THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY

Steven C. Kirven, Master-In-Equity

Lower Court Case Number 2023-CP-04-0846

James C. Sitton, II, individually and as Personal Representative of the Estate of John D. Sitton, and Betty A. Sitton, Appellants,

v.

John D. Sitton, Jr., individually and as Former Trustee of the John D. Sitton Trust, and Brian K. James, as Personal Representative of the Estate of Ruth R. Sitton, Defendants,

Of whom John D. Sitton, Jr. is the Respondent.

Appellate Case No. 2025-002061

INITIAL REPLY BRIEF OF APPELLANT

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Appellants' claims are not time-barred and the evidence of John Jr.'s breach of fiduciary duty is uncontested.

A. Respondent misapplies the statute of limitations by equating knowledge of trust activity with knowledge of a breach of trust.

Respondent's statute of limitations argument rests on the premise that James' awareness of trust activity constituted a "report" under section 62-7-1005(a) of the South Carolina Code, triggering the one-year limitation period. (BOR p. 13). This argument misreads the statute. Section 62-7-1005(a) requires a report that "adequately disclosed the existence of a potential claim for breach of trust." Knowledge that the Co-Trustees were managing trust property is not the same as knowledge that a breach of trust had occurred. Appellants were never provided a report. In fact, John, Jr. admitted that he had no records to show how trust money was spent. (Tr. p. 38, ll. 8 – 17). Accordingly, this one-year limitation period is inapplicable to this case.

The 1998–1999 distributions gave each of the five children comparable tracts of land and were made pursuant to a family agreement. These distributions did not disclose any breach; they reflected what appeared to be fair and equal treatment of the beneficiaries. Likewise, the 2004–2006 sales of trust property to third parties, with proceeds going to Ruth as Co-Trustee, did not on their face reveal a breach of fiduciary duty. The Trustees had broad authority under Items VII and VIII of the Will to sell trust property and use the proceeds for Ruth and Betty's support. (Pl.'s Ex. 2). James' awareness that sales occurred does not equate to knowledge that the proceeds of those sales were being mishandled.

John Jr. did not sell the property he deeded to himself until October 9, 2020 and March 31, 2021. (Pl.'s Exs. 10 & 14). It was at that point that a breach of fiduciary duty occurred. Under section 62-7-1001(a) of the South Carolina Code, a breach of trust occurs when a trustee violates

a duty owed to a beneficiary. The mere act of deeding property into one's own name is not a breach where the Trustees had "unquestioned and unlimited authority" to manage trust assets. The breach crystallized when John Jr. sold the property and kept the proceeds for himself. The lawsuit, filed on April 17, 2023, was within three years of both sales.

Under the three-year limitation period of section 62-7-1005(c), the lawsuit is timely. Respondent argues the Trust was "depleted" and thus effectively terminated by September 2011, triggering the three-year period. But legal title to real property remained in the Trust even after the September 2011 deed. The Trust was not terminated until the Consent Order of September 27, 2022. (Pl.'s Ex. 3 p. 4). A trust that still holds legal title to property has not been terminated. *See Mayer v. M.S. Bailey & Son, Bankers*, 347 S.C. 353, 555 S.E.2d 406 (Ct. App. 2001) (discussing trust termination for statute of limitations purposes). Respondent's reliance on the "depletion" theory is unavailing because the Trust still held title to real estate. Accordingly, the Master erred by finding that Appellants' causes of action were barred by the statute of limitations.

B. Laches cannot apply where the claims were filed within the applicable statute of limitations, and Respondent has not demonstrated the requisite prejudice.

Respondent argues that the common law doctrine of laches supplements the South Carolina Trust Code and applies independently to this case. Even accepting that premise, Respondent's laches argument fails on its own terms.

As a threshold matter, where there is a governing statute of limitations, laches does not apply. "Laches within the period of the statute of limitations is no defense at law." *Crotwell v. Whitney*, 229 S.C. 213, 223, 92 S.E.2d 473, 478 (1956); *see also Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 641, 518 S.E.2d 44, 47 (Ct. App. 1999). Section 62-7-1005

provides a specific statute of limitations for breach of trust claims, and Appellants filed within that period. Laches is therefore inapplicable.

Even if laches could apply alongside the statute of limitations, Respondent has not established the required elements. Laches requires proof of (1) delay, (2) that the delay was unreasonable, and (3) prejudice. *Hallums v. Hallums*, 296 S.C. 195, 198–99, 371 S.E.2d 525, 527 (1988). Respondent claims prejudice from Ruth's death and the loss of records. But Ruth died on May 25, 2013—more than seven years before John Jr. sold the trust property for his personal benefit. Respondent cannot manufacture prejudice from an event that preceded the breach itself. Accordingly, the Master erred in finding that Appellants' causes of action were barred by laches.

C. James did not voluntarily and intentionally abandon a known right.

Respondent's waiver defense requires proof that James "possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended." *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 387–88 (1992). James testified that he did not even know he was a beneficiary of the Trust until informed by counsel. (Tr. p. 69, l. 24 – p. 70, l. 17). A person who does not know he has a right cannot voluntarily abandon it. *See Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007) (waiver requires knowledge of a right and knowledge that the right is being abandoned).

Respondent emphasizes that James was involved in litigation over Ruth's estate, including the dispute over the 303 North B Street property. But that litigation concerned the validity of a deed John Sr. executed before his death—it did not involve the John D. Sitton Trust or the actions of the Co-Trustees in managing the residuary trust property. Respondent's argument that James' involvement in *other* litigation means he must have known about *this* breach of trust is incorrect. Similarly, Respondent's argument that James' failure to file a

creditor's claim in Ruth's estate constitutes waiver ignores that the claims at issue here are for an accounting and breach of fiduciary duty against John Jr., not against Ruth or her estate. More importantly, the claims at issue in this case arise from John Jr.'s sale of trust property for his own benefit which occurred after Ruth had already passed away. (Pl.'s Exs. 10 & 14). Accordingly, the Master erred by finding Appellants' claims were barred by the doctrine of waiver.

D. Respondent concedes that equitable estoppel does not apply to this case.

Respondent acknowledges that "the particular facts and circumstances of this case do not unequivocably meet all of the essential elements required for equitable estoppel." (BOR p. 21). This concession warrants reversal of the Master's ruling on this issue. Equitable estoppel requires proof of all essential elements by the party asserting it, and here, Respondent has acknowledged the elements are not met. *Rushing v. McKinney*, 370 S.C. 280, 293-94, 633 S.E.2d 917, 924 (Ct. App. 2006).

E. The Master erred in finding no breach of fiduciary duty.

Respondent acknowledges in his brief that he did not sell the trust property which had been deeded to him until 2020 and 2021. (BOR p. 22). As argued in Appellants' opening brief, it was these sales, and the failure by John Jr. to use the proceeds of these sales for the benefit of the beneficiaries that constituted the breach of fiduciary duty. (BOA pp. 13-14). Respondent attempts to justify the September 2011 deed as "his mother's decision" and as compensation for John Jr.'s services. But a trustee's duty to follow the trust instrument is absolute, not discretionary. *Deborah Dereede Living Tr. v. Karp*, 427 S.C. 336, 342, 831 S.E.2d 435, 439 (Ct. App. 2019). The Will directed that trust property be used for the support of Betty, Ruth, and James, with proceeds from sales applied to that purpose. Nowhere did the Will authorize the Trustees to sell property for their own benefit and to the exclusion of the beneficiaries. John Jr. sold trust

property that was deeded to him for his personal benefit in 2020 and 2021. Regardless of whether Ruth suggested or approved the conveyance, John Jr. as a Co-Trustee had an independent duty not to engage in self-dealing. *See Ramage v. Ramage*, 283 S.C. 239, 247, 322 S.E.2d 22, 27 (Ct. App. 1984) (trustees owe a duty of loyalty and self-interested transfers are presumptively a breach).

Respondent's suggestion that the Trustees were entitled to a ten percent commission on the sale of real estate does not excuse the conveyance of trust property to John Jr. personally or the sale of that property for his own benefit. A commission is a fee deducted from proceeds, not a transfer of the underlying trust asset itself. Furthermore, John Jr. kept one hundred percent of the proceeds of the sale of this property, not ten percent. And finally, John Jr. admitted to breaching his fiduciary duty, an admission that he has not disclaimed on appeal. (Tr. p. 42, ll. 8 – 11). The Master's finding that there was no breach of fiduciary duty is contrary to the evidence and should be reversed.

CONCLUSION

For the reasons argued in Appellants' opening brief, and this reply brief, this Court should reverse the judgment below and remand for a new trial.

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This 30th day of March 2026.