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**Apr 30 2026**

**SC Court of Appeals**

# Exhibit 2

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )  
)  
)  
Gerald Niesar, )  
Plaintiff, )  
)  
VS. )  
)  
Christine Nemeth, )  
Defendant. )  
)

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL CIRCUIT  
  
CIVIL ACTION NO.: 2025-CP-07-00873

ORDER

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**SC Court of Appeals**

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This Motion to Reconsider this Court’s order dated December 31, 2025 came before me for a hearing on January 14, 2026. Following the hearing, Plaintiff filed their supplemental memorandum on January 26, 2026 and Defendant filed their supplemental response on January 29, 2026.

The Court has reviewed the entire file for purposes of this Motion to Reconsider and considered oral arguments and all briefing regarding this action in which the Estate is alleging that it is entitled to half of the proceeds from the sale of the subject Property. After further review, the Court believes that there is a question of fact as to the Plaintiff’s claims and reverses her December 31, 2025 order granting Summary Judgment on all causes of action.

As to the cause of action for conversion, under South Carolina law, a cause of action for conversion cannot be sustained when the thing converted is an interest in real property. See Equitable Tr. Co. of Columbia v. Columbia Nat’l Bank, 142 S.E. 811, 813-814 (S.C. 1928), “The cause of action set up by the plaintiff is one in tort for damages for conversion, and such an action does not lie for an exercise of of dominion or control over real property or the assumption

of the right to dispose of the same, even though the exercise of such dominion or the assumption of such right is in denial of the rights of a true owner.”)

As to the cause of action for liability as executor de son tort, pursuant to S.C. Code § 62-1-302(a), the probate court has exclusive original jurisdiction over all subject matter related to estates of decedents, including actions involving estate property and related disputes, unless the Code specifically provides otherwise. South Carolina Code § 62-3-620 specifically allows the probate court to cite an executor de son tort before it, require an accounting, and decree liability for waste or damage to estate property — effectively empowering the probate court to adjudicate those claims.

In Judy v. Judy, 393 S.C. 160, 712 S.E.2d 408 (S.C. 2011), the Supreme Court of South Carolina held that the probate court had jurisdiction over a waste claim against a defendant whose conduct classified him as an “executor de son tort” under S.C. Code § 62-3-620. The court explained the statute authorizes the probate judge to require an executor de son tort to account for estate property and to decree damages for waste or conversion. In the Judy context, the Supreme Court’s holding supports the probate court as the proper forum for executor de son tort claims tied to estate administration, not circuit court. And while I cannot find an opinion explicitly stating “circuit courts lack subject matter jurisdiction over executor de son tort actions,” the Judy case and the Probate Code strongly support the principle that probate courts are the appropriate forum for such claims.

Finally, as to the cause of action for a constructive trust, while the Defendant’s argument is poorly articulated, there are questions of fact that need to be decided by the fact finder such that summary judgment is not appropriate on whether or not a constructive trust exists.

THEREFORE, IT IS ORDERED that the Final Order Granting Plaintiff's Motion for Summary Judgment entered on December 31, 2025 is reversed in full. Plaintiff's Motion for Summary Judgment is accordingly denied, and this case shall remain on the docket.

**IT IS SO ORDERED.**

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Carmen T. Mullen  
Fourteenth Judicial Circuit

March \_\_\_\_, 2026  
Beaufort, SC



Beaufort Common Pleas

**Case Caption:** Gerald Viglione Niesar , plaintiff, et al VS Christine Nemeth

**Case Number:** 2025CP0700873

**Type:** Order/Other

So Ordered

s/Carmen T Mullen 2142

# Certificate of Electronic Notification

## Recipients

**Charles Keep** - Notification transmitted on 03-10-2026 10:31:11 AM.

**Robert Brunson** - Notification transmitted on 03-10-2026 10:31:11 AM.

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**NOTICE OF ELECTRONIC FILING [NEF]**

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**A filing has been submitted to the court RE:** 2025CP0700873

**Official File Stamp:** 03-10-2026 10:31:06 AM

**Court:** CIRCUIT COURT

Common Pleas

Beaufort

**Case Caption:** Gerald Viglione Niesar , plaintiff, et al VS  
Christine Nemeth

**Document(s) Submitted:** Order - Final Order Granting Plain.'s Motion/SJ on  
12/31/25 Reversed In Full. Plain.'s Motion/SJ is  
Denied. Case Remains On Docket.

**Filed by or on behalf of:** Carmen T. Mullen

This notice was automatically generated by the Court's auto-notification system.

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**The following people were served electronically:**

Robert H. Brunson for Gerald Viglione Niesar

Charles Russ Keep, III for Christine Nemeth

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

George Frances Niesar

Estate of George Fances Neisar