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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
The Honorable Michael G. Nettles

Case No: 2024-CP-26-04462
Appellate Case No: 2025-001152

Lynn Dilucchio and Kevin Kemper,
As Co-Administrators C.T.A of The Estate
of Augusta Kemper, Plaintiffs,

Appellants

v.

George C. Zitzelberger, Defendant.

Respondent.

RECORD ON APPEAL

HAYNSWORTH SINKLER BOYD, P.A.
Mary M. Caskey, SC Bar No. 76198
Katherine E. Engels, SC Bar No. 105389
1201 Main Street, 22nd Floor (29201-3226)
Post Office Box 11889 (29211-1889)
Columbia, South Carolina
Telephone: (803) 779-3080
mcaskey@hsblawfirm.com
kengels@hsblawfirm.com

Attorneys for Appellants

MACDONALD LAW FIRM, PA
Daniel J. MacDonald, Sr., SC Bar No. 11986
1107 48th Avenue North, Suite 210
Myrtle Beach, SC 29577
Telephone: (843) 449-4493
dmacdonald@djmlawfirm.com

Attorney for Respondent

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Plaintiffs provided some evidence that, prior to the suit, the Defendant did own property in South Carolina and a business in South Carolina, which may have benefitted from the alleged improper transfers. The Plaintiffs also point to a prior ownership of a house, which was sold in part to satisfy the judgment against the Defendant's wife. The sale of the house was closed after the Plaintiffs filed this action. Although, it appears there was an agreement regarding the sale entered into prior to the transaction. Regardless, the property is not a part of this action. It is noted that the Defendant did not own the property sold by agreement in his individual name. He was on the title as Trustee of a Trust.

The Defendant has provided evidence that he is 73-years old, in poor health, and has not resided in South Carolina since December 2022. He currently has no assets, interests, or other contacts within South Carolina. The Defendant asserts that, at the time of the filing of this current action, he lacked the continuous and systematic contact with South Carolina required to establish general jurisdiction over the Defendant, a non-resident.

Rule 12(b)(2), SCRPC, permits the Court to dismiss a non-resident defendant for lack of personal jurisdiction. "The party invoking personal jurisdiction over a non-resident bears the burden of proving the existence of jurisdiction." See, Int'l Mariculture Resources v. Grant, 336 S.C. 434, 437, 520 S.E.2d 160, 161 (Ct. App. 1999); see also Allen v. Columbia Fin. Mgmt, Ltd., 297 S.C. 481, 484, 377 S.E.2d 352, 354 (Ct. App. 1988) (holding that because the defendant challenged personal jurisdiction, the plaintiff bore the burden of showing the existence of personal jurisdiction). Before trial, the plaintiff must "make a *prima facie* showing by pleadings and affidavits that the trial court should exercise personal jurisdiction" over the defendants. See, Allen, 297 S.C. at 484, 377 S.E.2d at 354. "When a non-resident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint, but may resort to affidavits or other evidence to determine jurisdiction." See, Power Prods. & Servs. Co., Inc. v. Kozma, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008).

The question of personal jurisdiction over a non-resident defendant is one which must be resolved upon the facts of each particular case. See, Cockrell v. Hillerich &

Bradsby Co., 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably anticipate being haled into court there. Without minimum contacts, the court does not have the power to adjudicate the action. The court must also find that the exercise of jurisdiction is reasonable or fair. See, Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 491, 611 S.E.2d 505,508 (2005) (citations omitted).

Under the fairness prong, the court must consider: (1) the duration of the activity of the non-resident within the state; (2) the character and circumstances of the commission of the non-resident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the non-resident; and (4) the State's interest in exercising jurisdiction. See, Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 491, 611 S.E.2d 505,508 (2005), citing, Clark v. Key, 304 S.C. 497, 405 S.E.2d 599 (1991) and Southern Plastics Co. v. Southern Commerce Bank, 310 S.C. 256, 260, 423 S.E.2d 128, 131(1992).

A plaintiff may attempt to demonstrate personal jurisdiction by two distinct avenues: general and specific. General jurisdiction is premised on a defendant's overall contact with the forum state, and depends upon a defendant maintaining "continuous and systematic" contacts with the state that are "so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities." See, Cribb v. Spatholt, 382 S.C. 475, 482, 676 S.E.2d 706, 710 (Ct. App. 2009) (citing Int'l Shoe Co. v. Washington, 326 U.S. 310, 318 (1945)). Specific personal jurisdiction, on the other hand, requires a showing that the defendant has sufficient contacts with the forum relating to claims at issue such that it has purposefully availed itself of the privilege of conducting business in the forum. See, Pitts v. Fink, 389 S.C. 156, 164-65, 698 S.E.2d 626, 630-31 (Ct. App. 2010).

General personal jurisdiction must be predicated upon "an enduring relationship" with this state. S.C. Code. Ann. §36-2-802 (2003). An "enduring relationship" is characterized by contacts that are substantial, continuous, and systematic. See,

Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 494- 95, 611 S.E.2d 505, 510 (2005); see also Coggershall v. Reproductive Endocrine Assocs. of Charlotte, 376 S.C. 12, 17, 655 S.E.2d 476, 479 (2007). In South Carolina, the threshold of contacts necessary to meet this standard is substantial, and significantly higher than the Complaint's singular allegation that the alleged transfers were initiated and received while the Defendant resided in Horry County. Even relatively periodic contacts with South Carolina are insufficient where the Defendant does not have a regular and sustained practice of directing its activities at South Carolina. See, e.g., Cockrell, 363 S.C. at 495, 611 S.E.2d at 510 (certifying products regularly sold in South Carolina insufficient to support exercising general jurisdiction); Coggershall, 376 S.C. at 17, 655 S.E.2d at 479 (performing services for nearly 3,000 South Carolina residents, doing business with multiple South Carolina vendors, and earning over \$2 million in revenues not enough to support a finding of general personal jurisdiction). The mere act of residing in Horry County at one point in time, and receiving transfers of funds from a spouse, is not sufficient to deem the Defendant essentially "at home" in this state.

The Defendant is 73-years old, in poor health, and has not resided in South Carolina since December 2022. He currently has no assets, interests, or other contacts within South Carolina. The Plaintiffs have not sufficiently alleged or proven the existence of general personal jurisdiction. The Defendant lacks the continuous and systematic contact with South Carolina required to establish general jurisdiction for the Defendant, a non-resident.

Specific jurisdiction over a cause of action arising from a defendant's contacts with the state is granted pursuant to the long arm statute. See, S.C. Code Ann. §36-2-803 (2003). South Carolina's long-arm statute has been construed to extend to the outer limits of the due process clause. See, Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 494- 95, 611 S.E.2d 505, 510 (2005) (citing Meyer v. Paschal, 330 S.C. 175, 498 S.E.2d 635 (1998)). Because South Carolina treats its long-arm statute as co-extensive with the due process clause, the sole question becomes whether the exercise of personal jurisdiction would violate due process. See, Moosally v. W.W. Norton & Co., Inc., 358 S.C. 320, 329, 594 S.E.2d 878, 883 (Ct. App. 2004) (citing Sonoco Prods. Co. v. Intoplast Corp., 867 F. Supp. 352, 354 (D.S.C.1994)).

As it relates to specific jurisdiction, the Plaintiffs have not met their burden to establish that the Defendant has sufficient contacts with South Carolina related to the claims made. The Complaint does not claim the Defendant made any transfers, merely that he received transfers. Receipt of transfers from a non-party is not sufficient for the Court to exercise specific personal jurisdiction over the Defendant.

Exercising jurisdiction over the Defendant would violate traditional notions of fair play and substantial justice. In considering the fairness of exerting jurisdiction over a non-resident defendant, the following factors are considered: (1) the duration of the defendant's activity in this state; (2) the character and circumstances of its acts in this state; (3) the inconvenience to the parties by conferring or refusing to confer jurisdiction over the non-resident; and (4) the state's interest in exercising jurisdiction. See, State v. NV Sumatra Tobacco Trading, Co., 379 S.C. 81, 91, 666 S.E.2d 218, 223 (2008).

The Defendant is a resident of Florida, is 73 years old, and is in ill health. The Plaintiffs are residents of New York. The Defendant does not individually own any assets in South Carolina. Since the Defendant is a resident of Florida, the exercise of jurisdiction over him in South Carolina is extremely inconvenient to him, especially at his age and health. Since, the Plaintiffs are from New York, there is no additional inconvenience for them if the case is heard in Florida rather than South Carolina. See, Aviation Assocs. & Consultants, Inc. v. Jet Time, Inc., 303 S.C. 502, 509, 402 S.E.2d 177, 180-81 (1991) ("[W]hile it may be inconvenient for Aviation, a South Carolina corporation, to litigate this case in Oklahoma, it would be no less inconvenient for Cobra, an Oklahoma corporation, to have to defend this case in South Carolina."). Therefore, the inconvenience factor weighs in favor of the Defendant.

There exists no South Carolina interest in resolving a dispute between two non-residents, which can be determine in another state. Since the Complaint does not allege transfers by the Defendant, any connection between the actions claimed and the State of South Carolina is weak at best. The mere receipt of money from a spouse during marriage is not an issue in which the State of South Carolina would have a strong interest in resolving for non-resident Plaintiffs.

Given the sparsity of the Defendant's "activity in this state" having any connection to Plaintiffs' claims, and the lack of inconvenience to the Plaintiffs which would result

from a finding that specific personal jurisdiction is lacking, the exercise of specific personal jurisdiction over the Defendant and compelling him to appear and litigate in South Carolina would be fundamentally unfair. The Plaintiffs' allegations in the Complaint are not sufficient to support the exercise of general jurisdiction. Likewise, the Defendant's connections to South Carolina relating to the alleged conduct at issue in this lawsuit do not support the exercise of specific personal jurisdiction over him. As such, the exercise of personal jurisdiction over the Defendant would neither comport with the requirements of due process, nor be fair.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Plaintiffs' Complaint is dismissed for lack of personal jurisdiction.

AND IT IS SO ORDERED.

[Judge's signature page to follow]



Horry Common Pleas

Case Caption: Lynn Dilucchio , plaintiff, et al VS George C Zitzelberger

Case Number: 2024CP2604462

Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2025-05-16 10:36:55 page 7 of 7

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2024 CP-26-04462

LYNN DILUCCHIO AND KEVIN KEMPER, AS CO-ADMINISTRATORS C.T.A OF THE ESTATE OF AUGUSTA KEMPER

GEORGE C. ZITZELBERGER

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Daniel J. MacDonald, Sr. MacDonald & Hicks, PA 1107 – 48 th Avenue North, Suite 210 Myrtle Beach, SC 29577	Attorney for : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		



Horry Common Pleas

Case Caption: Lynn Dilucchio , plaintiff, et al VS George C Zitzelberger

Case Number: 2024CP2604462

Type: Order/Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Lynn Dilucchio and Kevin Kemper as
Co-Administrators C.T.A. of the
Estate of Augusta Kemper,

Plaintiffs,

vs.

George C. Zitzelberger,

Defendant.

Case No. 2024-CP-26- _____

**SUMMONS
(Fraudulent Conveyance)
(Constructive Trust)
(Non-jury)**

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the person whose names are subscribed below at 1201 Main Street, 22nd Floor, Columbia, South Carolina 29201 or Post Office Box 11889, Columbia, South Carolina 29211, within thirty (30) days after the service hereof, exclusive of the day of such service. Your Answer must be in writing and signed by you or your attorney and must state your address or the address of your attorney, if signed by your attorney. If you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

/s/Mary M. Caskey

Mary M. Caskey, SC Bar No: 76198
Alexandra C. Glunt, SC Bar No: 105671
Haynsworth Sinkler Boyd, PA
1201 Main Street, Suite 2200 (29201)
Post Office Box 11889
Columbia, SC 29211
Telephone: (803) 779-3080
mcaskey@hsblawfirm.com
aglunt@hsblawfirm.com
Attorneys for Plaintiff

June 27, 2024

Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Lynn Dilucchio and Kevin Kemper as
Co-Administrators C.T.A. of the
Estate of Augusta Kemper,

Case No. 2024-CP-26- _____

Plaintiffs,

vs.

**COMPLAINT
(Fraudulent Conveyance)
(Constructive Trust)
(Non-jury)**

George C. Zitzelberger,

Defendant.

Plaintiffs Lynn Dilucchio and Kevin Kemper as Co-Administrators C.T.A. of the Estate of Augusta Kemper (“Plaintiffs”) allege the following against Defendant George C. Zitzelberger (“Zitzelberger”):

PARTIES AND JURISDICTION

1. This is an action to set aside numerous transfers made by Patricia O’Connell (“O’Connell”) to Zitzelberger in violation of the Statute of Elizabeth.
2. Plaintiffs are citizens of Suffolk County, New York.
3. Upon information and belief, Zitzelberger is a resident of Marion County, Florida.
4. This court has jurisdiction over Zitzelberger because the transfers were initiated while Zitzelberger resided in Horry County, South Carolina, and Zitzelberger received the transfers while residing in Horry County, South Carolina.
5. Horry County is the proper venue for this action because the most substantial part of the action occurred in Horry County, South Carolina.

FACTS

6. On or about July 27, 2021, Plaintiffs obtained a judgment against O’Connell in the amount of \$1,728,321.00, plus interest in Suffolk County, New York (the “Foreign Judgment”).

7. On or about July 31, 2023, the Foreign Judgment was domesticated and enrolled in Horry County, South Carolina (the “Domestic Judgment”).

8. As a result of the Foreign Judgment and Domestic Judgment, O’Connell is indebted to Plaintiffs in the amount of \$1,728,321.00, plus interest.

9. Beginning in 2020, when the lawsuit giving rise to the Foreign Judgment was pending, O’Connell began voluntarily making large transfers to various family members including Zitzelberger.

10. Upon information and belief, O’Connell knew she was indebted to Plaintiffs when the lawsuit leading to the Foreign Judgment was filed.

11. From 2020 until roughly early 2023, O’Connell voluntarily made numerous large monetary transfers to Zitzelberger from her personal bank accounts to Zitzelberger’s personal bank accounts.

12. Upon information and belief, O’Connell transferred *at least* a total of \$311,275.00 to Zitzelberger (the “Transfers”).

13. Zitzelberger and O’Connell were married when the Transfers were made.

14. Zitzelberger and O’Connell are still married.

15. On information and belief, the Transfers from O’Connell to Zitzelberger were made without consideration.

16. Given the close time proximity between the Transfers and the lawsuit leading to the Foreign Judgment, as well as the marital relationship between O'Connell and Zitzelberger, Plaintiffs are informed and believe that O'Connell made the Transfers with the intent to defraud them.

17. O'Connell admitted to making a portion of these Transfers.

18. Plaintiffs are informed and believed that there may be additional large cash deposits that O'Connell gave to Zitzelberger without consideration.

19. Plaintiffs discovered the Transfers after the Foreign Judgment was entered and after collection efforts began for enforcing the Domestic Judgment.

**FOR A FIRST CAUSE OF ACTION
(Set Aside Fraudulent Conveyance under Statute of Elizabeth)**

20. Plaintiffs incorporate by reference all previous allegations of the Complaint as if fully set forth herein.

21. The Transfers were made voluntarily.

22. The Transfers were made without consideration.

23. On information and belief, the Transfers were made with the intent to defraud creditors, including Plaintiffs.

24. At the time of the Transfers, O'Connell was indebted to Plaintiffs.

25. Upon information and belief, Zitzelberger knew that the Transfers were for the purpose of keeping money out of the reach of creditors, including Plaintiffs.

26. After the Transfers, O'Connell failed to retain sufficient assets to pay her indebtedness to Plaintiffs in full.

27. Accordingly, the Transfers from O'Connell to Zitzelberger were fraudulent and the Transfers must be set aside.

28. In the event the Transfers cannot be recovered, Plaintiffs are entitled to a judgment against Zitzelberger in the amount of \$311,275.00 for the fraudulent transfers received by Zitzelberger.

29. Plaintiffs also seek statutory pre-judgment interest on the Transfers.

**FOR A SECOND CAUSE OF ACTION
(Constructive Trust)**

30. Plaintiffs incorporate by reference all previous allegations of the Complaint as if fully set forth herein.

31. A constructive trust arose in favor of Plaintiffs when O'Connell made the Transfers to Zitzelberger.

32. Upon information and belief, Zitzelberger knew that the Transfers were for the purpose of keeping money out of the reach of creditors, including Plaintiffs.

33. It would inequitable to allow Zitzelberger to retain the Transfers.

34. Zitzelberger should not be allowed to retain the Transfers at the detriment of Plaintiffs, who are entitled to the Transfers.

35. To the extent Zitzelberger used the Transfers to purchase personal or real property, Plaintiffs are entitled to a constructive trust over that property.

36. Plaintiffs are entitled to an order imposing a constructive trust against Zitzelberger for the amount of the Transfers and any property held by Zitzelberger purchased with the Transfers.

WHEREFORE, Plaintiffs pray that:

1. the Transfers be declared fraudulent as to Plaintiffs and be set aside;
2. the Domestic Judgment immediately attach to the Transfers, and the Transfers be turned over to Plaintiffs;

3. in the event that the Transfers cannot be recovered, the Court enter judgment against Zitzelberger for the total amount of the Transfers in the amount of \$311,275.00, plus pre-judgment interest;

4. the Court imposes a constructive trust against Zitzelberger for the amount of the Transfers and any property held by Zitzelberger purchased with the Transfers; and

5. Plaintiffs be granted such other and further relief as is just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

/s/ Mary M. Caskey

Mary M. Caskey (SC Bar No. 76198)
Alexandra C. Glunt (SC Bar No. 105761)
1201 Main Street, 22nd Floor
Columbia, South Carolina 29201
Telephone: (803) 779-3080
mcaskey@hsblawfirm.com
aglunt@hsblawfirm.com

June 27, 2024

*Attorneys for Plaintiffs Lynn Dilucchio and
Kevin Kemper as Co-Administrators C.T.A. of
the Estate of Augusta Kemper*

AFFIDAVIT OF SERVICE

State of South Carolina

County of Horry

Common Pleas Court

Case Number: 2024-CP-26-04462

Plaintiff: **Lynn Dilucchio and Kevin Kemper as Co-Administrators
C.T.A. of the Estate of Augusta Kemper**

vs.

Defendant: **George C. Zitzelberger**

For: Mary Caskey
Haynsworth Sinkler Boyd, Pa

Received by Upstate Legal Support Services, LLC to be served on **George C. Zitzelberger, 5175 SW 97th Lane Road, Ocala, FL 34476**. I, Kenneth W Kelley SR, being duly sworn, depose and say that on the 24 day of Sept, 2024 at 9:47 a.m., executed service by delivering a true copy of the **Summons and Complaint** in accordance with state statutes in the manner marked below:

INDIVIDUAL SERVICE: Served the within-named person.

SUBSTITUTE SERVICE: By delivering to: _____ as _____, a person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

NON SERVICE: FOR THE REASON DETAILED IN THE COMMENTS BELOW.

Military Status: Yes or No If yes, what branch?

COMMENTS: _____

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

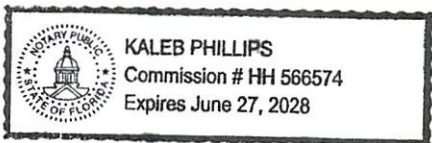
Subscribed and Sworn to before me on the 24 day of Sept, 24 by the affiant who produced ID or is personally known.

Kenneth W Kelley SR
PROCESS SERVER # 091312-14
Appointed in accordance with State Statutes

Kaleb Phillips
NOTARY PUBLIC
My Commission Expires: 6/27/28

Upstate Legal Support Services, LLC
P O Box 2144
Greenville, SC 29602
(864) 626-3733

Our Job Serial Number: 2024002951
Ref: 43676.0001



Allen v. Columbia Fin. Mgmt, Ltd., 297 S.C. 481, 484, 377 S.E.2d 352, 354 (Ct. App. 1988) (holding that because the defendant challenged personal jurisdiction, the plaintiff bore the burden of showing the existence of personal jurisdiction). Before trial, the plaintiff must "make a *prima facie* showing by pleadings and affidavits that the trial court should exercise personal jurisdiction" over the defendants. Allen, 297 S.C. at 484, 377 S.E.2d at 354. "When a non-resident defendant attacks the allegations of a complaint based on jurisdiction, the court is not confined to the allegations of the complaint but may resort to affidavits or other evidence to determine jurisdiction." See, Power Prods. & Servs. Co., Inc. v. Kozma, 379 S.C. 423, 430, 665 S.E.2d 660, 664 (Ct. App. 2008).

The question of personal jurisdiction over a non-resident defendant is one which must be resolved upon the facts of each particular case. See, Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Due process requires that there exist minimum contacts between the defendant and the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice. Further, due process mandates that the defendant possess sufficient minimum contacts with the forum state, so that he could reasonably anticipate being haled into court there. Without minimum contacts, the court does not have the power to adjudicate the action. The court must also find that the exercise of jurisdiction is reasonable or fair. See, Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 491, 611 S.E.2d 505,508 (2005) (citations omitted).

Under the fairness prong, the court must consider: (1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction. See, Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 491, 611 S.E.2d 505,508 (2005), citing, Clark v. Key, 304 S.C. 497, 405 S.E.2d 599 (1991) and Southern Plastics Co. v. Southern Commerce Bank, 310 S.C. 256, 260, 423 S.E.2d 128, 131(1992).

A plaintiff may attempt to demonstrate personal jurisdiction by two distinct avenues: general and specific. General jurisdiction is premised on a defendant's overall contact with the forum state, and depends upon a defendant maintaining "continuous

and systematic" contacts with the state that are "so substantial and of such a nature as to justify suit against the defendant on causes of action arising from dealings entirely different from those activities." See, Cribb v. Spatholt, 382 S.C. 475, 482, 676 S.E.2d 706, 710 (Ct. App. 2009) (citing Int'l Shoe Co. v. Washington, 326 U.S. 310, 318 (1945)). Specific personal jurisdiction, on the other hand, requires a showing that the defendant has sufficient contacts with the forum relating to claims at issue such that it has purposefully availed itself of the privilege of conducting business in the forum. See, Pitts v. Fink, 389 S.C. 156, 164-65, 698 S.E.2d 626, 630-31 (Ct. App. 2010).

ANALYSIS

As to allegations related to the question of personal jurisdiction, the unverified Complaint merely avers that the Defendant is a resident of Florida; and that while the Defendant was a resident of Horry County, South Carolina he received transfers from his wife, which the Plaintiffs claim were fraudulent. Importantly, the pleading does not claim that the Defendant made transfers, and does not have as a party the person whom the Plaintiffs claim made the transfers.

The Defendant is 73-years old, and has not resided in South Carolina since December 2022. He currently has no assets, interests, or other contacts within South Carolina. The Plaintiffs have not sufficiently alleged the existence of personal jurisdiction within the unverified Complaint. The Defendant lacks the continuous and systematic contact with South Carolina required to establish general jurisdiction for the Defendant, a non-resident.

General personal jurisdiction must be predicated upon "an enduring relationship" with this state. S.C. Code. Ann. § 36-2-802 (2003). An "enduring relationship" is characterized by contacts that are substantial, continuous, and systematic. See, Cockrell v. Hillerich & Bradsby Co., 363 S.C. 485, 494- 95, 611 S.E.2d 505, 510 (2005); see also Coggershall v. Reproductive Endocrine Assocs. of Charlotte, 376 S.C. 12, 17, 655 S.E.2d 476, 479 (2007). In South Carolina, the threshold of contacts necessary to meet this standard is substantial, and significantly higher than the Complaint's singular allegation that the alleged transfers were initiated and received while the Defendant resided in Horry County. Even relatively periodic contacts with South Carolina are insufficient where the Defendant does not have a regular and sustained practice of

directing its activities at South Carolina. See, e.g., Cockrell, 363 S.C. at 495, 611 S.E.2d at 510 (certifying products regularly sold in South Carolina insufficient to support exercising general jurisdiction); Coggershall, 376 S.C. at 17, 655 S.E.2d at 479 (performing services for nearly 3,000 South Carolina residents, doing business with multiple South Carolina vendors, and earning over \$2 million in revenues not enough to support a finding of general personal jurisdiction). The mere act of residing in Horry County at one point in time is not sufficient to deem the Defendant essentially "at home" in this state. The Complaint alleges no greater level of activity within South Carolina. To the extent the Plaintiffs seek the exercise of general personal jurisdiction, there is no basis to do so.

As it relates to specific jurisdiction, the Plaintiffs have not met their burden to establish that Defendant has sufficient contacts with South Carolina related to claims made. The Complaint does not claim the Defendant made any transfers, merely that he received transfers. Receipt of transfers from a non-party is not sufficient for the court to exercise specific personal jurisdiction over the Defendant.

Exercising jurisdiction over the Defendant would violate traditional notions of fair play and substantial justice. In considering the fairness of exerting jurisdiction over a non-resident defendant, the following factors are considered: (1) the duration of the defendant's activity in this state; (2) the character and circumstances of its acts in this state; (3) the inconvenience to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction. See, State v. NV Sumatra Tobacco Trading, Co., 379 S.C. 81, 91, 666 S.E.2d 218, 223 (2008).

The Complaint filed does not claim transfers by the Defendant, and merely alleges receipt of transfers of money from his spouse. The character of the acts alleged is not sufficient to support the assertion of jurisdiction over a non-resident Defendant.

The Defendant is a resident of Florida, and the Plaintiffs are residents of New Jersey. Since the Defendant is a resident of Florida, the exercise of jurisdiction over him in South Carolina is extremely inconvenient to him, especially at his age. Since, the Plaintiffs are from New Jersey, there is no additional inconvenience for them if the case is heard in Florida rather than South Carolina. See, Aviation Assocs. & Consultants, Inc. v. Jet Time, Inc., 303 S.C. 502, 509, 402 S.E.2d 177, 180-81 (1991) ("[W]hile it may be

inconvenient for Aviation, a South Carolina corporation, to litigate this case in Oklahoma, it would be no less inconvenient for Cobra, an Oklahoma corporation, to have to defend this case in South Carolina."'). Therefore, the inconvenience factor weighs in favor of the Defendant.

There exists no South Carolina interest in resolving a dispute between two non-residents, which can be determine in another state. Since the Complaint does not allege transfers by the Defendant, the connection between the actions claimed and the State of South Carolina are weak at best. The mere receipt of money from a spouse during marriage is not an issue in which the State of South Carolina would have a strong interest in resolving for non-resident Plaintiffs.

Given the sparsity of the Defendant's "activity in this state" having any connection to Plaintiffs' claims, and the lack of inconvenience to the Plaintiffs which would result from a finding that specific personal jurisdiction is lacking, the exercise of specific personal jurisdiction over the Defendant and compelling him to appear and litigate in South Carolina would be fundamentally unfair.

The Plaintiffs' allegations in the Complaint are not sufficient to support the exercise of general jurisdiction. Likewise, the Defendant's connections to South Carolina relating to the alleged conduct at issue in this lawsuit do not support the exercise of specific personal jurisdiction over him. As such, the exercise of personal jurisdiction over the Defendant would neither comport with the requirements of due process, nor be fair.

WHEREFORE, the Defendant prays this Honorable Court dismiss the Plaintiffs' claims and action pursuant to Rule 12(b)(2) for lack of personal jurisdiction.

AFFIRMATION PURSUANT TO RULE 11, SCRCivP

The undersigned, as attorney for the Defendant, hereby affirms that consultation with counsel for the opposing party would serve no useful purpose.

[signature on the following page]

MACDONALD & HICKS, PA
1107 48th Avenue North, Suite 210
Myrtle Beach, SC 29577
(843) 449-4493
dmacdonald@machickslaw.com
Attorneys for the Defendant

s/ Daniel J. MacDonald, Sr.

Daniel J. MacDonald, Sr.
SC Bar #11986

Myrtle Beach, South Carolina

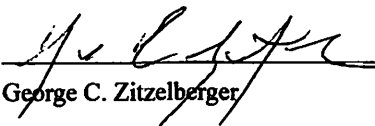
October 22, 2024

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
 COUNTY OF HORRY) CASE NO. 2024-CP-26-04462
)
 LYNN DILUCCHIO AND KEVIN)
 KEMPER, AS CO-ADMINISTRATORS)
 C.T.A. OF THE ESTATE OF AUGUSTA)
 KEMPER,)
)
 Plaintiffs,)
)
 v.)
)
 GEORGE C. ZITZELBERGER,)
)
 Defendant.)
 _____)

AFFIDAVIT OF GEORGE C. ZITZELBERGER


I, George C. Zitzelberger, the authorized Defendant herein, being duly sworn on oath affirm and state as follows:

1. I am an adult over the age of 70 years, a citizen of the United States of America, and a citizen and resident of Marion County, Florida.
 2. I have not been a citizen or resident of the State of South Carolina since December 2022.
 3. I currently own no assets, any other ownership interests, or other contacts within the County of Horry or the State of South Carolina.
 4. I have not had regular or sustained activities in the State of South Carolina or the County of Horry since December 2022.
- Further, the Affiant sayeth not.

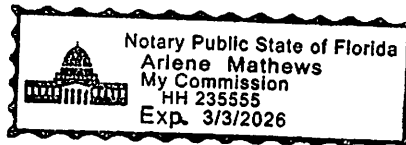


 George C. Zitzelberger

Subscribed and sworn to before me
 this 28 day of October, 2024



 Notary Public for Florida
 My Commission expires 03/03/2026



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Lynn Dilucchio and Kevin Kemper as
Co-Administrators C.T.A. of the
Estate of Augusta Kemper,

C/A NO: 2024-CP-26-04462

Plaintiffs,

vs.

George C. Zitzelberger,

Defendant.

**PLAINTIFFS’ MEMORANDUM IN OPPOSITION
TO DEFENDANT’S MOTION TO DISMISS**

Plaintiffs Lynn Dilucchio and Kevin Kemper as Co-Administrators C.T.A. of the Estate of Augusta Kemper (collectively “Plaintiffs”) submit this Memorandum in Opposition to the Motion to Dismiss Pursuant to 12(b)(2), SCRPC, filed by George C. Zitzelberger (“Zitzelberger”) filed on October 22, 2024.

BACKGROUND FACTS

Plaintiffs filed this action seeking to set aside fraudulent transfers made to Zitzelberger by his wife, Patricia Zitzelberger f/k/a Patricia O’Connell (“O’Connell”), and to establish a constructive trust over proceeds or assets arising from the fraudulent transfers. Plaintiffs hold a judgment against O’Connell, and through supplemental proceedings in that action, discovered the fraudulent transfers subject to this complaint. Zitzelberger now seeks to dismiss the Complaint pursuant to Rule 12(b)(2), SCRPC, for lack of personal jurisdiction.¹

¹ Zitzelberger also argues that the Complaint is defective because it does not allege that Defendant made the transfers at issue and does not name O’Connell, the person who made the transfers, as a defendant. However, the nature of the suit requires neither. Plaintiff alleges that O’Connell transferred money to Zitzelberger in violation of the statute of frauds and seeks to set those transfers aside. Plaintiff already has a judgment against O’Connell and there would be

As a basis for jurisdiction, Plaintiffs allege that the transfers were initiated while Zitzelberger resided in Horry County, South Carolina, and Zitzelberger received the transfers while residing in Horry County, South Carolina. (Compl. ¶ 4.) Plaintiffs also allege that the fraudulent transfers were made while O’Connell and Zitzelberger were married. (Compl. ¶ 13.) Despite this, Zitzelberger claims that the Court does not have personal jurisdiction over him because (1) he moved to Florida in 2022; (2) does not *currently* have assets or contacts with South Carolina; and (3) has not had regular or sustained activities in South Carolina since December 2022. This is insufficient to establish lack of personal jurisdiction.

ARGUMENT

Personal jurisdiction is exercised as either general jurisdiction or specification jurisdiction. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007). In South Carolina, general jurisdiction is determined under S.C. Code Ann. § 36-2-802, and specific jurisdiction is determined under South Carolina’s long-arm statute, S.C. Code Ann. § 36-2-803. *Id.* South Carolina's long-arm statute, “which affords broad power to exercise personal jurisdiction over causes of action arising from tortious injuries in South Carolina, has been construed to extend to the outer limits of the due process clause.”² *Colleton River Plantation Club, Inc. v. Holmes*, No. 2018-000826, 2021 WL 1664123, at *1 (S.C. Ct. App. Apr. 28, 2021).

At the pretrial stage, the burden of proving personal jurisdiction over a nonresident is met by a *prima facie* showing of jurisdiction. *Id.* The Court is not confined to the allegations of the complaint, but may look to other evidence to determine jurisdiction. *Id.* (citing *Graham v. Lloyd’s*

no basis to sue her again for these transfers when the property transferred is owned by Zitzelberger. Second, Plaintiff does not allege any wrongful transfers by Zitzelberger; instead, Plaintiffs allege that he was the recipient of fraudulent transfers made by O’Connell that must be set aside pursuant to the Statute of Elizabeth.

² This means that “the exercise of personal jurisdiction under either statute must comport with due process requirements and must not offend traditional notions of fair play and substantial justice. Due process requires some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum state.” *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).

of London, 296 S.C. 249, 251 n.1, 371 S.E.2d 801, 802 n.1 (Ct. App. 1988)). To defeat personal jurisdiction, Zitzelberger relies only on general jurisdiction under S.C. Code Ann. § 36-2-802. This Court, however, has both general and specific jurisdictions over Zitzelberger.

To establish general jurisdiction, the South Carolina code provides: “[a] court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, doing business, or maintaining his or its principal place of business in, this State as to any cause of action.” S.C. Code Ann. § 36-2-802. Zitzelberger argues that he no longer resides in South Carolina so this court does not have jurisdiction over him as laid out in Section 36-2-802. While Plaintiffs acknowledge that Zitzelberger no longer resides in South Carolina, Zitzelberger did live in South Carolina at the time of the alleged acts, and Zitzelberger owned real property in Horry County, South Carolina until October 2024 when this lawsuit was filed. In fact, the proceeds from the property that Zitzelberger sold in October 2024 were used to pay the Plaintiffs in partial satisfaction of the O’Connell judgment.³ Based on the allegations in the Complaint and Zitzelberger’s ownership of real property in South Carolina when the lawsuit was filed in June of 2024, this Court has general personal jurisdiction over Zitzelberger pursuant to Section 36-2-802.

Regardless, this Court has specific personal jurisdiction over Zitzelberger pursuant to S.C. Code Ann. § 36-2-803, which governs “[p]ersonal jurisdiction based upon conduct.” Specifically, that section provides that a court may exercise personal jurisdiction over a person who:

- (1) transacting any business in South Carolina;
- (5) having an interest in, using, or possessing real property in this State;
- (7) entry into a contract to be performed in whole or in part by either party in South Carolina.

³ A copy of the deed demonstrating property ownership by Zitzelberger is attached as Exhibit 1.

Where a nonresident has availed himself of the privilege of conducting activities in South Carolina, the Court has specific jurisdiction. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007).

Here, Zitzelberger has admitted that he lived in South Carolina for numerous years up until 2022. Even after he moved to Florida, Zitzelberger owned property and a business in Horry County, South Carolina. He owned a sports bar in Horry County from 2020 until July 2023, and indicated that some of the alleged transfers may have been used to purchase and operate that business. Plaintiffs are informed and believe that the fraudulently transferred funds may have been used to operate that business. Zitzelberger has admitted receiving funds from O'Connell while he lived in South Carolina, though he denies the transfers were fraudulent.⁴

Further, as noted above, Zitzelberger owned real property in South Carolina until October 2024. Zitzelberger already transferred the net proceeds from the sale of that property to Plaintiffs after Plaintiffs alleged that the property was fraudulently transferred to Zitzelberger. Zitzelberger entered into multiple contracts related to the real estate, including an agreement to sell the property to the buyer, and an agreement to turn over net proceeds to Plaintiffs.⁵

Based on the foregoing, Plaintiffs requests that the Court deny Zitzelberger's Motion to Dismiss, and grant such other and further relief as may be just and proper.

[Signature page to follow]

⁴ Excerpts from Zitzelberger's deposition taken in a collection proceedings against O'Connell are attached as Exhibit 2.

⁵ Contracts entered into in South Carolina by Zitzelberger are attached as Exhibit 3.

/s/Mary M. Caskey

Mary M. Caskey, SC Bar No: 76198

Alexandra C. Williams, SC Bar No: 105671

Haynsworth Sinkler Boyd, PA

1201 Main Street, Suite 2200 (29201)

Post Office Box 11889

Columbia, SC 29211

Telephone: (803) 779-3080

mcaskey@hsblawfirm.com

awilliams@hsblawfirm.com

Attorneys for Plaintiff

February 7, 2025

Columbia, South Carolina

45004040080,

EXHIBIT 1

ELECTRONICALLY FILED - 2025 Feb 07 8:49 AM - HORRY - COMMON PLEAS - CASE#2024CP2604462

Prepared By and Return to:
The Floyd Law Firm PC
15 Highway 17 South
P.O. Drawer 14607 (29587)
Surfside Beach, SC 29575
File No.: 278193.001

NO TITLE EXAMINATION PERFORMED BY DOCUMENT PREPARER

(Please do not write above this line - Reserved for Register of Deeds Office)

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) **WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS, that **GEORGE C. ZITZELBERGER**, in the State aforesaid, for and in consideration of the sum of **FIVE AND 00/100 (\$5.00)**, unto us paid by **GEORGE C. ZITZELBERGER AND PATRICIA A. ZITZELBERGER, TRUSTEES OF THE GEORGE AND PATRICIA ZITZELBERGER LIVING TRUST, DATED OCTOBER 12, 2020, AS AMENDED**, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell, and release unto the said **GEORGE C. ZITZELBERGER AND PATRICIA A. ZITZELBERGER, TRUSTEES OF THE GEORGE AND PATRICIA ZITZELBERGER LIVING TRUST, DATED OCTOBER 12, 2020, AS AMENDED**, their successors, heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion, the following described property, to wit:

All that certain piece, parcel or tract of land, containing 1.0 acres, more or less, situate, lying and being in Socastee Township, Horry County, South Carolina, and being shown and designed as Parcel 1, on that certain map thereof made by Frederick L. Harris, Professional Land Surveyor, and being referred to as "Subdivision Survey of 1.00 Acre Tract for Anne Marie Kelly Owned by Robert and Hilda B. Sobon dated June 3, 2013", and being recorded in the office of the Register of Deeds on June 13, 2013, in Plat Book 258 at Page 94, Horry County records, said plat being incorporated by reference herein as a part of this description.

This being the same property conveyed to George C. Zitzelberger by deed of Patricia A. Zitzelberg f/k/a Patricia A. Kemper-O'Connell dated March 23, 2020 and recorded April 8, 2020, in Deed Book 4302 at Page 2656, Horry County records.



TMS#184-00-02-324 PIN 450-04-04-0080

Grantee(s) Address: 7020 Bay Road, Myrtle Beach, SC 29588

THIS CONVEYANCE IS MADE SUBJECT TO all covenants, restrictions, easements, rights-of-way, reservations and encroachments of record which may affect the above described property, and all governmental statutes, ordinances, rules and regulations.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said George C. Zitzelberger and Patricia A. Zitzelberger, Trustees of the George and Patricia Zitzelberger Living Trust, dated October 12, 2020, as amended, their successors, heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion.

AND Grantor does hereby bind themselves and their heirs and assigns, to warrant and forever defend all and singular the said premises unto the said George C. Zitzelberger and Patricia A. Zitzelberger, Trustees of the George and Patricia Zitzelberger Living Trust, dated October 12, 2020, as amended, their successors, heirs and assigns, forever, in fee simple, together with every contingent remainder and right of reversion against the Grantor's heirs and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

[SIGNATURE PAGE TO FOLLOW]



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STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

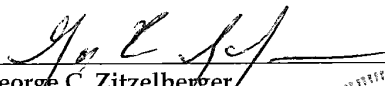
AFFIDAVIT
 S.C. Code Ann. §12-24-20 et. seq.

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 7020 Bay Road, Myrtle Beach, SC 29588 and were transferred by George C. Zitzelberger to George C. Zitzelberger and Patricia A. Zitzelberger, Trustees of the George and Patricia Zitzelberger Living Trust, dated October 12, 2020, as amended, on the 19th day of October, 2020.
3. Check one of the following: The deed is
 - (a) _____ Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) X Exempt from the deed recording fee because (See Information section of affidavit): #1 if exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$0.00 .
 - (b) _____ The fee is computed on the fair market value of the realty, which is _____ Dollars (\$ _____).
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes, which is _____ Dollars (\$ _____).
5. Check Yes _____ or No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement between the lienholder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$ _____.
6. The deed recording fee is computed as follows:

(a) Place the amount listed in Item 4 above here:	\$0.00
(b) Place the amount listed in Item 5 above here: (If no amount is listed, place zero here.)	-0.00
(c) Subtract Line 6(b) from Line 6(a):	\$0.00
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$0.00 .
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: SELLER .
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 19th day of October, 2020.


 George C. Zitzelberger

 (L.S.)
 Notary Public in and for S. C.
 My Commission Expires: 09/10/2028
 Dalton B. Floyd, Jr.
 Notary Public Printed Name





**HORRY COUNTY REGISTER OF DEEDS
TRANSMITTAL SHEET**

**TO BE FILED WITH EACH INSTRUMENT PRESENTED ELECTRONICALLY FOR RECORDING.
HORRY COUNTY REGISTER OF DEEDS, 1301 SECOND AVENUE POST OFFICE BOX 470 , CONWAY ,
SOUTH CAROLINA 29526**

DOCUMENT TYPE OF INSTRUMENT BEING FILED: Deed

DATE OF INSTRUMENT: .

DOCUMENT SHALL BE RETURNED TO:

NAME: The Floyd Law Firm, PC

ADDRESS:
15 Highway Business South
Surfside Beach, SC 29575

TELEPHONE: (843) 238-5141

FAX: (843) 238-5141

E-MAIL ADDRESS: bookkeeping@floydlaw.com

Related Document(s): book **4302** , page **2656**

PURCHASE PRICE / MORTGAGE AMOUNT: \$ 5.00

BRIEF PROPERTY DESCRIPTION: 1.0 acres, more or less

TAX MAP NUMBER (TMS #) 184-00-02-324 / PIN NUMBER: .

GRANTOR / MORTGAGOR / OBLIGOR / MARKER (FROM WHO):

	<u>LAST NAME</u>	<u>FIRST NAME</u>	<u>MIDDLE NAME</u>
1.	<u>ZITZELBERGER</u>	<u>GEORGE</u>	<u>C.</u>

GRANTEE / MORTGAGEE / OBLIGEE (TO WHO):

FULL BUSINESS NAME

1. GEORGE C. ZITZELBERGER AND PATRICIA A. ZITZELBERGER, TRUSTEES OF THE GEORGE AND PATRICIA ZITZELBERGER LIVING TRUST, DATED OCTOBER 12, 2020, AS AMENDED

1 Q Okay. And when -- and so you sold that?

2 A Yes.

3 Q And when was that?

4 A July of '23.

5 Q Okay. And did -- and you're married. Is that right?

6 A Correct.

7 Q Can you state your wife's name?

8 A Patricia Zitzelberger.

9 Q Okay. And when did y'all get married?

10 A May of 2018.

11 Q Okay. And did she ever own an interest in that bar?

12 A No.

13 Q Okay. And what is your current address? I think you
14 mentioned you're in Florida now. Is that right?

15 A Yes. It's 5175 97th -- Southwest 97th Lane road,
16 Ocala.

17 Q In Ocala?

18 A Yeah.

19 Q Okay. And are you the record owner of that property?

20 A Correct.

21 Q Okay. Does anybody own that property with you?

22 A No.

23 Q Okay. And when was that property purchased?

24 A December of '22.

25 Q December of 2022?

1 A Yes.

2 Q Okay. And you live there full-time now. Is that
3 right?

4 A Yes.

5 Q Okay. And is that where you're at right now?

6 A Yes.

7 Q And what type of home is that? Is it, like, a
8 townhouse, a single-family residence?

9 A Single-family resident.

10 Q Okay. And how much did you purchase it for in 2022?

11 A \$380,000.

12 Q And did you have to take out a mortgage?

13 A Yes.

14 Q Okay. Do you remember what that mortgage was for?

15 A I think it was \$80,000.

16 Q \$80,000? Okay. And where did you get the funds to
17 purchase that house?

18 A Well, there was a couple places. I sold some stuff
19 that I owned. And then, you know, I mean, I had some money in
20 the bank. I sold my condo.

21 Q Okay. You mentioned you sold some stuff. What was
22 that stuff?

23 A Well, because of my -- I don't know if you heard the
24 beginning when we were talking, chitchatting -- my health
25 problems.

1 Q Uh-huh.

2 A I owned a motorcycle, and my cardiologist deemed that
3 that was not good, so I sold that. I think I had a Trans Am. I
4 sold that. But there was a couple things I sold. I can't
5 remember exactly what they were.

6 Q Okay. And then you also mentioned a condo. What was
7 the address of that condo?

8 A That was on -- it was 4771 Wild Iris Drive in Myrtle
9 Beach.

10 Q Okay. And so when did you sell that?

11 A In '22.

12 Q Okay. So right before you purchased the --

13 A Yeah, somewhere in there.

14 Q -- the Ocala Property?

15 A Yeah, somewhere in that timeframe.

16 Q Okay. And did Patricia ever have an ownership interest
17 in that Wild Iris --

18 A No.

19 Q -- property? No? Okay. Let's see. And then do you
20 own any other property?

21 A No.

22 Q No? What about 7020 Bay Road, Myrtle Beach?

23 A I guess my name is on the deed. But other than me
24 dumping money into it, you know, that's about the end of it.

25 Q So when --

1 A I didn't purchase that at all.

2 Q Okay. So how did it get in your name?

3 A I put it in my name because my wife's insurance policy
4 got cancelled, and this probably wasn't the smartest thing in
5 the world for me to do. But her insurance policy got cancelled
6 for -- from State Farm, for everything. So I had State Farm. I
7 says, okay, well, we'll just go ahead and put everything in my
8 name, under my policy. And I talked to the agent. I had no
9 problem.

10 And -- but in my eyes was, okay, well, I'm going to
11 insure this, then my name has to be on it. I mean, that -- I
12 don't know if that was what I should have done or what I
13 shouldn't have done, but that's the reason why it was put in my
14 name.

15 Q Okay. Was that a homeowners --

16 A I'm still paying the insurance on that property.

17 Q Okay. And that's a homeowners insurance policy?

18 A Correct.

19 Q Okay. And so Patricia's was cancelled. Do you
20 remember why it was cancelled?

21 A I think it was -- I'm not a hundred percent sure, but I
22 believe it was one of her daughters put too many claims in or
23 something, and they cancelled her.

24 Q Okay.

25 A I -- I think that's what it was. I'm not really a

1 hundred percent sure.

2 Q Okay. And so it was in your name, and -- but now,
3 maybe it's in a trust name. Is that right?

4 A I know we opened up a trust for a will at Floyd Law
5 Firm. Now, I'm not sure exactly what -- I don't know that much
6 about a trust, so...

7 Q Okay. So let me just -- I think the property is
8 currently held in George Zitzelberger and Patricia A.
9 Zitzelberger Living Trust. Does that sound right to you?

10 A That sounds right.

11 Q Okay. And so you mentioned that you opened that trust
12 to create a will?

13 A Yes.

14 Q Okay. And do you remember when you did that?

15 A No.

16 Q Okay. Would it have been right before the property --
17 would it have been in 2020 right before the property was
18 transferred into that -- that name, that living trust name?

19 A It -- it -- I -- could have been. I really don't
20 remember exactly when that happened.

21 Q Okay. And then, so are you and Patricia the trustees
22 of that trust?

23 A I really -- I don't know.

24 Q Okay. And do you know -- do you have beneficiaries for
25 that trust?

1 Q Okay. So you don't know where that came from?

2 A No, I don't know where it came from. But if it went
3 into one of my accounts in 2020, it was for -- I'm sure it was
4 for repairs and upgrades at the house.

5 Q And which house would that be?

6 A On Bay Road.

7 Q On Bay Road? Okay. And so what -- what type -- what
8 type of renovations were you doing for the house?

9 A Well, it's probably got about \$125,000 worth of
10 concrete put into it. I had a swimming pool put into it. It's
11 got a garage added, a three-bay 20 by 50 garage in the back
12 added. I had that insulated and sheet-rocked and air
13 conditioned. So, I mean, there was -- I put a lot of money in
14 there.

15 Q Okay. And so you said it was for renovations. Would
16 that money have come from Patricia?

17 A Probably.

18 Q Okay.

19 A I -- I -- I don't know. But yeah, probably.

20 Q And then do you have -- did you use one contractor for
21 all of that work, or -- or did you use a ton of different
22 people?

23 A Multiple contractors.

24 Q Okay. Do you recall those names?

25 A I think there's checks in there that were written that

1 I saw. There was two different concrete guys. There was --
2 some of that was paid in cash.

3 Q Okay.

4 A But I think most of the garage -- I can't remember now.

5 Q Okay.

6 A But I can't remember who the contractors were.

7 Q Alrighty. And so I'm going to show you a second --
8 another page. Can you see this?

9 A Yep.

10 Q Okay. So does that look -- that appears -- this top
11 one, and you can tell me if I'm wrong. That appears to be a
12 check from Patricia for \$75,000. Does that look right to you?

13 A From Patricia to me for \$75,000. Yep.

14 Q Okay. So -- so that's probably where that \$75,000 came
15 from then?

16 A That's probably it. Yeah, I guess.

17 Q Okay. Alrighty. And so you think all -- every bit of
18 that \$75,000 went into the renovations on your house?

19 A Well, it had to go into something at the house. I
20 mean, I don't have it.

21 Q Okay. Alrighty. Just give me one second.

22 All right. So I'm going to show you this statement as
23 well. Does this appear to be a preferred rewards account in
24 your name, based on this document?

25 A Yeah.

1 Q Okay.

2 A What's -- what's POD mean?

3 Q I believe, payable on death.

4 A Okay.

5 Q All right. And so it appears from here that there was
6 another deposit on the same date, March 20, 2020, for \$20,000.

7 Does that look right to you?

8 A I suppose.

9 Q Okay. And do you recall where that \$20,000 came from?

10 A Not at all.

11 Q Okay. If it was on the same day, do you -- I mean, do
12 you have an idea of where it could have come from?

13 A Well, I'm pretty sure it had to come from my wife's
14 account. I have to assume.

15 Q Okay.

16 A But again, it was -- you know, anything that went into
17 those accounts were used for home improvement.

18 Q Okay. So that \$20,000 would have also been used for
19 home improvement. Is that right?

20 A Correct.

21 Q Okay.

22 A Or something around the house.

23 Q And that would have been for the same renovations you
24 were just telling me about?

25 A Right.

1 Q Okay.

2 A I mean, there was a GenX put in. That was expensive.
3 There was a pool, swimming pool.

4 Q And then I'm just going to scroll all the way down
5 here. Maybe if I can get a shortcut. We'll see. Guess not.

6 A I actually printed off all your pages.

7 Q Oh, you did?

8 A Yeah. But the reason why I'm vague on these right now,
9 because I didn't look at them. I mean, there's only, like, 500
10 pages. I had to go buy paper.

11 Q It is a lot of pages. And I feel sorry about the
12 trees.

13 A It's not your fault.

14 Q All right. So can you see this here?

15 A I do.

16 Q Okay. And I'm looking at these January 2021 deposits.

17 A Okay.

18 Q There -- this \$80,000 deposit from Jacob Batson or
19 Christina. Do you know who that is?

20 A I think the Christina is Patty's daughter.

21 Q And Patty. Is that Patricia?

22 A Correct.

23 Q Okay. Do you recall what that was for?

24 A I think that's -- she repaid her mother for a loan or
25 something.

1 There's a whole lot of people that went to the bar. And then I
2 was told the bar was for sale. And then --

3 Q Did you go -- sorry, I didn't mean to interrupt you.
4 Go ahead.

5 A And so then I got interested in it.

6 Q Did you go to that bar prior to you purchasing it?

7 A Yeah, not all the time, but from time to time.

8 Q Okay.

9 A When you ride a motorcycle in Myrtle Beach, you go -- I
10 mean, it just -- everybody gets together and rides bar to bar,
11 basically.

12 Q I get that. All right. And so did you and Patty buy
13 that bar together?

14 A No.

15 Q So where'd you get the funds to purchase that bar?

16 A She supported me in -- in buying the bar.

17 Q What do you mean by that?

18 A Well, I mean, she'd be -- I told her -- I says, "I want
19 to get this bar," and she supported me in, you know, the aspect
20 of, "Yeah, you can go ahead and do that. I agree." And not,
21 "No, I think you're stupid," or...

22 Q Okay. So did she give you any financial support to
23 open the bar?

24 A I think I may have taken some money out of the account.

25 Q Okay.

1 A And it may have been out of -- I don't know where it
2 came from, my checking account with Bank of America. I just
3 don't -- I'm just not sure.

4 Q Okay. And when you said "taken some money," do you
5 have a ballpark range of what that would be?

6 A No.

7 Q Okay. And so when you said you took it out of your
8 account, you think you took that out of your own account or a
9 joint account that you might have had with Patricia?

10 A Would have been both. I don't know. I can't remember.

11 Q Okay. And so you wouldn't recall which account that
12 was?

13 A No.

14 Q Okay. And so would that have been the only money that
15 you used to -- to purchase the bar, or would you have gotten a
16 loan, or how else would you have come up with the money?

17 A No, there was no loan taken out at all. I'm -- I'm
18 sure I used some of my money.

19 Q Okay. And so how long -- so it sounds like you
20 operated that bar from --

21 A For three years.

22 Q -- 2020, maybe, to 2023?

23 A Yeah. Three years I had it.

24 Q That sounds right?

25 A Yeah.

**AGREEMENT TO SELL REAL ESTATE
AS PARTIAL SATISFACTION OF JUDGMENT**

This Agreement to Sell Real Estate as Partial Satisfaction of Judgment (“Agreement”) is made by and between Lynn Dilucchio and Kevin Kemper as Co-Administrators C.T.A. of the Estate of August Kemper (collectively the “Administrators”), Patricia O’Connell aka Patricia O’Connell-Kemper aka Patricia A. Kemper-O’Connell aka Patricia A. Zitzelberger aka Patricia A. Zitzelberger (“P. Zitzelberger”), and George C. Zitzelberger (“G. Zitzelberger”) (collectively the “Zitzelbergers”), individually and as Trustees of the The George and Patricia Zitzelberger Living Trust, Dated October 12, 2020 (the “Trust”), and is effective as of the last date executed by the Parties below (the “Effective Date”). The Administrators and the Zitzelbergers are sometimes referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Administrators are the holder of a judgment against P. Zitzelberger dated July 31, 2023, in Horry County, South Carolina, Case No. 2021-CP-26-06228, in the principal amount of \$1,728,321.00 (the “Judgment”);

WHEREAS, the Trust is the current owner of property located at 7020 Bay Road, Myrtle Beach, SC 29588 (the “Property”);

WHEREAS, the Property was previously owned by P. Zitzelberger and was transferred by P. Zitzelberger to G. Zitzelberger, and then from G. Zitzelberger to the Trust;

WHEREAS, the Administrators have alleged that they are entitled to set aside the transfers of the Property since P. Zitzelberger was the owner; and

WHEREAS, the Zitzelbergers have agreed to sell the Property and tender the net proceeds from the sale of the Property to the Administrators to use towards the Judgment.

NOW, THEREFORE, in consideration of the promises and respective agreements herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Listing of Property:** The Zitzelbergers agree to list the property with Watermark Real Estate Group within five (5) days of this Agreement, and pursuant to the terms of the Exclusive Right to Sell Agreement Listing Agreement attached as **Exhibit 1**.

2. **Notification of Offers:** The Zitzelbergers agree to provide notice to the Administrators of any offer received on the Property within two (2) days of receipt of the offer. Notice shall be given in accordance with this Agreement.

3. Consent by the Administrators: The Zitzelbergers acknowledge that they need the Administrators' consent in order to sell the Property due to the Judgment and prospective litigation to set aside the transfer of the Property to the Administrators have the right to refuse to agree to the sale of the Property. The Administrators agree not to reasonably withhold consent if the terms of the sale of the Property are reasonable and the purchase price is reasonable and for fair market value.

4. Application of Sales Proceeds to Judgment: The net proceeds of the sale of the Property shall be applied towards the balance owed on the Judgment. The Zitzelbergers agree that the net proceeds shall be paid directly to the Administrators at the closing of the sale of the Property. The Administrators agree to file a partial satisfaction of the Judgment within five (5) days of the date of the receipt of the net proceeds from the sale of the Property. Provided however, the Administrators that during the time of listing until closing, the Zitzelbergers shall be entitled to reimbursement from the closing proceeds, for payment of insurance premiums paid to maintain insurance on the property.

5. Good Faith: The Parties hereto each state and agree that this Agreement is the product of good faith negotiations between the Parties, and that: (i) each Party understands and agrees that it has extended good and valuable consideration to the other; and (ii) each Party is entitled to reasonably rely on this and other provisions contained herein.

6. Governing Law: This Agreement shall be interpreted, and the rights and obligations of the Parties hereto determined, in accordance with the laws of the state of South Carolina.

7. No Third Party Beneficiaries: Nothing contained in this Agreement shall be deemed to indicate that this Agreement has been entered into for the benefit of any person other than the Parties hereto.

8. Section Titles: The section titles contained in this Agreement are and shall be deemed to be without substantive meaning or content of any kind whatsoever and are not a part of the Agreement between the Parties hereto.

9. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. DocuSign, Electronic, PDF, and facsimile copies of this Agreement and the signatures hereto may be used with the same force and effect as the original. This Agreement shall be deemed fully executed and effective when each party has executed at least one of the counterparts, even though no single counterpart bears all such signatures.

10. Entire Agreement: This Agreement expresses the entire understanding and agreement of the Parties hereto with respect to the subject matter hereof and thereof and supersedes all prior understandings and agreements of the Parties regarding the same subject matter. This Agreement may not be amended or modified except by a writing signed by the Parties hereto.

11. Construction: This Agreement shall not be construed more strongly against either Party solely by reason of who was more responsible for its preparation.

12. Severability: Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, each provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

13. Notice: All notices, demands or other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered in person or by any means whereby a signature confirming delivery is obtained, or shall be provided via email correspondence:

(a) If to the Administrators:

Ruskin Moscou Faltischek, P.C.
Long Island, 1425 RXR Plaza, East Tower, 15th Floor
Uniondale, NY 11556-1425
Email: LBLADYKAS@rmfpc.com
Attn: Lois Bladykas, Esq.

Bruno, Gerbino, Soriano & Aitken, LLP
445 Broad Hollow Road, Ste 420
Melville, New York 11747
Email: VGerbino@bgslaw-ny.com
Attn: Vince Gerbino, Esq.

With a copy, which shall not constitute notice to:

Haynsworth Sinkler Boyd, PA
1201 Main Street, Suite 2200
Columbia, SC 29201
Email: mcaskey@hsblawfirm.com
Attn: Mary M. Caskey, Esq.

(a) If to the Zitzelbergers:

The Floyd Law Firm
15 Highway 17 Business South
Surfside Beach, SC 29575
Email: mndrost@floydlaw.com
Attn: Marissa N. Drost, Esq.

or to such other persons or addresses as the Parties may furnish to each other from time to time.

Any such notice, demand or other communication made pursuant to the provisions of this Paragraph 11 shall be deemed to have been given on the date actually delivered to the addressee to which it is directed.

[Signature Page Follows]

Columbia, SC 29201
Email: mcaskey@hsblawfirm.com
Attn: Mary M. Caskey, Esq.

(a) If to the Zitzelbergers:

The Floyd Law Firm
15 Highway 17 Business South
Surfside Beach, SC 29575
Email: mndrost@floydllaw.com
Attn: Marissa N. Drost, Esq.

or to such other persons or addresses as the Parties may furnish to each other from time to time. Any such notice, demand or other communication made pursuant to the provisions of this Paragraph 11 shall be deemed to have been given on the date actually delivered to the addressee to which it is directed.

[Signature Page Follows]

□

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement and have caused same to be duly delivered on their behalf:

Lynn Dilucchio, as Co-Administrator C.T.A. of the
Estate of August Kemper

Augusta Lynn Dilucchio, as Co-Ad
Date: 5-8-2024

Kevin Kemper, as Co-Administrator C.T.A. of the
Estate of August Kemper

Date: _____

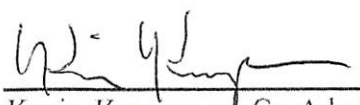
Patricia O'Connell aka Patricia O'Connell-Kemper
aka Patricia A. Kemper-O'Connell aka Patricia A.
Zitzelberg aka Patricia A. Zitzelberger, individually,
and as Trustee of The George and Patricia
Zitzelberger Living Trust, Dated October 12, 2020

Date: _____

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement and have caused same to be duly delivered on their behalf:

Lynn Dilucchio, as Co-Administrator C.T.A. of the Estate of August Kemper

Date: _____



Kevin Kemper, as Co-Administrator C.T.A. of the Estate of August Kemper

Date: 5/12/24

Patricia O'Connell aka Patricia O'Connell-Kemper aka Patricia A. Kemper-O'Connell aka Patricia A. Zitzelberg aka Patricia A. Zitzelberger, individually, and as Trustee of The George and Patricia Zitzelberger Living Trust, Dated October 12, 2020

Date: _____

George Zitzelberger, individually and as Trustee of The George and Patricia Zitzelberger Living Trust, Dated October 12, 2020

Date: _____

(a) If to the Zitzelbergers:

The Floyd Law Firm
15 Highway 17 Business South
Surfside Beach, SC 29575
Email: mndrost@floydllaw.com
Attn: Marissa N. Drost, Esq.

or to such other persons or addresses as the Parties may furnish to each other from time to time. Any such notice, demand or other communication made pursuant to the provisions of this Paragraph 11 shall be deemed to have been given on the date actually delivered to the addressee to which it is directed.

[Signature Page Follows]

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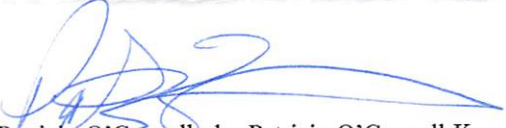
IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement and have caused same to be duly delivered on their behalf:

Lynn Dilucchio, as Co-Administrator C.T.A. of the Estate of August Kemper

Date: _____

Kevin Kemper, as Co-Administrator C.T.A. of the Estate of August Kemper

Date: _____


Patricia O'Connell aka Patricia O'Connell-Kemper
aka Patricia A. Kemper-O'Connell aka Patricia A. Zitzelberg aka Patricia A. Zitzelberger, individually,
and as Trustee of The George and Patricia Zitzelberger Living Trust, Dated October 12, 2020

Date: 5/8/24

George Zitzelberger, individually and as Trustee of The George and Patricia Zitzelberger Living Trust, Dated October 12, 2020

Date: _____

(a) If to the Zitzelbergers:

The Floyd Law Firm
15 Highway 17 Business South
Surfside Beach, SC 29575
Email: mndrost@floydllaw.com
Attn: Marissa N. Drost, Esq.

or to such other persons or addresses as the Parties may furnish to each other from time to time. Any such notice, demand or other communication made pursuant to the provisions of this Paragraph 11 shall be deemed to have been given on the date actually delivered to the addressee to which it is directed.

[Signature Page Follows]

□

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement and have caused same to be duly delivered on their behalf:

Lynn Dilucchio, as Co-Administrator C.T.A. of the Estate of August Kemper

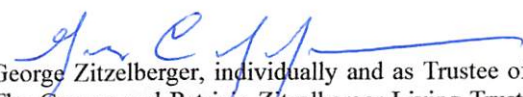
Date: _____

Kevin Kemper, as Co-Administrator C.T.A. of the Estate of August Kemper

Date: _____

Patricia O'Connell aka Patricia O'Connell-Kemper aka Patricia A. Kemper-O'Connell aka Patricia A. Zitzelberg aka Patricia A. Zitzelberger, individually, and as Trustee of The George and Patricia Zitzelberger Living Trust, Dated October 12, 2020

Date: _____


George Zitzelberger, individually and as Trustee of The George and Patricia Zitzelberger Living Trust, Dated October 12, 2020

Date: 5/9/24
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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Case No. 2021-CP-26-06228

Lynn Dilucchio and Kevin Kemper as Co-Adminstrators C.T.A. of the Estate of Augusta Kemper,

Plaintiffs,

v.

Patricia O'Connell aka Patricia O'Connell-Kemper,

Defendant.

TOLLING AGREEMENT

This Tolling Agreement (the "Tolling Agreement") is made and entered into as of July 11, 2024, by and between (a) Lynn Dilucchio and Kevin Kemper as Co-Adminstrators C.T.A. of the Estate of Augusta Kemper ("Administrators"); and (b) Patricia O'Connell aka Patricia O'Connell-Kemper aka Patricia A. Kemper-O'Connell aka Patricia A. Zitzelberger aka Patricia A. Zitzelberger ("P. Zitzelberger"), and George C. Zitzelberger ("G. Zitzelberger") (collectively the "Zitzelbergers"), individually and as Trustees of The George and Patricia Zitzelberger Living Trust, Dated October 12, 2020 (the "Trust").

WHEREAS, on July 27, 2021, Plaintiffs obtained a judgment against O'Connell in Suffolk County, New York in the amount of \$1,728,321.00, plus interest at the per annum rate of 9% until paid (the "Foreign Judgment");

WHEREAS, on July 24, 2023, the Foreign Judgment was entered against O'Connell in Horry County, South Carolina (the "Judgment");

WHEREAS, the Trust is the current owner of property located at 7020 Bay Road, Myrtle Beach, SC 29588 (the “Property”);

WHEREAS, a dispute arose as to whether the Property was a fraudulent transfer (the “Fraudulent Transfer”);

WHEREAS, the Parties entered into an agreement to resolve the Fraudulent Transfer and to sell the Property on May 12, 2024;

WHEREAS, the statute of limitations for the Fraudulent Transfer expires on July 26, 2024;

WHEREAS, subject to the terms and conditions set forth herein, the Parties desire to toll the running of any existing statute of limitations concerning the Fraudulent Transfer.

NOW, THEREFORE, in consideration of the mutual promises stated in this Tolling Agreement, the Parties agree and stipulate as follows:

1. The recitals set forth above are true and correct in all respects.
2. The Parties agree that any defenses based on the passage of time, including, without limitation, any statutes of limitation, statutes of repose, estoppel, waiver or laches are hereby tolled and extended from the date of this Tolling Agreement up through and including December 31, 2024, (the “Extended Deadline”). The period between July 11, 2024, and December 31, 2024, shall be referred to herein as the “Tolling Period.”
3. Interest shall cease to accrue on the Judgment during the Tolling Period.
4. In accordance with the foregoing, the Parties agree that the Tolling Period, or any portion thereof, shall be excluded from any calculation of any statute of limitations or other time period otherwise applicable to the Fraudulent Transfer that is ultimately commenced and/or prosecuted by and/or on behalf of the Administrators. The Zitzelbergers and the Trust

acknowledge and agree that they will be estopped from arguing that this Tolling Agreement is ineffective to extend the time within which the Fraudulent Transfer must be commenced.

5. This Tolling Agreement shall not operate as an admission of liability by any Party. Neither this Tolling Agreement nor any action taken pursuant to this Tolling Agreement shall be offered or received in evidence in any action or proceeding as an admission of liability or wrongdoing by any Party.

6. Each person or entity who executes this Tolling Agreement on behalf of a Party represents and warrants that he, she, or it is duly authorized to execute this Tolling Agreement on behalf of said Party, has all requisite authority to bind such Party, and such Party has full knowledge of and has consented to the terms and provisions of this Tolling Agreement. This Tolling Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective successors and assigns.

7. This Tolling Agreement sets forth the entire agreement by and among the Parties with respect to the subject matter hereof. This Tolling Agreement supersedes all prior and contemporaneous written and oral agreements and discussions with regard to the subject matter of this Tolling Agreement.

8. Except as otherwise provided herein, this Tolling Agreement may only be amended by an agreement in writing signed by all the Parties.

9. This Tolling Agreement may be executed in multiple counterparts, and all such counterparts taken together shall be deemed to constitute one and the same instrument. Transmission by email, facsimile, or other form of electronic transmission of an executed counterpart of this Tolling Agreement shall be deemed to constitute due and sufficient delivery of

such counterpart. Each fully executed counterpart of this Tolling Agreement shall be deemed to be a duplicate original.

IN WITNESS WHEREOF, the Parties have executed this Tolling Agreement as of the date first set forth above.

Lynn Dilucchio, as Co-Administrator
Lynn Dilucchio, as Co-Administrator C.T.A. of the Estate of August Kemper

Date: 7-23-2024

Kevin Kemper as Co-ADMINISTRATOR
Kevin Kemper, as Co-Administrator C.T.A. of the Estate of August Kemper

Date: 7/26/2024

Patricia O'Connell
Patricia O'Connell aka Patricia O'Connell-Kemper aka Patricia A. Kemper-O'Connell aka Patricia A. Zitzelberg aka Patricia A. Zitzelberger, individually, and as Trustee of The George and Patricia Zitzelberger Living Trust, Dated October 12, 2020

Date: 7/11/2024

George Zitzelberger
George Zitzelberger, individually and as Trustee of The George and Patricia Zitzelberger Living Trust, Dated October 12, 2020

Date: 7/11/24

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Lynn Dilucchio and Kevin Kemper as Co-Administrators C.T.A. of the Estate of Augusta Kemper,

C/A NO: 2024-CP-26-04462

Plaintiffs,

vs.

George C. Zitzelberger,

Defendant.

PLAINTIFF’S FIRST SET OF INTERROGATORIES TO DEFENDANT

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Plaintiffs Lynn Dilucchio and Kevin Kemper as Co-Administrators C.T.A. of the Estate of Augusta Kemper (“Plaintiffs”), by and through its undersigned counsel, request that Defendant George C. Zitzelberger (“Zitzelberger”) answer the following interrogatories in writing:

DEFINITIONS AND INSTRUCTIONS

1. The following definitions apply to all requests:
 - a. And/Or. The terms “and” and “or” shall be construed disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.
 - b. Communication. The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) in any manner, oral or written, by any means, physical, electronic, or otherwise.
 - c. Concerning. The term “concerning” means relating to, referring to, describing, evidencing, or constituting.
 - d. Describe. To “describe” means to give a substantial account of an event or communication, or to relate the substance of a document, idea, or thing (tangible or intangible), and to include all relevant dates and the names of all relevant individuals.

- e. Document. The term “document” means the recording of information in any tangible form and includes any written, printed, typed, filmed, taped, computer-generated, computer-stored or other graphic matter of any kind or nature, however produced or reproduced, whether sent or received or neither, including drafts or copies bearing notations or marks not found on the original.
 - f. You. The term “you,” “your,” or “yourself” refers to Zitzelberger and each of his present and former agents, representatives, and attorneys, and each person acting or purporting to act on his behalf.
2. The following instructions apply to all requests:
- a. If you contend that you are entitled to withhold information on the basis of attorney, client privilege, the work product doctrine, or other ground, then do the following with respect to each and every document: (a) describe the nature of the document (i.e., letter, memorandum, etc.); (b) state the date of the document; (c) identify the person who sent and received the original and a copy of the document; (d) state the subject matter of the document; and (e) state the basis upon which you contend you are entitled to withhold the document from production
 - b. These interrogatories are continuing in nature and Zitzelberger is obligated to supply Plaintiffs with new information concerning the issues raised by these interrogatories whenever such information becomes known to Zitzelberger or his counsel.

INTERROGATORIES

1. Give the names and addresses of persons known to You or Your counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches or other prepared documents in Your possession that relate to the claim or defense in the case.
3. For each person known to You or Your counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

4. Identify any expert witness you intend to use in this action. For any expert, describe the testimony you expect the expert to offer, and any documentation or evidence upon which the expert has relied.

5. State Your full name, any other names You have ever been known as, date and place of birth, social security number, driver's license number, marital status, the name(s) of Your current and former spouse(s), and addresses for the past five (5) years.

6. Have you ever been a party to any other civil action? If so, please give:

- a. the names of all parties to each suit;
- b. the date of each such suit; and
- c. the court in which each such suit was brought.

7. Identify all real property owned by You since January 1, 2018. For each property, identify the address of the real property, your interest in the property, and any other party who had an interest in that property.

8. For any property identified in response to Interrogatory No. 7, identify the source of funding to purchase the real estate. If any purchase was financed, identify the name of the lender, the amount borrowed, and list any account number associated with the loan.

9. Identify any children or dependents that you have had since January 1, 2018. For each child or dependent, identify the name, address, phone number, and age of the child or dependent.

10. State whether you have purchased real property for or on behalf of any other individual since January 1, 2018. For each property, identify the person for who it was purchased, the address of the property, the date of the purchase, and the current owner of the property. Identify all documents that support this answer by Bates Number.

11. Identify all vehicles and/or motorcycles owned by You since January 1, 2018. For each vehicle, identify the VIN number, owner name, and identify the state where the vehicle has been registered at any time since January 1, 2018.

12. Identify all companies with whom you have had real property, personal property, or life insurance with since January 1, 2018. For each company, identify the full name of the insurer, the account number, the dates of insurance, the identity of the property or person insured, and the location of the person or property insured.

13. Identify all bank accounts, including the financial institution and account number, Zitzelberger maintained between January 1, 2018, until the present.

14. Identify and list all cash transfers or checks made by Patricia O'Connell a/k/a Patricia O'Connell Kemper a/k/a Patricia Zitzelberger to You over \$5,000.00 from January 1, 2018, until the present. For each transfer, state the purpose of the transfer and how the transfer was made. Identify all documents that support this answer by Bates Number.

15. Describe any real or personal property with a value over \$5,000.00 that Zitzelberger received from Patricia O'Connell a/k/a Patricia O'Connell Kemper a/k/a Patricia Zitzelberger between January 1, 2018, until the present.

16. List all trusts that you have had an interest in since January 1, 2018. For each trust, list the full name of the trust, your interest in the trust, whether there are any other beneficiaries of the trust, and identify the trustee of the trust.

17. List all cash transfers made by Patricia O'Connell a/k/a Patricia O'Connell Kemper a/k/a Patricia Zitzelberger that were used for or provided to the Wild Horse or its associated LLC.

18. List all corporations, limited liability companies, partnerships, or other organizations that You have an interest in or have had an interest in from January 1, 2018, until the present.

HAYNSWORTH SINKLER BOYD, P.A.

/s/ Mary M. Caskey

Mary M. Caskey (SC Bar No. 76198)
Alexandra C. Glunt (SC Bar No. 105761)
1201 Main Street, 22nd Floor
Columbia, South Carolina 29201
Telephone: (803) 779-3080
mcaskey@hsblawfirm.com
aglunt@hsblawfirm.com

*Attorneys for Plaintiffs Lynn Dilucchio and
Kevin Kemper as Co-Administrators C.T.A. of
the Estate of Augusta Kemper*

October 28, 2024

Columbia, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

Lynn Dilucchio and Kevin Kevin Kemper as
Co-Administrators C.T.A. of the Estate of
Augusta Kemper,

Plaintiffs,

vs.

George C. Zitzelberger,

Defendant.

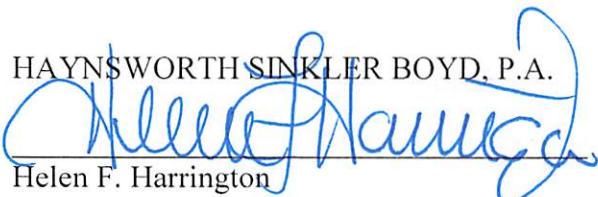
C/A NO: 2024-CP-26-04462

CERTIFICATE OF SERVICE

I, Helen F. Harrington, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused a copy of **Plaintiffs' First Set of Interrogatories to Defendant and Plaintiff's First Requests for Production to Defendant** to be served on Defendant, by causing a copy of the same to be emailed and placed in the U.S. Mail, postage prepaid, addressed to the Defendant's counsel at the following address:

dmacdonald@machickslaw.com
Daniel J. MacDonald, Sr., Esquire
MacDonald & Hicks, PA
1107 48th Avenue North, Suite 210
Myrtle Beach, SC 29577

this 28th day of October, 2024.

HAYNSWORTH SINKLER BOYD, P.A.

Helen F. Harrington
Litigation Paralegal

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 LYNN DILUCCHIO AND KEVIN)
 KEMPER, AS CO-ADMINISTRATORS)
 C.T.A. OF THE ESTATE OF AUGUSTA)
 KEMPER,)
)
 Plaintiffs,)
)
 v.)
)
 GEORGE C. ZITZELBERGER,)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NO. 2024-CP-26-04462

ANSWERS TO INTERROGATORIES

The Defendant, George C. Zitzelberger, answering the Interrogatories propounded by the Plaintiffs, Lynn Dilucchio and Kevin Kemper, as Co-Administrators C.T.A of the Estate of Augusta Kemper, would answer as follows:

1. Give the names and addresses of persons known to You or Your counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER: (1) **George C. Zitzelberger**
5175 SW 97th Lane Road
Ocala, FL 34476

Witness is the Defendant in this action, and is expected to testify regard his assets, liabilities, and all matters set forth in the Complaint and Answer filed herein.

(2) **Lynn A. Kemper Dilucchio**
137 Stanley Drive
Centereach, NY 11720

Witness is a Plaintiff in this action, and is expected to testify regard her role as Administrator of the Estate of Augusta Kemper, and all matters set forth in the Complaint and Answer filed herein.

- (3) **Kevin Kemper
(unknown)
c/o Mary M. Caskey, Esquire
Haynsworth Sinkler Boyd, Pa
1201 Main Street, 22nd Floor
Columbia, SC 29201**

Witness is a Plaintiff in this action, and is expected to testify regard his role as Administrator of the Estate of Augusta Kemper, and all matters set forth in the Complaint and Answer filed herein.

- (4) **Any and all witnesses identified by the Plaintiffs.**
- (5) **Defendant reserves the right to supplement his responses to discovery to include naming additional witnesses.**

2. Set forth a list of photographs, plats, sketches or other prepared documents in Your possession that relate to the claim or defense in the case.

ANSWER: See attached Exhibit A.

3. For each person known to You or Your counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See answer to Interrogatory #1.

4. Identify any expert witness you intend to use in this action. For any expert, describe the testimony you expect the expert to offer, and any documentation or evidence upon which the expert has relied.

ANSWER: None at this time. However, the Defendant reserves the right to supplement his answers to discovery to include the naming of expert witnesses.

5. State Your full name, any other names You have ever been known as, date and place of birth, social security number, driver's license number, marital status, the name(s) of Your current and former spouse(s), and addresses for the past five (5) years.

ANSWER: George Clifford Zitzelberger

DOB: 01/31/1951

FL Driver's License to be provided by separate secure means

Married to Patricia A. O'Connell Zitzelberger

Address: 5175 SW 97th Lane Road, Ocala, FL 34476

Prior Addresses: 7020 Bay Road, Myrtle Beach, SC

4771 Wild Iris Drive, #6-203, Myrtle Beach, SC

6. Have you ever been a party to any other civil action? If so, please give:
- the names of all parties to each suit;
 - the date of each such suit; and
 - the court in which each such suit was brought.

ANSWER: Other than the pending case, the Defendant has only had traffic offenses, two (2) debt collection cases which were dismissed, and one (1) debt collection case which obtained a judgment. The records for those cases are public record and available to the Plaintiffs' counsel.

7. Identify all real property owned by You since January 1, 2018. For each property, identify the address of the real property, your interest in the property, and any other party who had an interest in that property.

ANSWER: (1) Magnolia Place HPR, Phase 1, Unit 6203
(purchased in 2012 and sold in April 2023)

(2) 7020 Bay Road, Myrtle Beach
(was owned by George C. Zitzelberger and Patricia Zitzelberger Living Trust Dated October 12, 2020 and sold in October 2024)

(3) 5175 SW 97th Lane Road, Ocala, FL (purchased in 2022)

8. For any property identified in response to Interrogatory No. 7, identify the source of funding to purchase the real estate. If any purchase was financed, identify the name of the lender, the amount borrowed, and list any account number associated with the loan.

ANSWER: Magnolia Place HPR, Phase 1 Unit 6203 was purchased by George Zitzelberger on May 24, 2013 for \$102,500 and was sold on April 10, 2023 for \$235,000.

The Ocala, Florida property was purchased in 2022. This Defendant used the proceeds from the sale of the Magnolia Condominium, the sale of his personal motorcycle, the sale of his personal Trans Am, and the sale of other personal property or interests to purchase the home in Ocala, Florida. Defendant also took a mortgage for approximately \$80,000 for the purchase with American Mortgage.

Upon information and belief, the residence on Bay Road in Myrtle Beach was purchased with cash from an inherited annuity by Patricia O'Connell Zitzelberger. Defendant's name was subsequently added to the deed for insurance purposes.

9. Identify any children or dependents that you have had since January 1, 2018. For each child or dependent, identify the name, address, phone number, and age of the child or dependent.

ANSWER: George Zitzelberger does not have a dependent child since January 1, 2018. Mr. Zitzelberger does care for his elderly mother, and has for some time.

10. State whether you have purchased real property for or on behalf of any other individual since January 1, 2018. For each property, identify the person for who it was purchased, the address of the property, the date of the purchase, and the current owner of the property. Identify all documents that support this answer by Bates Number.

ANSWER: No

11. Identify all vehicles and/or motorcycles owned by You since January 1, 2018. For each vehicle, identify the VIN number, owner name, and identify the state where the vehicle has been registered at any time since January 1, 2018.

ANSWER: Jeep Cherokee and Jeep Wagoneer were purchased in 2023. Defendant traded in his Dodge Ram truck and his wife's 2016 Mustang to make the purchases. No recreational vehicles. No watercraft.

12. Identify all companies with whom you have had real property, personal property, or life insurance with since January 1, 2018. For each company, identify the full name of the insurer, the account number, the dates of insurance, the identity of the property or person insured, and the location of the person or property insured.

ANSWER: State Farm Insurance

13. Identify all bank accounts, including the financial institution and account number, Zitzelberger maintained between January 1, 2018, until the present.

ANSWER: Defendant has or had bank accounts at Bank of America, Truist Bank, and Wells Fargo.

14. Identify and list all cash transfers or checks made by Patricia O'Connell a/k/a Patricia O'Connell Kemper a/k/a Patricia Zitzelberger to You over \$5,000.00 from January 1, 2018, until the present. For each transfer, state the purpose of the transfer and how the transfer was made. Identify all documents that support this answer by Bates Number.

ANSWER: This answering Defendant objects to this Interrogatory until such time as jurisdiction has been determined. Defendant is also filing for a protective order due to his health. Additionally, the Interrogatory is overly broad or burdensome, as this answering Defendant cannot possibly recall cash transfers from his wife and the purpose of each. Further, this Defendant was deposed by Plaintiff in a separate action, and was asked about transfers, so reference to that deposition can be had by the Plaintiff, or a subsequent deposition can be taken.

15. Describe any real or personal property with a value over \$5,000.00 that Zitzelberger received from Patricia O'Connell a/k/a Patricia O'Connell Kemper a/k/a Patricia Zitzelberger between January 1, 2018, until the present.

ANSWER: Defendant's name was added to the title of the 2016 Mustang automobile and the residence on Bay Road. Both title changes were made due to insurance purposes.

16. List all trusts that you have had an interest in since January 1, 2018. For each trust, list the full name of the trust, your interest in the trust, whether there are any other beneficiaries of the trust, and identify the trustee of the trust.

ANSWER: George C. Zitzelberger and Patricia Zitzelberger Living Trust Dated October 12, 2020 – beneficiaries are Defendant's grandchildren: Skye Marie Ramirez, Hanna Zitzelberger, Kaylen Zitzelberger, Alex Ramirez, Alfonzo Ramirez, Jaylin Gonzales, Lorenzo Culbreath, Marissa Culbreath, Melody Ramirez, and Jasmine Ramirez.

17. List all cash transfers made by Patricia O'Connell a/k/a Patricia O'Connell Kemper a/k/a Patricia Zitzelberger that were used for or provided to the Wild Horse or its associated LLC.


ANSWER: This answering Defendant objects to this Interrogatory until such time as jurisdiction has been determined. Defendant is also filing for a protective order due to his health. Additionally, the Interrogatory is overly broad or burdensome, as this answering Defendant cannot possibly recall cash transfers from his wife and the purpose of each. Further, this Defendant was deposed by Plaintiff in a separate action, and was asked about transfers, so reference to that deposition can be had by the Plaintiff, or a subsequent deposition can be taken.

18. List all corporations, limited liability companies, partnerships, or other organizations that You have an interest in or have had an interest in from January 1, 2018, until the present.

ANSWER: P & G Unleashed, LLC (sole member LLC) used to operate Wild Horse Food & Spirit from approximately 2020 to 2023. Defendant sold the business in 2023.

[signature on the following page]

MACDONALD & HICKS, PA
1107 48th Avenue North, Suite 210
Myrtle Beach, SC 29577
(843) 449-4493
dmacdonald@machickslaw.com
Attorneys for Defendant



Daniel J. MacDonald, Sr.
SC Bar #11986

Myrtle Beach, South Carolina

January 9, 2025


STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
LYNN DILUCCHIO AND KEVIN)
KEMPER, AS CO-ADMINISTRATORS)
C.T.A. OF THE ESTATE OF AUGUSTA)
KEMPER,)
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Plaintiffs,)
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v.)
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GEORGE C. ZITZELBERGER,)
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Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2024-CP-26-04462

CERTIFICATE OF MAILING

I, Susan Petersen, an employee of the Law Firm of MacDonald & Hicks, P.A., the attorneys for the Defendant in the above entitled action, certify that I have this day mailed a copy of the **Defendant's Answers to Interrogatories and Responses to Request for Production** to counsel for the Plaintiffs at her address of record, with sufficient postage attached thereto, as follows:

Mary M. Caskey
Haynes Sinkler Boyd, PA
PO Box 11889
Columbia, SC 29211



Susan Petersen

Myrtle Beach, South Carolina

January 9, 2025

STATE OF SOUTH CAROLINA * COURT OF COMMON PLEAS
*
COUNTY OF HORRY * TRANSCRIPT OF RECORD

-----X
LYNN DILUCCHIO and KEVIN *
KEMPER as Co-Administrators *
C.T.A. of the Estate of *
Augusta Kemper, *
*
Plaintiffs, *
vs. * Case No. 2024-CP-26-04462
*
GEORGE C. ZITZELBERGER, *
*
Defendant. *
-----X

April 14, 2025

B E F O R E:

The Honorable Michael G. Nettles, Presiding Judge

A P P E A R A N C E S:

Alexandra Williams, Esq.
Attorney for the Plaintiffs

Daniel J. MacDonald, Sr., Esq.
Attorney for Defendant

Recorded by: WebEx Recording

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

I N D E X

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E X H I B I T S

(None.)

COURT REPORTER/TRANSCRIBER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[sic]	Indicates the word is written as said
(Indiscernible)	Indicates word(s) is not known due to poor audio recording quality

P R O C E E D I N G S

1
2 THE COURT: All right. Very well. I'll be glad to hear
3 from the moving party.

4 MR. MacDONALD: Your Honor, Danny MacDonald on behalf of
5 the defendant, George Zitzelberger.

6 Your Honor, on the roster, it has the Motion for
7 Protection scheduled first; however, the Motion for Dismissal
8 Based on Jurisdiction was actually filed first, and it
9 actually relates a little bit to some of the positions I take
10 in the Motion for Protection.

11 THE COURT: Let's deal with that one first.

12 MR. MacDONALD: Yes, sir, Your Honor. Thank you. That's
13 what I was going to ask if the Court would allow us to do.

14 Your Honor, the plaintiffs are citizens of the state of
15 New York. I think I said New Jersey in the memo that I filed,
16 but either one. They're not from around here, as we say.

17 THE COURT: Both of them are from the same territory.

18 MR. MacDONALD: Yes, sir. And they are the holders of a
19 default judgment against Patricia O'Connell, who is married to
20 my client, George Zitzelberger.

21 My understanding -- and I only have limited
22 understanding -- is that the judgment was obtained in an
23 action in the state of New York. It was a default judgment,
24 and it had something to do with a trust and perhaps an
25 annuity. But that's really the basic understanding of the

1 underlying case.

2 There was -- there is another action in which the
3 plaintiffs have filed against Ms. O'Connell related to --
4 there was a house that we'll get into that's a little bit a
5 part of, I'd say, the factual dispute in this motion.

6 My client was -- has married -- Ms. O'Connell -- married
7 her in 2018, and they are currently residents in the state of
8 Florida. There was an affidavit filed in support of the
9 motion in which he said he hasn't lived in South Carolina
10 since 2022.

11 Additionally, Your Honor, bearing on this motion and the
12 Motion on Protective Order, Mr. Zitzelberger is, I think, 73
13 years old. He is not in good health. We filed, attached to
14 the Motion for Protective Order, that he's had to undergo
15 several heart procedures recently, and his doctor actually
16 says he does not need this stress, especially the stress to
17 travel up here for litigation.

18 Your Honor, the -- we have had a continuance granted to
19 us in February on these motions, and that's why we are now
20 here in front of you in April.

21 Your Honor, our contention is that neither general nor
22 specific jurisdiction are present in this case for the
23 plaintiffs to be able to sue Mr. Zitzelberger here. The
24 Court, I'm sure, recalls all the requirements of minimum
25 contacts and due process; I won't go through all of those.

1 But I do think the Court -- we really are relying a lot on the
2 fairness prong of the test for due process, which I will lay
3 out as the duration of activity of the non-resident in this
4 state, the character and circumstances of the commission of
5 the non-resident's acts, the inconvenience resulting from the
6 parties -- excuse me, to the parties by conferring or --
7 refusing to confer jurisdiction over the non-resident, and the
8 State's interest in exercising jurisdiction.

9 Your Honor, if the Court looks at the Summons and
10 Complaint filed by the plaintiffs, they do admit and indicate
11 that my client is a resident of the state of Florida; that the
12 plaintiffs are residents of the state of New York. And,
13 really, the action is an attempt to claw back or disgorge
14 monetary payments or transfers of funds between the husband
15 and wife during their marriage while they lived in South
16 Carolina. I don't know if they're asking for any of that as
17 it relates to the state of Florida because they just claim
18 monetary payments.

19 THE COURT: Why would that not be resolved in Family
20 Court?

21 MR. MacDONALD: Well, they're husband and wife. This is
22 a -- they're essentially trying to collect the payments as
23 either Statute of Elizabeth payments or claim of constructive
24 trust over items that don't exist anymore or that in the state
25 of Florida, which is part of my argument.

1 So it's not in Family Court because it is -- it's
2 essentially an extension of a collection of a judgment action.

3 THE COURT: Oh, okay. All right. I was a little
4 confused.

5 MR. MacDONALD: Well, I apologize, Your Honor, if I
6 confused you on that.

7 The husband and wife are not fighting, Your Honor. It
8 is -- and I think these are children of Mrs. O'Connell's first
9 husband or prior husband or prior person she may have had a
10 relationship with. I think he passed away. This is my basic
11 understanding, and I'd be happy for Plaintiff's counsel to
12 correct me.

13 Something happened. There was a dispute. There was an
14 action filed in New York. A default judgment was obtained
15 against Ms. O'Connell in New York, and then they have brought
16 the judgment and registered it in South Carolina and been
17 trying to collect against her in South Carolina, and then have
18 now claimed against Mr. Zitzelberger to try to say there were
19 transfers between Husband and Wife that they're entitled to
20 have clawed back or claim a constructive trust, et cetera.

21 THE COURT: Okay.

22 MR. MacDONALD: And I hope that -- and if I got anything
23 wrong, I'm happy for Plaintiff's counsel to correct me.

24 Your Honor, ever since I --

25 THE COURT: Where do you -- where do you maintain will be

1 the appropriate court to resolve this matter?

2 MR. MacDONALD: Florida, Your Honor. And mainly, ever
3 since I've been involved in this case -- when this case
4 started with the plaintiffs wanting to take Mr. Zitzelberger's
5 deposition in the other case, they have lived in Florida.

6 There was a house in South Carolina that the plaintiffs
7 were making a claim against, and if the Court reviews the deed
8 submitted with the plaintiff's memorandum and an agreement,
9 that house was not owned in Mr. Zitzelberger's individual
10 name. At the time that the action was pending, it was
11 named -- it was owned in the name of a trust. So he only had
12 an interest in that house as trustee.

13 He owned another condo of his own before he even got
14 married in South Carolina, which has been sold. He owned a
15 restaurant/bar in South Carolina, which had been sold. But
16 importantly, Your Honor, neither one of those properties are
17 involved in this action. They aren't the basis for any of the
18 claims in the plaintiff's Complaint.

19 The only thing the plaintiff has complained about are
20 monetary transfers between a husband and a wife. So the
21 house, the ownership of the house -- even the house that was
22 in the trust has been sold. The money has gone to the
23 plaintiff by agreement, but it was owned by a trust. It was
24 not owned by Mr. Zitzelberger individually when the action
25 occurred.

1 Your Honor, so, for general jurisdiction, you know, you
2 have to have substantial contacts with the state or the
3 actions have to relate to those substantial contacts. None of
4 that really occurs here. They did live here. I fully admit
5 -- I believe Mr. Zitzelberger testified he lived here about
6 three or four years and then moved to Florida, and -- but his
7 actions -- let me just say, currently, what they're claiming
8 can actually be handled in Florida.

9 If there's anything that's owned by him that they want a
10 constructive trust in, it's going to have to be in Florida,
11 because he doesn't own anything up here anymore.

12 The actions that they are complaining about are him just
13 receiving funds between Husband and Wife. It's not like a car
14 wreck where he went out and had a car wreck in South Carolina
15 and jurisdiction is conferred upon them.

16 Your Honor, our argument is essentially based upon the
17 fairness, based upon the health of Mr. Zitzelberger, based
18 upon the minimum contacts now that Mr. Zitzelberger has, based
19 on the fact that both parties are not residents of South
20 Carolina, based upon that there's no real interest in the
21 state of South Carolina in this case, and based upon the fact
22 that it would be extremely inconvenient, next to impossible.

23 My client still is under a doctor's care. I've had
24 limited contact with him. To have him to have to come from
25 Florida in order to defend a case that can be brought -- I

1 mean, excuse me, to South Carolina to defend a case that can
2 be brought in South Carolina -- Florida, they can go after the
3 funds that he may or may not have in a bank account there just
4 as easily as they can do that here.

5 He has a house that, obviously, he is going to say is not
6 part of this -- is not subject to any trust or clawback. That
7 property is there.

8 There's nothing really to hold jurisdiction here in this
9 case, and we think it would be in the best interest of justice
10 for the matter to be dismissed and they can bring it in
11 Florida.

12 Your Honor, in the plaintiff's brief, they do cite some
13 specific jurisdiction under 36-2-803, and I would just remind
14 the Court that those references to the jurisdiction there are
15 for actions that relate to specific matters laid out in that
16 statute. And one of the things they claim is ownership of
17 real property in South Carolina; however, the claim of
18 monetary transfers between the spouses is not related to his
19 ownership of real property in South Carolina. It's only
20 related to the house that was sold that the plaintiffs have
21 received the funds from.

22 Your Honor, I just think that, based upon the basic facts
23 of a New York plaintiff, a Florida defendant, on funds
24 transferred between spouses that can be attached or clawed
25 back in any jurisdiction, that Florida is the proper

1 jurisdiction rather than South Carolina, given my client's
2 age, his health, and the other factors that the Court would
3 consider in determining jurisdiction.

4 THE COURT: All right. Ms. Williams, I'll be glad to
5 hear from you.

6 MS. WILLIAMS: Yes, Your Honor. May it please the Court.
7 I represent the plaintiffs, which is the -- they are the
8 co-administrators of the Estate of Augusta Kemper.

9 Mr. MacDonald got most of those facts of the previous
10 judgment against Ms. O'Connell correct. And the only real
11 relevance that has, Your Honor, is, as Mr. MacDonald
12 mentioned, the plaintiffs hold a judgment against Patricia
13 O'Connell, who is Mr. Zitzelberger's wife, through
14 supplemental proceedings in that action where Mr. Zitzelberger
15 was deposed. Plaintiffs discovered what they believed to be
16 numerous fraudulent transfers made to Zitzelberger while he
17 was a citizen and resident of Horry County, South Carolina, or
18 while he had significant contacts with South Carolina.

19 Mr. MacDonald admitted that the funds were received while
20 Mr. Zitzelberger was residing in South Carolina, and the
21 plaintiffs initiated this action to set aside those fraudulent
22 transfers pursuant to the Statute of Elizabeth.

23 Your Honor, for purposes of the Statute of Elizabeth, the
24 causes of action for a fraudulent transfer arises at the time
25 of the transfer, which occurred here while Mr. Zitzelberger

1 had significant contacts with South Carolina, as Mr. MacDonald
2 just said himself.

3 And, Your Honor, as you know, personal jurisdiction is,
4 obviously, either based on general jurisdiction or specific
5 jurisdiction. For the purposes of general jurisdiction that
6 arises in South Carolina under statute where it says the Court
7 may exercise personal jurisdiction over a person domiciled in
8 this state or otherwise having continuous, substantial, and
9 systematic contacts with South Carolina.

10 Your Honor, I would note, part of the issue here and what
11 Mr. Zitzelberger testified to in his Complaint were that -- or
12 in the deposition in the judgment case, I'll call it, was that
13 Mr. Zitzelberger received funds from Ms. O'Connell; that he
14 either put into his business, that he put into his house, or
15 that he purchased vehicles with. All of that occurred in
16 South Carolina. The transactions and the transfers occurred
17 in South Carolina. That is not in dispute here.

18 I don't think it matters that the final, you know,
19 locations of those funds, they ended up in real property that
20 are located in Florida or that they may have ended up in
21 vehicles that are now potentially located in Florida or have
22 been sold.

23 As Mr. MacDonald says, this is a monetary case, and all
24 of the monetary transfer occurred in South Carolina, and those
25 funds were used to further business in South Carolina; namely,

1 his -- Mr. Zitzelberger owned a bar in South Carolina, in
2 Horry County, and part of his deposition indicated that he may
3 have used those funds in the business in South Carolina. He
4 also may have purchased vehicles with those funds in South
5 Carolina.

6 Your Honor -- and I know we mentioned this property.
7 Mr. Zitzelberger, yes, he had an interest in that property and
8 owned it pursuant to that constructive trust until October
9 2024, and those funds, after that sale, was used to satisfy
10 part of the O'Connell judgment, Your Honor.

11 And Mr. Zitzelberger also exercised a tolling agreement.
12 Again, that was an alleged fraudulent transfer, and that
13 tolling agreement, if you look at Exhibit 3, specifically
14 lists Horry County, South Carolina.

15 Now, I do understand that it has been dealt with
16 separately and it's not necessarily part of this action, but
17 it was a fraudulent transfer, and because it was dealt with
18 separately, it was not included in this specific cause of
19 action.

20 You know, and Zitzelberger argues that he no longer
21 resides in South Carolina, Your Honor, but that's not the
22 test. It's whether your contacts at the time of a cause of
23 action arose give rise to personal jurisdiction, not whether
24 where you live now gives rise to personal jurisdiction, and so
25 I'll just note that difference for the Court.

1 And, you know, Your Honor, as part of the specific
2 jurisdiction in the South Carolina long-arm statute, it does
3 say transacting business in South Carolina, as I mentioned,
4 based on Mr. Zitzel's [verbatim] testimony, it is believed
5 that those funds were used to further his business that was in
6 South Carolina; having an interest, using, or possessing real
7 property, those funds were used for property located in South
8 Carolina.

9 And as we mentioned, Your Honor, the deed and the tolling
10 agreement were executed in South Carolina, although, again,
11 they were part of the total fraudulent transfer allegation now
12 that we have these remaining causes of actions.

13 They are monetary funds, Your Honor, but they were all
14 used in furtherance of -- one, they were received in South
15 Carolina and then they were used in South Carolina, at least
16 based on the information that we have today.

17 And, Your Honor, I mean, jurisdiction in general just
18 requires that -- you know, due process requires some act by
19 which the defendant purposely avails itself of the privileges
20 of conducting activities within this state. As I mentioned,
21 all the examples I have given, I think it is fair to say that
22 Mr. Zitzelberger availed himself of the privileges of
23 conducting business in South Carolina when he's using
24 fraudulently transferred funds to further a business, to
25 purchase vehicles in South Carolina, as well as put, you know,

1 those funds into a property that is located in South Carolina.

2 Certainly, Your Honor, just in closing, by receiving
3 large monetary transfers while residing in South Carolina,
4 which he has admitted to, and using those proceeds towards
5 business purposes, real properties, and vehicles all located
6 in South Carolina at the time of the transfers, which I think
7 is a distinction that is important here, would be
8 Mr. Zitzelberger clearly purposely availed himself of the
9 privileges of South Carolina.

10 THE COURT: All right. Well, I'll tell you what I'm
11 going to do. This gives me chills, recalling back all this
12 jurisdictional stuff.

13 MR. MacDONALD: Me too, Judge.

14 THE COURT: What I'm going to have to do, I'm going to
15 have to digest this thing. It's fairly -- I think -- I have a
16 good -- good handle on the facts now, which are kind of
17 convoluted, but I would like for y'all to send proposed orders
18 and let me -- let me contemplate that.

19 MR. MacDONALD: Your Honor, may I just add --

20 THE COURT: And what -- and the other thing, I'm going to
21 hold the request for a protective order in abeyance until I
22 rule on this.

23 MR. MacDONALD: Thank you, Your Honor.

24 And may I just -- I just -- and I will put it in the
25 Order, Your Honor, just for the Court's understanding. A

1 little bit of rebuttal to opposing counsel's arguments.

2 One is, the deposition, when it was taken, was --
3 Mr. Zitzelberger was in Florida. He didn't come up here for
4 the deposition. The deposition was taken while he was still
5 in -- I don't know if any of this matters to the judge, but I
6 just feel like I need the Court to understand.

7 The deed that was -- when it was executed, he was in
8 Florida.

9 The agreements that we made about the tolling and all
10 that, he was in Florida when all that occurred.

11 If you go through the deposition, I'll be happy to maybe
12 pull out some of the excerpts. All of the cars and everything
13 they talk about were sold. They have been sold. He doesn't
14 -- it's not like he still has the vehicles.

15 Your Honor, I think my difference is that, yes, he lived
16 here. Yes, there were some transfers between Husband and
17 Wife. Right? But he has been in Florida for over -- going on
18 three years now. Right? And to haul him all the way from
19 Florida to South Carolina on a case related to monetary
20 transfers that at the time were known to be -- I mean, it's
21 not like he made the transfers. He's receiving transfers from
22 his wife. He doesn't know they're fraudulent. He hasn't
23 committed any tort. I don't think the Statute of Elizabeth is
24 classified as a tort.

25 So none of those actions support a claim for

1 jurisdiction. That would be my argument, and I just wanted to
2 clear up a couple of the factual matters, and we'll submit an
3 order to the Court.

4 THE COURT: Ms. Williams, would you like to say anything
5 else?

6 MS. WILLIAMS: Yeah, and I will note, we have no -- you
7 know, we are not disputing that, when Mr. Zitzelberger's
8 deposition was taken, it was in Florida. Not necessarily
9 disputing that he was located in Florida when this deed
10 occurred or when this agreement happened. However, he was --
11 when these transfers occurred, even if he was living in
12 Florida, he still owned a business in South Carolina and he
13 still had an interest in the property in South Carolina and he
14 still owned vehicles in South Carolina.

15 So, yes, he may have been living in Florida, but that
16 doesn't mean that he didn't have significant contacts with
17 South Carolina. And that's the only thing I'll note, Your
18 Honor.

19 THE COURT: Just out of curiosity, you mentioned a bar in
20 Horry County. What was the name of the bar?

21 MR. MacDONALD: I cannot remember. He sold it, Your
22 Honor. And what I can't argue is I don't know when he sold
23 it. But it was on the south end. I can't remember.

24 MS. WILLIAMS: I think it was like Wild Horses or
25 something like that.

1 MR. MacDONALD: Yeah, that's correct. Ms. Williams is
2 correct.

3 THE COURT: And that was just pure curiosity. I just
4 wondered which one it was.

5 MR. MacDONALD: Not Suck, Bang, and Blow, Your Honor.

6 THE COURT: All right. Well, I will read your riveting
7 proposed orders, and I'll make a call on it post haste. How
8 about that?

9 MR. MacDONALD: When was the timeframe you want on those,
10 Judge?

11 THE COURT: Well, how much time do y'all need?

12 MR. MacDONALD: I don't know. About four years, about
13 the time that --

14 THE COURT: Well, good. It sounds like you've already
15 got it --

16 MR. MacDONALD: Ten days would be fine. Ten days would
17 be fine, if the Court would allow it.

18 THE COURT: All right. It will be ten days. If y'all
19 have a problem with that, just let me know.

20 MR. MacDONALD: Yes, sir.

21 Thank you, Ms. Williams.

22 MS. WILLIAMS: Thank you, Your Honor.

23 THE COURT: Thank you.

24 (The above hearing concluded.)
25

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CASE NAME: Dilucchio v. Zitzelberger

DATE OF HEARING: 4/14/25

RECORDING METHOD: WebEx Recording

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/s/ Bobbi Fisher

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 9/25/25

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
The Honorable Michael G. Nettles

Case No: 2024-CP-26-04462

Appellate Case No: 2025-001152

Lynn Dilucchio and Kevin Kemper,
As Co-Administrators C.T.A of The Estate
of Augusta Kemper, Plaintiffs,

Appellants

v.

George C. Zitzelberger, Defendant.

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

/s/Mary M. Caskey

Mary M. Caskey, SC Bar No: 76198

Katherine E. Engels, SC Bar No: 105389

HAYNSWORTH SINKLER BOYD, P.A.

Post Office Drawer 11889

Columbia, SC 29211

Telephone: (803) 779-3080

mcaskey@hsblawfirm.com

kengles@hsblawfirm.com

Attorneys for Appellants