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

RESPONDENT'S FINAL BRIEF

Allen and Eakes
James S. Eakes
S.C. Bar No. 1820
Post Office Box 1405
Anderson, South Carolina 29622
(864) 224-1681
stveakes@bellsouth.net
ATTORNEY FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF THE ISSUE ON APPEAL

Did the Master-In-Equity err by finding that Appellants' claims were time-barred by the statute of limitations, laches, waiver, and estoppel?

STATEMENT OF THE CASE

The issues in this action arise out of a residuary trust created under the handwritten Last Will and Testament of John D. Sitton ("John, Sr.") dated December 6, 1991. John, Sr. died testate on February 16, 1993, and his estate was probated in the Pickens County Probate Court. The decedent's wife, Ruth R. Sitton, ("Ruth") and his son, John D. Sitton, Jr. ("John, Jr.") were appointed as Co-Personal Representatives and Co-Trustees per the terms of his Last Will and Testament.

The Appellants filed a lis pendens and a summons, and complaint on April 17, 2023, in the Anderson County Court of Common Pleas against Respondent, individually, and as former trustee of the John D. Sitton Trust. The Appellants' complaint contained three causes of action. The first cause of action involved real estate still titled in the name of the John D. Sitton Trust. This cause of action was settled by the parties at mediation and as confirmed by the order of the Court dated May 5, 2024 and filed May 7, 2024.

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

The Respondent timely filed and served his counterclaim to Appellant's complaint. The Respondent denied the material allegations of the Appellants' second and third causes of action, and he asserted a number of affirmative defenses, including the statute of limitations, laches, waiver, and estoppel, and unclean hands. The Appellants timely filed and served a reply to Respondent's counterclaim.

After the completion of discovery, the case came to be tried on January 29, 2025, before the Honorable Steven C. Kirven, Master-In-Equity for Anderson County. After taking the matter

under advisement, the Master-In-Equity signed a final order on September 8, 2025. The final order was filed on September 8, 2025. The final order dated September ,. 2025, found that Appellants' causes of action for an accounting and for an alleged breach of fiduciary duty were barred by the statute of limitations and laches, and were further barred by the affirmative defenses of waiver and estoppel. Both causes of action were dismissed with prejudice. The Plaintiff, Betty A. Sitton, did not actively participate in this action, and she died before the trial. Her intestate beneficiaries are her surviving four siblings.

STANDARD OF REVIEW

An action involving trusts is one in equity. As stated in Epworth Orphanage v. Long, 199 S.C. 385,389, 19 S.E.2d 481, 482, (1942): "Trusts have long and broadly been a field for the jurisdiction of equity." In an action in equity, tried with reference to a Master, this Court [Appellate Court] reviews the evidence and determines the facts according to its own view of the preponderance of evidence, though it is not required to disregard the findings of the Master." Friarsgate, Inc. v. First Fed. Sav. & Loan Ass'n, 317 S.C. 452, 456, 454 S.E.2d 901, 904 (Ct. App. 1995). **See,** Also, Fox v. Moultrie, 379 S.C. 609, 666 S.E.2d 915 (2008). That is to say that, even though the appellate court can make findings based on its view of the preponderance of the evidence, "it is not required to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility." Ingram v. Kasey's Assocs., 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000) citing Tiger, Inc. v. Fisher Argo, Inc., 301 S.C. 229, 391 S.E.2d 538 (1989) and Wright v. Trask, 329 S.C. 170, 495 S.E.2d 222 (Ct. App. 1997).

SEPARATE STATEMENT OF FACTS

John D. Sitton ("John Sr.") died testate on February 16, 1993, and, at the time of his death, he was a citizen and resident of Pickens County, South Carolina. John D. Sitton, Sr. was survived by his wife, Ruth R. Sitton, and his five (5) children, namely: John D. Sitton, Jr. ("John, Jr."); Dorothy Sitton Ashley ("Dorothy"); Betty A. Sitton ("Betty"); Dale Rogers Sitton ("Dale"); and James C. Sitton, II("James").

The handwritten Last Will and Testament of John D. Sitton, deceased, was admitted to Probate without contest under Case Number: 93-ES-04-0024 and, pursuant to the terms of the decedent's Last Will and Testament, Ruth R. Sitton and John D. Sitton, Jr. were duly appointed as Personal Representatives to serve without bond, and they served until the estate closed in 1994. (R.pp. 280-281).

By Item VII of his Last Will and Testament, John Sr. devised his entire residuary estate, in trust, to the John D. Sitton Trust ("Trust"). He named his wife, Ruth R. Sitton, and his son, John D. Sitton, Jr., to act as Co-Trustees, to serve without bond, and with full power to sell real or personal property. (R.p.158).

Item VII of decedent's Last Will and Testament further provides, in part, that: "I direct my said Trustees to provide support for my daughter, Betty Sitton; and secondly to provide support for my son, James C. Sitton, II, if and when the need arises for food, shelter, clothing and medical expenses… My Trustees shall make disbursements to all beneficiaries but the provisions set forth above for all **three named beneficiaries** of the Trust shall always be given a priority." (Emphasis Added) (R.p.158).

Item VII of John Sr's will further provided: "At such time as **Betty A Sitton** and **Ruth R. Sitton,** (Emphasis Added) depart this life, if there be any remaining assets in said Trust, my

remaining heirs: namely, my daughter, Dorothy Sitton Ashley, my daughter, Dale Sitton Rogers, my son, James C. Sitton, II, and my son, John D. Sitton, Jr., shall share and **share** alike in said Trust and said Trust can then be terminated if the four (4) heirs named herein give their approval… ." (R.p.159).

In Item VIII of his Last Will and Testament, the decedent provides, in part, as follows: "My Trustees and/ or Alternate Trustee shall have unquestioned and unlimited authority to use their discretion in investing and re-investing and using any part of the Corpus and/ or interest they deem necessary or advisable for the comfortable maintenance, support, health, and well being of **Betty Ann Sitton and Ruth R. Sitton,** and shall supplement with food, shelter, and clothing for James S. Sitton, II." (Empasis Added) (R.p.160).

John, Sr. made no provision for one of his named Trustees to act alone. In Item VIII he names as alternate Trustee, Dale Sitton Rogers. However, after Ruth died, she never acted in this capacity.

Under the terms of the Last Will and Testament of John D. Sitton, Sr. dated December 6, 1991, the two (2) primary beneficiaries of the testamentary trust created by his will were his wife, Ruth R. Sitton, and his disabled daughter, Betty Ann Sitton, and "to supplement with food, shelter, and clothing for James C. Sitton, II." Betty was the disabled daughter of John D. Sitton, Sr. and Ruth R. Sitton, and she lived in their home, and they supported her. After the death of her father in 1993, Betty continued to live with and be supported by her mother, Ruth, until Ruth died in 2013, a period of twenty (20) years.

The only residuary assets transferred into the John D. Sitton Trust consisted of the real property owned by John D. Sitton, Sr. at his death and not specifically devised to named beneficiaries by Items III, IV, and V of his will. John D. Sitton, Jr. and Ruth R. Sitton, as Co-

Personal Representatives of the Estate of John D. Sitton, executed a statutory deed of distribution dated October 20, 1994, and recorded October 31, 1994, in the Anderson County Register of Deeds Office in Record Book 1981 at Page 46 conveying all real estate owned by the decedent and not otherwise specifically devised to the Trust. (R.pp.174-175).

The first activity in the Trust occurred in 1998 and 1999 to implement a family agreement between Ruth R. Sitton and her five children and to carry out the wishes of John, Sr., concerning certain of the Trust real property. (R.pp.81-83; pp. 120-121). John D. Sitton, Jr., and Ruth R. Sitton, as Co-Trustees, executed Trust deeds conveying the following tracts of land to the five children for no consideration.

1.) Tract #1 containing 9.686 acres on March 31, 1998, to Dorothy S. Ashley (R.pp. 214-217);

2.) Tract # 4 containing 9.690 acres on September 1, 1999, to John D. Sitton, Jr, (R pp. 211-213);

3.) Tract #3 containing 9.684 acres on September 1, 1999, to Dale S. Rogers (R.pp. 208-210);

4.) Tract #5 containing 9.685 on September 1, 1999, to James C. Sitton, II (R. pp.205-207); and

5.) Betty Ann Sitton received Tract #2 containing 9.688 acres and/ or the proceeds from the sale of the tract by the Trustees (R. pp. 82-83).

There was no specific language in the testamentary trust for these transfers of trust assets to the five children, and all were aware that the conveyances were by the Co-Trustees of trust real estate. All five sold their respective tracts.

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

A.) On November 23, 2004, the Co-Trustees sold a parcel of land on Syracuse Road to James K. Clinkscales and Kenneth W. Clinkscales for $11,000.00. The deed was recorded on December 9, 2004, in Record Book 6497 at Page 170; (R. pp. 176-177);

B.) On March 23, 2005, the Co-Trustees sold 0.62 of an acre of land on Syracuse Road to James S. Smith and Thomas Duncan for $12,300.00. The deed was recorded on April 15, 2005, in Record Book 6689 at Page 234; (R. pp. 178-179);

C.) On April 22, 2005, the Co-Trustees sold 1.00 acre of land to Travis J. Davis for $13,500.00. The deed was recorded on April 29, 2005, in Record Book 6711 at Page 195, (R. p. 180); and

D.) On March 22, 2006, the Co-Trustees sold 0.84 of an acre of land to Kenneth W. Clinkscales for $12,000.00. The deed was recorded on May 25, 2006, in Record Book 7381 at Page 115. (R. pp. 181-182).

The net proceeds of sale from the above sales of trust property were placed into Ruth R. Sitton's bank account and disbursed by her. John D. Sitton, Jr. did not receive any of the proceeds, nor did he spend any of the proceeds (R. pp. 77-79).

Finally, on September 1, 2011, John D. Sitton, Jr. and Ruth R. Sitton, as Co-Trustees Under the Last Will and Testament of John D. Sitton, conveyed certain real estate to John D. Sitton, Jr. by deed dated September 1, 2011, and recorded on September 23, 2011, in the Office of the Register of Deeds for Anderson County, South Carolina, in Record Book 10162 at Page 275. (R. pp. 183-187).

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

Ruth R. Sitton died on May 25, 2013, and she was still living in the family home she shared with her husband at 303 North B Street, Easley, South Carolina, at the time of her death. Her disabled daughter, Betty Ann Sitton, was still residing with her at the time of her death. There has been almost constant litigation in the Estate of Ruth R. Sitton since her death. (R. pp. 88-91). The Estate of Ruth R. Sitton is being probated in the Pickens County Probate Court under Case Number: 2013-ES-39-00478.

On July 17, 2013, James S. Sitton, II filed for formal appointment as personal representative of his late mother's estate. John D. Sitton, Jr. filed an answer and counterclaim on August 9, 2013, seeking formal appointment as Personal Representative and, also, formal probate of a copy of the Last Will and Testament of Ruth R. Sitton dated July 17, 2009. Pursuant to a hearing held on October 28, 2014, Judge Kathy P. Zorn, Pickens County Probate Judge, issued an order dated November 10, 2014, finding that Ruth R. Sitton died intestate since her original will had not been found and that it was in the best interests of all parties involved "to appoint a disinterested person as Personal Representative, preferably a member of the South Carolina Bar, due to the animosity between the parties." (R. p.288).

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

hearing in the Pickens County Probate Court, Judge Kathy P. Zorn issued a consent order dated March 14, 2016, admitting the original Last Will and Testament of Ruth R. Sitton to probate and confirming the appointment of a third-party personal representative, Kenneth Roper, of the Pickens County Bar, to continue to serve as Personal Representative of the Estate of Ruth R. Sitton "due to the severe animosity between the parties". (R. pp. 288-289).

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

On December 18, 2017, James C. Sitton, II., individually and as Successor Trustee of Ruth R. Sitton, and Dorothy Sitton Ashley, individually and as Primary Trustee of Ruth R. Sitton, Dale Sitton Rogers, and Betty Ann Sitton filed an amended summons and petition with the Pickens County Probate Court against John D. Sitton, Jr. and Kenneth Roper for approval of a trust, for partition of the 303 North B Street property, and for waste. (R. pp. 218-225). This litigation arose out of a deed and a corrective deed by John D. Sitton executed prior to his death on July 9, 1987, where he attempted to convey his undivided one-half (1/2) interest in the 303 North B Street property to "Dorothy Sitton Ashley, Trustee for Ruth R. Sitton, with authority to convey". (R. p. 225). Pursuant to a motion to dismiss filed by John D. Sitton, Jr., for lack of jurisdiction over the subject matter, Judge Kathy P. Zorn issued her order dated October 31, 2018, finding it is appropriate to transfer the issue to clarify the deed to the Circuit Court to be

determined there. (R. pp. 226-227). Therefore, the action was removed to the Pickens County Court of Common Pleas.

The action over the alleged trust deed came to be heard before the Honorable Perry H. Gravely, Circuit Court Judge for Pickens County, on April 3, 2020. Judge Gravely issued his order dated May 18, 2020, and he found that the two deeds attempting to convey the undivided one-half (1/2) interest of John D. Sitton in the 303 Noth B Street property to Dorothy Sitton Ashley, Trustee "were to a non-existing grantee at the time the deeds were executed and anytime since then." Therefore, he found that the original deed and the corrective deed were "void *ab initio* ,and no trust was created by said deeds." He remanded the case back to the Probate Court for any further proceedings. (R. p. 201-204). This order was not appealed. Therefore, the undivided one-half (1/2) interest of John D. Sitton in and to the 303 North B Street, Easley, South Carolina, property was an asset of the Estate of John D. Sitton, Sr., and this resulted in the re-opening of his estate and the appointment of James C. Sitton, II as successor Personal Representative.

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

ARGUMENT

THE MASTER-IN-EQUITY CORRECTLY RULED BY FINDING THAT THE APPELLANTS' CLAIMS WERE TIME-BARRED BY THE STATUTE OF LIMITATIONS, LACEHS AND WAIVER:

A.) Appellants' causes of action for an accounting and for breach of fiduciary duty are barred by the applicable statutes of limitations contained in S.C. Code Ann. §62-7-1005.

The current South Carolina Trust Code ("SCTC") was enacted into law in 2013 with an effective date of January 1, 2014. S.C. Code Ann. §62-7-1005 (2021) established a statute of limitations especially applicable to a trustee's liability to a beneficiary for "breach of trust". It established a one-year limitation period and a three-year limitation period. This code section is similar in content to former South Carolina Probate Code §62-7-307 (1987).

S.C. Code Ann. §62-7-1005 (2001) provides as follows:

"(a) Unless previously barred by adjudication, consent, or limitation, a beneficiary may not commence a proceeding against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

(c) If subsection (a) does not apply, a judicial proceeding by a beneficiary or on behalf of a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of:

(1) the removal, resignation, or death of the trustee;

(2) the termination of the beneficiary's interest in the trust; or

(3) the termination of the trust."

The only assets of the Trust consisted of real property owned by John, Sr. at his death. The real property was conveyed to John D. Sitton, Jr. and Ruth R. Sitton, as Trustees under the Last Will and Testament of John D. Sitton by deed of distribution from the Personal Representatives dated October 20, 1994.

There was no activity in the Trust until 1998-1999 when, pursuant to a family agreement between Ruth and her five children, each of the five children were deeded comparable tracts of land by the Co-Trustees, for no consideration. These five tracts of land were part of the real property described in the 1994 deed of distribution. Specifically, the Co-Trustees deeded Tracts #5 containing 9.685 acres to James C. Sitton, II by deed dated September 1, 1999, and recorded in Record Book 3588 at Page 89. (R. pp. 205-207).

Therefore, James was aware of the existence of the trust and acknowledged in his testimony this was trust property. (R. pp. 120-121). He sold his tract for valuable consideration.

The next activity in the trust occurred between November, 2004, and March 22, 2006, when Ruth and John, Jr, as Co-Trustees, sold four (4) separate tracts of the trust property to third-parties for a total consideration of $48,800.00. (R. pp. 76-77). These deeds were a matter of public record, and James testified that: "In 2004 I found out they had sold some of the real estate and that's when I started getting very suspicious." (R.p.109, ll. 14-16). James, also, checked the public tax records and obviously knew about the sales between 2004 and 2006. He admitted he was aware of these sales. (R. p. 133, ll. 13-23).

There was no further action taken by the Co-Trustees until September 1, 2011, when John D. Sitton, Jr. and Ruth R. Sitton, as Co-Trustees, conveyed certain real estate to John D. Sitton, Jr., by deed dated September 1, 2011, and recorded on September 23, 2011. (R. pp. 183-187). James was aware of this deed as early as September, 2012. John, Jr. testified that James knew about this deed in 2012 when he found it in a safe and that "he was acting pretty ugly about it at the house" and "he went to my mother and fussed". (R. p. 85, ll. 4-17). When asked about this, James testified "I do not recall that" (R. p. 112, ll. 9-11) and "no, I do not recall". (R. p. 112, ll. 12-14). He did not deny finding the deed. The Master, who was able to observe the witnesses and their demeanor, found that "... the Plaintiff was evasive in many instances and not believable on other instances such as his claim that he did not recall finding the deed to the Defendant in 2012." (R. p. 295). John, Jr. asserted James had a "deep rooted ill-will almost hatred" of him. (R. pp. 92-94). James acknowledged this in his testimony relating his animosity and ill will back to an incident when he was for years old and John, Jr. ran over his duck. (R. pp. 98-100). John, Jr. further testified regarding James: "He resents me, he wants to make sure I don't get anything and that's his main goal". (R. p. 94, ll. 2-6).

§62-7-1005 (a) further provides that claims by a beneficiary are barred "... more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust."

§62-7-1005 (b) provides: "A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence".

Ruth was Co-Trustee, and John, Jr. deferred to her regarding the trust real estate and handling the money from the sale of the real estate. This trust was created in 1994 and, due to the

family dynamics and the death of Ruth, it is unknown what information she provided to her children. However, it is evident that James had actual knowledge of the deeds conveying the trust property to the five children in 1998 and 1999 and actual knowledge of the sale of the trust property to four (4) third-party buyers in 2004-2006. The Master-In-Equity found that James knew about the deed conveying trust property to John, Jr. in 2012. These were the equivalent of a "report" adequately disclosing to James the existence of a potential claim for breach of trust and/ or placed him on notice that he should inquire into the existence of a potential claim. Therefore, his claims are barred by the one (1) year statute.

S.C. Code Ann §62-7-104 (a) (2021) provides that:

"(a)... a person has knowledge of a fact if the person:

(1) Has actual knowledge of it;

(2) Has received a notice or notification of it; or

(3) From all the facts and circumstances known to the person at the time in question, has reason to know it."

James had knowledge of the conveyances of the real estate out of the trust and, also, that Ruth received the proceeds from the sale of the four pieces sold to third-parties.

The deed of September 11, 2011, was the final deed executed and issued by the Co-Trustees, and there is no evidence that there has been any activity in the Trust since that time. Appellants did not file their action until twelve years later.

Ruth R. Sitton died on May 25, 2013, and there has been almost constant litigation in her estate since her death with James being very involved with all of the litigation. In two formal proceedings in the Pickens County Probate Court, he sought unsuccessfully to be appointed as Personal Representative. Judge Kathy P. Zorn signed an order dated November 10, 2014, finding

it was in the best interest of all involved "to appoint a disinterested person as Personal Representative, preferably a member of the South Carolina Bar, due to animosity between the parties." (R. p. 288). Then, Judge Kathy P. Zorn issued an order on March 14, 2016, which appointed Kenneth Roper of the Pickens County Bar as Personal Representative of Ruth's estate "due to severe animosity between the parties". (R. pp. 288-289). James filed the action in Ruth's estate on December 18, 2017, over the disputed "trust deed" to the 303 North B Street property, and, in this action, he alleged he was the "Successor Trustee of Ruth R. Sitton". (R. pp. 218-225). This protracted legal action was ended on April 3, 2020, by the order of Judge Gravely dated May 18, 2020 (R. pp. 226-227). It is inexplicable and ingenious for James to now claim that he did not know about the Trust in John, Sr.'s will and the actions of the Trustees thereafter. He was the primary actor in all of the protracted litigation.

ALL deeds for the Trust property were signed by Ruth and John, Jr as Co-Trustees. There was no provision in John Sr.'s will for a survivor Trustee to act alone. Dale Sitton Rogers was named as a successor Trustee in John's will, but she never acted in this capacity. (R. p. 76; p. 79; pp. 87-88).

S.C. Code Ann. §62-7-1005 (c) provides that an action for breach against a trustee must be commenced within three years after the first to occur of: "(1) the removal, resignation, or death of the trustee; (2) the termination of the beneficiary's interest in the trust; or (3) the termination of the trust".

There was clearly no activity in the Trust after the deed to John, Jr on September 11, 2011. The Trust was basically dormant after this deed with no activity. Even though the legal title to certain real estate was still in the Trust, there was no activity by the Trustees and no money in the Trust. Therefore, the depletion of the Trust was a triggering event requiring

Appellant to act within three years. A trust can only exist if it is funded. A trust is deemed terminated when it is depleted for the purpose of calculating the statute of limitations period. **See** Mayer v. M.S. Bailey & Son, 347 S.C. 353, 555 S.E.2d 406 (S.C. App. 2001).

The death of Ruth on May 25, 2013, was a second triggering event to occur and, therefore, the three year limitation period started to run on this date, if not before on September 11, 2011. As stated above John, Jr. could not act independently as sole trustee and never attempted to. Dale Sitton Rogers, the named successor trustee never acted in this capacity.

Even though James is now seeking an accounting and alleging breach of fiduciary duties against Ruth and John, Jr., he did not file a statutory creditor's claim in Ruth's estate within the eight month statutory debt period.

James is seeking an accounting for the proceeds received by the Co-Trustees from the sale of the four parcels of real estate sold to third-parties between 2004-2006. John, Jr never handled any of the money from the sales. He testified "I gave it to my mother and she put it in her bank account." (R. p. 65, ll. 11-12). He further testified that all money from the sales "... went into my mother's bank account." (R. p. 77, ll. 23-25). John, Jr testified he did not know specifically where his mother deposited the money or how she spent it (R. pp. 77-79), and he did not have access to his mother's account. (R. p.59, ll. 4-13). Ruth deposited the money into her own account, and she handled her own account, deciding how to spend the money. (R. p. 65). John, Jr deferred to his mother.

Ruth's disabled daughter, Betty, was living with her, and she was supporting her during this time. John, Sr. in Item VIII of his will specifically provided: "My Trustees and/ or a Alternate Trustee shall have unquestioned and unlimited authority to use their discretion in investing and reinvesting and using any part or the Corpus and/ or interest they may deem

necessary or advisable for the comfortable maintenance, support, health, and well being or Betty Ann Sitton and Ruth R. Sitton, and shall supplement with food, shelter, and clothing for James C. Sitton, II." (R. p. 160). It is obvious that Betty and Ruth were the primary beneficiaries.

James testified that he knew about the proceeds from the sale of the trust property as early as 2004 and that he became "very suspicious". (R. p. 109, ll. 4-18). James checked the public records for the sale of trust property in 2004-2006. He knew his mother was handling the money from the sale of the trust property and was concerned about how she was spending the money. (R. p. 109). James alleged his mother spent money on John, Jr., but he never offered any direct proof other than his suspicion. He had no direct knowledge.

James confirmed in his testimony that his mother handled her own money and made her own decisions. When asked if he helped his mother with her financial affairs after 1997, he testified: "I mean, absolutely not, I was forbidden to. She told me Johnny was over the house and she was over the finances and she did not want to hear anything from me about it." (R. p. 103, ll. 2-5). However, he was aware of his mother's finances. John, Jr. testified that "Jimmy was the bookkeeper". (R. p. 66, l. 14).

James became power of attorney for his mother in 2012, and he then handled all of her finances until her death on May 25, 2013. (R. p. 119, ll. 18-22) He paid all of her bills and real estate taxes, which would have included the real estate taxes for the real estate remaining in the Trust that clearly denoted it as Trust property. (R. p. 111, ll. 7-9). James had access to all of Ruth's financial records. (R. pp. 139-140). James testified that: "I had my mother's bank account at the end when I became her power of attorney in 2012. The money wasn't in there". (R. p. 140, l. 25; p. 141, l. 1-6). He continued paying the Trust real property taxes after Ruth's death.

This is the equivalent of a report disclosing the existence of a potential claim involving the one year limitation period in §62-7-1005 (a). James did not file his action for an accounting until April 27, 2023, seventeen years after the money received from the final deed in 2006 and ten years after his mother died.

The Master-In-Equity further found that: "Even if Plaintiff was not time barred by the time and other defenses, the testimony provided by the Defendant at trial provides as complete of an accounting as the Defendant is able to provide based upon the death of his mother and the loss of her records due to the passage of time caused by Plaintiff's unreasonable delay. (R. p. 297).

B.) **Claims of a trust beneficiary may also be barred by principles of estoppel and laches arising under the common law of trusts, and the Master-In-Equity correctly ruled that Appellants' causes of action for an accounting and breach of fiduciary duty were barred by laches**:

The common law of trusts and principles of equity supplement the **South Carolina Trust Code.** ("S.C.T.C.") **S.C. Code Ann.** §62-7-106 (2021). An act done and any right acquired or accrued before the effective date of S.C.T.C are not affected by the act. Unless otherwise provided by the act, any right in a trust accrues in accordance with the law in effect on the date of the creation of the trust and a substantive right in the decedent's estate accrues in accordance with the law in effect on the date of the decedent's death. 2013 Act No. 100 of the South Carolina Legislature. **See** Comments to S.C. Code Ann. §62-7-106.

The Comments to S.C. Code Ann. §62-7-1005 state in part: "The one-year and three-year limitations periods under this section are not the only means for barring an action by a beneficiary. ...Claims may also be barred by principles such as estoppel and laches arising in equity under the common law of trusts. **See** §62-7-106." Therefore, the one year and three year

limitations periods contained in §62-7-1005 are not exclusive and do not preclude the affirmative defense of laches.

The principle of "laches" is in effect an equitable statute of limitations. White v. Warby, 176 S.C. 36, 179 S.E. 671 (1935). Laches is an equitable doctrine, which "arises upon the failure to assert a known right. "**EX parte Stokes,** 256 S.C. 260, 182 S.E.2d 306 (1971).

Laches has been defined as:

"Neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches. "Hallums v. Hallums, 296 S.C. 195, 198-199, 371 S.E.2d 525, 527 (1988). Simply put, to prove laches, a party must establish (1) delay; (2) unreasonable delay; and (3) prejudice.

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

No action was taken by the Co-Trustees of the John D. Sitton Trust after the deed of September 1, 2011, a period of almost twelve (12) years before the Appellants filed this action. One of the Co-Trustees, Ruth R. Sitton, died on May 25, 2013. The Appellant, James, had actual knowledge and/ or inquiry notice of the facts forming the basis of his claim starting in 2004, and

he inexplicably failed to assert his claims for nineteen years. Respondent, John, Jr., has been prejudiced by James' unexplained delay of such great length due to the death of witnesses, including a Co-Trustee, Ruth R. Sitton, and the loss of records making it difficult or impossible to defend against James' claims. Ruth had unique knowledge pertaining to this action, and she was the primary decision maker. James was his mother's power of attorney and handled her financial affairs before her death and had access to all of her records. The unexplained delay clearly renders it more difficult for the Court to determine the matters in controversy due to the loss of crucial testimony from Ruth. **See.** All Saints Parish, Waccamaw v. Protestant Episcopal Church in the Diocese of South Carolina, 358 S.C. 209, 595 S.E.2d 253 (S.C. App. 2004); Byars v. Cherokee County, 237 S.C. 548, 118 S.E.2d 324 (1961); and Presbyterian Church of James Island v. Pendarvis, 227 S.C. 50, 86 S.E.2d 740 (1955).

Laches is clearly applicable where James delayed for more than ten years after Ruth, the Trustee primarily responsible for making decisions, died. **See** Rembert v. Gressette, 318 S.C. 519, 458 S.E.2d 552 (S.C. App. 1995). Since Ruth made the decisions acting as Trustee, she would have been responsible for an accounting and breach of fiduciary duty, not John, Jr. By not filing a claim in Ruth's estate, James is foreclosed from pursuing any remedies against Ruth. He is seeking to hold John, Jr. solely accountable and this is clearly prejudicial to John, Jr. Ruth handled the money, and it is impossible to render an accounting for how she spent the money. Neither Ruth nor her estate can now be held accountable for any alleged breaches of fiduciary duty.

The facts and circumstances of this case ,as set forth in Respondent's brief , are such as to import that the Appellant, James, has, in essence, abandoned the claims he now seeks to assert, and both of his causes of action should be barred by the equitable doctrine of laches.

C.) **The doctrine of waiver is applicable in this particular case, and the Master-In-Equity correctly ruled that waiver is an affirmative defense and bar to Appellant's causes of action**:

"Waiver is a question of fact for the finder of fact." Parker v. Parker, 313 S.C. 482, 487, 443 S.E. 2d 388 (1994). "A waiver is a voluntary and intentional abandonment or relinquishment of a known right." Janasik v. Fairway Oaks Villas Horizontal Prop. Regime, 307 S.C. 399, 344, 415 S.E.2d 384, 387 (1992). "Generally, that party claiming waiver must show that the party against whom waiver is asserted, at the time, had actual or constructive knowledge of his rights or of all the material facts upon which they depended." *Id.* At 344, 415 S.E.2d at 387-88. "The doctrine of waiver does not necessarily imply that the party asserting waiver has been misled to his prejudice or into an altered position." *Id.* At 344, 415, S.E.2d at 388." "[W]aiver require[s] a party to have known of a right, and known that the party was abandoning that right." Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 470, 471 (2007).

"Where an implied waiver is involved, the distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations, so that it is difficult to determine the exact point where one doctrine ends and the other begins." Janasik, 307 S.C. at 344, 415 S.E.2d at 388 (quoting 28 Am. Jur. 2d *Estoppel and Waiver* §134 (1966). "Whether a party is barred by estoppel or waiver can only be determined in light of the circumstances of each case." *Id.*

See, Also, Mac Papers, Inc. v Geneseis Press, Inc. 426 S.C. 393, 826 S.E.2d 874 (S.C. App. 2019).

Applying the doctrine of waiver to this particular case, James had knowledge or at least constructive knowledge of his father's will admitted to probate in 1994, which created the Trust.

He was deeded Tract #5, containing 9.685 acres, on September 1, 1999. This property was deeded by "John D. Sitton, Jr., and Ruth R. Sitton, as Trustees under the Last Will and Testament of John D. Sitton". The derivation in this deed further states that the property James received was "... a portion of the property conveyed unto John D. Sitton, Jr. and Ruth R. Sitton , as Trustees under the Last Will and Testament of John D. Sitton, by Deed of Distribution from the estate of John D. Sitton dated October 20, 1994, and recorded October 31, 1994 at the RMC Office for Anderson County, South Carolina, in Deed Book 1981 at Page 046." (R. p. 205). Thereafter, he admittedly knew of the sale of the four parcels of real estate by the Trustees from 2004 – 2006. He knew money was received from these sales and became suspicious of how his mother was spending the money. The Master-In-Equity found that James knew of the conveyance of certain of the Trust real property to John, Jr by deed of the Trustees dated September 1, 2011, as early as September, 2012. (R. pp. 294-295).

Ruth died on May 25, 2013, and James has been involved as the primary litigant in constant litigation over her estate since that time, including actions in Probate Court and Common Pleas Court. Even though his mother was a Co-Trustee, he did not file a creditor's claim in her estate. Through this litigation it is hard to imagine that he did not become aware of his father's will and other matters involving the Trust.

After his father's death, James was living at home and helped his mother with financial matters. He "was the bookkeeper and helped his mother with her finances". (R. pp. 140-141). In the years leading up to his mother's death, James was handling all of his mother's financial matters, paying her bills, taxes, and insurance. (R. pp. 139-140). The real estate taxes he paid clearly denoted "John Jr and Ruth R. Sitton as Trustees Sitton". (R. p. 192). In fact, James was appointed as attorney-in-fact for Ruth R. Sitton in February, 2012. (R. p. 119, ll. 20-22).

Therefore, he had "actual or constructive knowledge of his rights or all of the material facts upon which they depended". Yet he did not file this action for an accounting and breach of fiduciary duty until April 27, 2023. This was seventeen years after the final sale of real property to third-parties and the receipt of money by the Trustees; almost twelve years after the conveyance of the Trust real property to John, Jr.; and ten years after his mother died.

The Master-In-Equity correctly found that Appellant had voluntarily abandoned a known right and that, as an equitable matter, the affirmative defense of waiver applied.

D.) Is Equitable estoppel applicable to the particular facts of this case?:

"The doctrine of estoppel applies if a person, by his actions, conduct, words, or silence which amounts to a representation, or a concealment of material facts, causes another to alter his position to his prejudice or injury." Rushing v. McKinney, 370 S.C. 280, 293, 633 S.E.2d 917, 924 (Ct. App. 2006). "The essential elements of equitable estoppel are divided between the estopped party and the party claiming estoppel." Strickland v. Strickland, 375 S.C. 76, 84, 650 S.E.2d 465, 470 (2007).

The elements of equitable estoppel pertaining to the party estopped and related to the party claiming estoppel are set forth in a number of South Carolina cases, including Mac Papers, Inc. v. Genesis Press, Inc., 426 S.C. 393, 826 S.E.2d 874 (S.C. App. 2019) and Mazloom v. Mazloom, 382 S.C. 307 and 675 S.E.2d 746 (S.C. App. 2009).

Respondent concedes that the particular facts and circumstances of this case do not unequivocably meet all of the essential elements required for equitable estoppel. However, Appellant's (James's) silence and inaction for seventeen years and failure to act for seventeen years were extremely prejudicial to Respondent (John, Jr.). His mother Ruth, was Co-Trustee, and he deferred to her in making decisions regarding the Trust. Ruth was also a primary

beneficiary of the Trust. Ruth died ten years before James filed his action and, therefore, the main witness regarding the Trust was dead. This included a loss of the records in Ruth's possession. Further, James did not file a statutory creditor's claim in his mother's estate, and he failed to raise any questions concerning the handling and management of the Trust through the years of litigation in Ruth's estate.

The decision of the Master finding that the claims of Appellant were barred by the applicable statute of limitations, laches, and waiver should be affirmed.

E.) **The Master-In-Equity correctly found as a finding of fact that John D. Sitton, as Co-Trustee, did not breach his fiduciary duty to Appellants**:

The Master found that all of the Sitton children deferred to their mother, Ruth, regarding the Trust real estate and money derived from the sale of the trust real estate. Ruth and Betty were the primary beneficiaries of the Trust, and Ruth was providing Betty a home and supporting her. Additionally, all five Sitton children were deeded comparable tracts of land of approximately 9.7 acres from the trust property in 1998 and 1999. All benefitted, and no one complained. The Trustees were given broad powers and discretion in the management of the Trust property.

James claims that John, Jr. breached his fiduciary duty when he and Ruth executed a deed dated September 1, 2011, conveying real estate to John, Jr. James knew about this deed as early as September ,2012 and took no action. He was handling his mother's financial affairs at that time and had access to all of her records. Ruth died in 2013, and James took no action until April, 2023, ten years after his mother's death.

John, Jr testified it was his mother's decision to deed him this property "for all he had done for the family". (R. p. 84). He repeatedly testified that "it was his mother's decision" and he "did not think he did anything wrong at all". (R. pp. 68-69).

The Master also noted that the Trustees were entitled to a ten percent (10%) commission on the sale of real estate.

James knew about the Trust Deed as early as September, 2012, (R. p. 85, ll. 4-17) and he took no action even throughout the litigation in his mother's estate. John, Jr. did not sell the property conveyed to him until October 14, 2020, and April, 2021, eight years after James discovered the deed and seven years after Ruth died. It should also be noted again that James was his mother's power of attorney and handling her financial affairs in 2012 when he first discovered this deed. He had access to Ruth's records which would have included the deed. The Master found that James "learned of this deed when he found it in his Mother's home in 2012". (R. pp. 294-295).

Under the facts of this case, there was no breach of fiduciary duty. The Master correctly found that the deed to John, Jr. was an act of his mother and that there were a number of reasons it was issued to John, Jr., including "a right to a commission and his various assistance to his mother, Ruth R. Sitton and his sister Betty Sitton, over a considerable period of time". (R. p. 297). The Master heard all of the testimony and was in a better position to evaluate credibility and assign comparative weight to the testimony of the parties.

CONCLUSION

Based upon the testimony and evidence presented at trial and the foregoing arguments, the Master was correct in finding that the Appellants' causes of action and claims were barred by the applicable statute of limitations, laches, and waiver. The Master heard the testimony of both parties, and he was in a position to evaluate the credibility of Appellant and Respondent and to assign comparative weight to the testimony.

For the foregoing reasons, Respondent respectfully requests that this Court affirm the trial Court's Final Order.

May 12, 2026

James S. Eakes, SC Bar No. 1820
Allen & Eakes
Post Office Box 1405
Anderson, South Carolina 29622
(864) 224-1681
stveakes@bellsouth.net
ATTORNEY FOR RESPONDENT