues of fact." Id. at 503, 354 S.E.2d at 403 (Ct. App. 1987) (citing Trixler Brokerage Co. v. Ralston Purina Co., 505 F.2d 1045 (9th Cir. 1974); New Hampshire Fire Ins. Co. v. Perkins, 28 F.R.D. 588 (D. Del.1961); and Williams v. Farmers and Merchants Ins. Co., 457 F.2d 37 (8th Cir. 1972)). Because the defendant's allegations "in each of his pleadings" were found to "involve essentially the same facts," the King court held the defendant had waived his right to demand a jury trial when he failed to make such a demand within ten days of his initial answer. Id.<sup>3</sup>

The same situation is present in this case. Defendant Strobel did not demand a jury trial

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<sup>3</sup> In Trixler Brokerage, which Zurich cited with approval, the Ninth Circuit Court of Appeals held that the presentation of a new theory of recovery in an amended pleading does not constitute the presentation of a new issue on which a jury trial should be granted. Trixler Brokerage, 505 F.2d at 1050 ("The theory of a case relates to the ultimate basis of liability[] rather than to an issue created by the pleadings.... When read in context, the word issue must have been intended by the Supreme Court to mean nothing other than an issue of fact. Obviously, appellant would not be demanding a jury trial on an issue of law."). As a result, the fact the amended pleading adds a new legal theory does not revive the time for the party to demand a jury trial.

when she filed her initial Answer to the Amended Petition on November 17, 2023. Her deadline to demand a jury trial lapsed on November 27, 2023, pursuant to Rule 38(b). While she later demanded a jury trial on December 18, 2023, when she filed her Amended Answer and Counterclaim, her amended pleading involves essentially the same facts and fails to create new issues of fact. The fact that Defendant Strobel filed an Amended Answer and Counterclaim did not revive her right to demand a jury trial which had already expired.

In short, Defendant Strobel failed to make a timely demand for a jury trial pursuant to Rule 38(b) and § 62-1-306(a), and therefore, waived any entitlement to a jury trial as a matter of right.

**(b) Jury Trial as a Matter of Discretion – § 62-1-306(b) and Rule 39(b):**

Defendant Strobel also asks the Court to exercise “its discretion” to order a jury trial and impanel a jury pursuant to § 62-1-306(b) and Rule 39(b). The Court declines this request. First, the Court finds this case does not involve any special or exceptional circumstances warranting a jury trial. Second, even if the Court were inclined to exercise its discretion to grant a jury trial despite Defendant Strobel’s waiver of this right, the jury’s decision “is advisory only” pursuant to § 62-1-306(b) and Rule 39(c). There is no need for an advisory jury verdict in this case.

The SCPC expressly states that when the right to trial by jury has been waived, “the court in its discretion may call a jury to decide any issue of fact, *in which case the verdict is advisory only.*” S.C. CODE ANN. § 62-1-306(b) (emphasis added). Rule 39(c) also gives a similar statement. See S.C. R. CIV. PRO. 39(c) (“In all actions not triable of right by a jury the court upon motion or of its own initiative may try any issue *with an advisory jury* ....”) (emphasis added). Because Defendant Strobel waived any right to a jury trial, this Court could impanel a jury under § 62-1-306(b) or Rule 39(b) only in “an advisory capacity.”

Defendant Strobel’s motion does not elucidate what “issues of fact” she wants a jury to

decide in an advisory capacity. Further, her motion does nothing more than point out that Rule 39(b) grants this court “discretion” to order a jury trial. However, the mere grant of discretion does not justify exercising that discretion in a particular instance. Importantly, while the rule gives the Court discretion to order a jury trial even when a party has waived its right to a jury trial, it was not intended to emasculate the requirement that a party make a timely demand for a jury trial. If a party can obtain a jury trial by showing nothing more than the fact it asked for one under Rule 39(b), then the time limitation imposed in Rule 38(b) (which § 62-1-306(a) effectively incorporates) is rendered meaningless.

In exercising discretion to order a jury trial, our courts have considered the issues involved, prejudice to the movant when their request is denied, the timeliness of the request, the docket, and the reason for movant’s delay. See Satcher v. Satcher, 351 S.C. 477, 490, 570 S.E.2d 535, 542 (Ct. App. 2002) (considering the same and finding no abuse of discretion in trial court’s denial of movant’s request for jury trial after where request was not until after filing his second amended complaint, finding that transferring the case to the jury docket would not result in the “speedy decision on the issues in the case”, and failing to find any prejudice to movant from the denial of a jury trial). Federal courts applying the federal counterpart to Rule 39(b) require the moving party to demonstrate some special or exceptional circumstance that would compel the court to do so. See Gen. Tire & Rubber Co. v. Watkins, 331 F.2d 192, 197 (4th Cir. 1964).

Courts in other jurisdictions have also considered whether the shifting of a trial from a nonjury calendar to a jury calendar will affect the public interest. See Glogau v. Hagan, 107 Cal. App. 2d 313, 318, 237 P.2d 329, 333 (1951); see also Nassif Realty Corp. v. Nat'l Fire Ins. Co. of Hartford, 107 N.H. 267, 220 A.2d 748 (1966) (concluding trial court's denial of the plaintiff's

motion for a jury trial was not unreasonable nor an abuse of discretion where congestion, delay, and calendar control present difficult problems for trial courts).

Rule 39(b) was applied by our court of appeals in King. In that case, the trial court had granted the defendant's motion to amend its pleading to assert a new counterclaim against the plaintiff. However, it also denied the defendant's request under Rule 39(b) that the court exercise its discretion and set the counterclaim for a jury trial. In affirming the trial court, the court of appeals pointed out that the defendant had not shown any reason for its failure to demand a jury trial in its prior pleadings. 291 S.C. at 503, 354 S.E.2d at 403 ("The record does not disclose a reason for [defendant's] failure to demand a jury trial prior to serving his last answer and counterclaim and [defendant] concedes this."). King illustrates that a party asking for a trial court to exercise its discretion under Rule 39(b) must show a meaningful reason for the court to do so besides the simple fact the party inadvertently failed to timely request a jury trial as a matter of right under Rule 38(b). Likewise, in Satcher, the court of appeals held that the trial court had properly exercised its discretion to deny the plaintiff's request for a jury trial under Rule 39(b), explaining that transferring the case to the jury docket would not result in the "speedy decision on the issues in the case." 351 S.C. at 490, 570 S.E.2d at 542.

The holdings in King and Satcher are in accord with federal cases. Federal courts grant Rule 39(b) "motions infrequently, and ordinarily only when the moving party presents some exceptional circumstance, beyond mere inadvertence, to justify the original waiver." Gelardi v. Transamerica Occidental Life Ins., 163 F.R.D. 495, 496 (E.D. Va. 1995) (citing cases); see Keatley v. Food Lion, Inc., 715 F. Supp. 1335, 1338 (E.D. Va. 1989) ("The plaintiff has advanced no reason why the Court should exercise its discretion and order a trial by jury. Unless some cause beyond mere inadvertence is shown, untimely requests for jury trials should be denied."); Frankl

Miller Webb & Moyers, LLP v. Crest Ultrasonics Corp., 2019 WL 5566546, at \*2 (W.D. Va. Oct. 28, 2019) (“Conspicuously absent from Defendant’s Motion [under Rule 39(b)] is any justification for its delay in making the jury demand. Such a failure has repeatedly been found undeserving of relief.”).

As the Court explained in Seitz v. Hammond, 35 F.R.D. 567 (E.D.S.C. 1964):

The right to trial by jury has ancient origins in Anglo-Saxon jurisprudence. To Blackstone it was ‘The glory of the English law’ and ‘the most transcendent privilege which any subject can enjoy.’ Nevertheless, the Rules provide that this valuable right can be waived, and the matter becomes one of discretion for the Court. *However, this discretion should not be loosely used or applied, because it could so easily take on the character of arbitrariness.*

*Accordingly, a party should not be relieved of his waiver of trial by jury ‘unless there are special circumstances excusing the failure to make a timely demand.’* The Court finds that such ‘special circumstances’ do not exist here so as to relieve movant of his waiver.

Id. at 567 (footnotes omitted) (emphasis added).

In this case, Defendant Strobel has not presented any meaningful reason or exceptional circumstance for the court to exercise its discretion and order a jury trial, which pursuant to § 62-1-306(b) and Rule 39(c), would be advisory only. As in King, Defendant Strobel’s motion gives no explanation for why she failed to timely request a jury trial in her previous pleadings. She filed an original Answer and an Answer to Amended Petition before finally making a request for a jury trial for the first time in her Amended Answer to Amended Petition. She has offered no meaningful reason for her failure to do so in any of her prior pleadings. Even if the reason is because she overlooked Rule 38(b)’s requirements or inadvertently neglected to include a demand for a jury trial, case law provides that is not a sufficient reason to grant a motion under Rule 39(b).

Additionally, like the plaintiff in Satcher, Defendant Strobel has made no showing that granting her request for a jury trial will result in a “speedy decision” on the issues in the case. In

fact, a non-jury trial would result in a substantial saving in time and expense for the court and the parties and will reduce the length and complexity of the trial of the case.

The Court finds no compelling reason to impanel an advisory jury in this case, as it would incur unnecessary expenses, and a jury of laypeople is not more qualified than the Court to the decide the issues in this case. Defendant Strobel has not justified any benefit or helpfulness of an advisory jury in this matter. Accordingly,

IT IS ORDERED that Defendant Paula M. Strobel's Motion to Amend Answer, which motion was originally filed in the Probate Court on May 13, 2024, and was later refiled in the Circuit Court on June 23, 2025, is hereby DENIED; and

IT IS ORDERED that Defendant Strobel's Motion for Jury Trial, which motion was originally filed in the Probate Court on June 24, 2024, and was later refiled in the Circuit Court on June 23, 2025, is hereby DENIED;<sup>4</sup> and

IT IS SO ORDERED!

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Thomas J. Rode  
Presiding Circuit Court Judge  
Court of Common Pleas  
Ninth Judicial Circuit

This \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_, South Carolina.

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<sup>4</sup> As previously noted, while Plaintiffs separately filed a Motion to Strike Defendant Strobel's demand for a jury trial in the Probate Court on May 2, 2024, and refiled that motion in the Circuit Court on October 15, 2024, that motion was not set for a hearing before the undersigned. Accordingly, this Order does not dispose of that motion even though it addresses the same issues and arguments as those involved in resolving Defendant Strobel's Motion for Jury Trial.



Charleston Common Pleas

**Case Caption:** Daniel Lloyd Strobel , plaintiff, et al VS Paula M Strobel , defendant, et al  
**Case Number:** 2024CP1004752  
**Type:** Order/Other

So Ordered

s/ T.J. Rode (#2792)

Daniel Lloyd Strobel et al  
PLAINTIFF(S)

Paula M Strobel et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

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

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

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

Pursuant to Rule 59(e) SCRPC, on November 13, 2025, Defendant Paula Strobel filed a motion to alter or amend the order of this Court dated November 3, 2025. Under the applicable standard, this motion is respectfully denied.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/31/2025 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

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

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Charleston Common Pleas

**Case Caption:** Daniel Lloyd Strobel , plaintiff, et al VS Paula M Strobel , defendant, et al  
**Case Number:** 2024CP1004752  
**Type:** Order/Electronic Form 4

So Ordered

s/ T.J. Rode (#2792)