

2012-212854

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Civil Action No. 98-CP-12-325
(Appellate Case No.: 2011-189186)

RECEIVED

AUG 24 2012

S.C. Supreme Court

Patricia E. King and Robbie King Jones, as Representatives
of W.R. King and Ellen King.....Plaintiffs,

Of Whom, Patricia E. King, as Representative of
W.R. King and Ellen King, is.....Respondent,
v.

Margie B. King and Robbie Ione King, individually,
and as Co-Representatives of the Estate of Christopher
G. King (deceased) and Nelson M. King, Chester Telephone
Company, ...Defendants,

Of Whom, Margie B. King and Robbie Ione King,
individually, and as Co-Representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are..... Petitioners.

APPENDIX

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**TABLE OF
CONTENTS**

INDEX TO APPENDIX

Record on Appeal

Record on Appeal.....	1
Appendix to Record on Appeal.....	2

Briefs

Appellants' Final Brief.....	3
Appellants' Final Reply Brief.....	4
Final Brief of Respondent, Patricia E. King.....	5

Motions/Petitions

Appellants' Petition for Rehearing.....	6
Respondent's Return to Appellants' Petition for Rehearing.....	7

Orders

Order Denying Appeal, Filed June 20, 2012.....	8
Order Denying Rehearing, Filed August 22, 2012.....	9

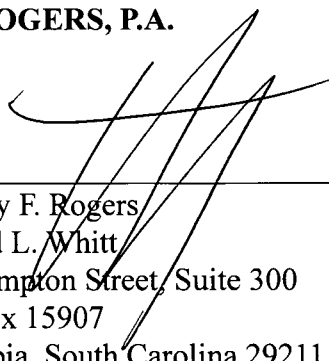
Correspondence

Correspondence to the Court of Appeals Dated July 1, 2011.....	10
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Appendix
August 24, 2012

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August 24, 2012
Columbia, South Carolina

1

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Civil Action No. 98-CP-12-325

Patricia E. King and Robbie King Jones, as representatives
of W.R. King and Ellen King.....Plaintiffs,

Of whom Patricia E. King, as representative of
W.R. King and Ellen King, is.....Respondent,
v.

Margie B. King and Robbie Ione King, individually,
and as Co-Representatives of the Estate of Christopher
G. King (deceased) and Nelson M. King, Chester Telephone
Company, ...Defendants,

Of whom, Margie B. King and Robbie Ione King,
individually, and as Co-Representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are.....Appellants.

RECORD ON APPEAL

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INDEX TO RECORD ON APPEAL

ORDERS

Order of the Honorable Lee S. Alford, Chester County Chief Judge for Administrative Purposes, filed May 30, 2001.....	1
Order of the Honorable Brooks P. Goldsmith, Chester County Chief Circuit Court Judge, filed August 4, 2010.....	3
Order of the Honorable James C. Harrison, Jr., Special Referee for Chester County, dated October 18, 2010.....	5
Order of the Honorable James C. Harrison, Jr., Special Referee for Chester County, dated March 7, 2011.....	8
Unpublished Opinion No. 2007-UP-132, filed by the South Carolina Court of Appeals on March 28, 2007.....	21

PLEADINGS

Plaintiffs' Complaint filed November 12, 1998.....	32
Plaintiffs' Complaint dated February 5, 1998.....	51
Answer and Counterclaims filed by Defendants on December 14, 1998.....	65
Plaintiffs' First Amended Complaint filed April 6, 2001.....	75
Amended Counterclaims filed by Defendants on June 11, 2010.....	84
Plaintiffs' Motion to Dismiss Defendants' Amended Counterclaims, filed on June 23, 2010.....	94
Defendants' Motion to Proceed with Accounting, filed on July 26, 2010.....	96
Motion to Reconsider, Rehear, Alter or Amend Judgment, filed by Defendants on March 17, 2011.....	100
Motion for Summary Judgment of Plaintiff, filed March 28, 2011.....	105
Notice of Appeal, filed by Defendants on April 04, 2011.....	107
Notice of Appeal (amended), filed by Defendants on April 12, 2011.....	109

INDEX TO RECORD ON APPEAL (cont.)

TRANSCRIPTS

Transcript of Record for August 5, 2010, Hearing before the
Honorable James C. Harrison, Jr., of the Chester County Circuit Court.....111

Transcript of Record for August 16, 2010, Hearing before the
Honorable James C. Harrison, Jr., of the Chester County Circuit Court.....132

EXHIBITS

Exhibit "1" to Proceedings on August 16, 2010.....171

Exhibit "4" to Proceedings on August 16, 2010.....178

Exhibit "26" to Proceedings on August 16, 2010.....185

Exhibit "27" to Proceedings on August 16, 2010.....186

OTHER

Electronic Mail from the Trial Judge to the Counsel of Record dated March 25, 2011.....187

Certificate of Counsel.....192

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTER)

Patricia E. King and Robbie
King Jones, as representatives of
W.R. King and Ellen King,

Plaintiffs,

vs.

Margie B. King and Robbie
Patricia Ione King,
individually and as co-personal
representatives of the Estate
of Christopher C. King, deceased
and Nelson M. King, Chester
Telephone Company and Branch
Banking & Trust (BB&T),

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

CIA No.: 98-CP-12-325

ORDER

FILED

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CLERK OF COURT
CHESTER COUNTY, S.C.

This matter is before the court pursuant to the agreement of both parties and their counsel in regard to the referral of certain issues and causes of action to a Special Referee to be appointed by this court. This issue is raised by this court, Sua sponte, after the court recognized the complexity of the issues involved as well as the fact that certain of the causes of action are equitable in nature and therefore, would be tried non-jury whether or not those causes of actions or issues were referred to the Special Referee.

Both parties agree with the court that the case would be better served by having the complex and equitable issues resolved by a Special Referee leaving only the action on the promissory note to be tried by a jury. Further, this matter shall be taken off of the trial roster for the next term of court until such time as the parties have proceeded with discovery and had the Special Referee issue his recommendation to this court after hearing.

THEREFORE, IT IS HEREBY ORDERED that the Honorable James C. Harrison, Jr., shall

be appointed Special Referee to direct the accounting in this matter as to the original funeral home business and to decide whether there was an actual transfer of this business during the life of W.R. and/or Ellen King. If there was an inter vivos transfer by W.R. and/or Ellen King to the late Christopher C. King, then no accounting will be necessary. If the Special Referee finds that there was not a inter vivos transfer of this funeral home business by W.R. and/or Ellen King during their lifetime, then there shall be an accounting, as stated above, directed by the Special Referee. This accounting must include all nine siblings and all related issues. The Referee shall hear and make his recommendation on count six of the Complaint, count eight of the Complaint, count nine of the Complaint and count ten of the Complaint, if applicable. Additionally, the Special Referee shall hear and issue his recommendation on any equitable or non-jury matters contained in the Complaint, Answer and/or Counterclaim.

This Court is informed that counsel is working on the issue on whether or not there are any other causes of actions or issues which may be equitable in nature and heard by the Special Referee and upon approval by this Court, this matter shall also be heard by the Referee.

This Court further finds that the legal issue of whether or not Christopher C. King is liable to Plaintiffs Patricia King and Robbie King Jones on the note being sued upon shall be placed on the trial roster after discovery on that issue is complete, which should be done within forty five days from the date of this Order.

AND IT IS SO ORDERED.


The Honorable Lee S. Afford
Chief Judge for Administrative Purposes
Sixth Judicial Circuit

Chester, South Carolina
May 18, 2001

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Case No.: 1998-CP-12-00325

Patricia E. King and Robbie King Jones, as
representatives of W.R. King and Ellen King,

Plaintiffs,

v.

Margie B. King and Robbie Ione King,
Individually and as Co-personal
representatives of the Estate of Christopher
C. King, deceased, and Nelson M. King,

Defendants.

ORDER

FILED

CLERK OF COURT
CHESTER CO S.C.
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INTRODUCTION

A Hearing was held in this matter on Thursday, July 22, 2010, with counsel for all parties present. The Court heard arguments from counsel and hereby Orders the following:

ORDER

I. As to Plaintiffs' Motion to Vacate Order of Reference:

The Court, after oral argument from counsel for all parties on the issue of vacating the Order of Reference, finds that the Order of Reference, filed May 30, 2001, continues with full force and effect of law and Plaintiffs' Motion to Vacate Order of Reference, is denied.

II. As to Plaintiffs' Motion to Dismiss Defendants' Amended Counterclaims:

The Court, after oral argument from counsel for all parties on the issue of jurisdiction, finds that Special Referee Harrison has continuing jurisdiction in this matter and jurisdiction for Motions. Accordingly, this Court finds that it does not have jurisdiction to hear Plaintiffs' Motion.

III. As to the Order of Reference, filed May 30, 2001:

This Order is issued to clarify the matters referred to the Special Referee in this case and his authority to hear the same. This Order clarifies the power and authority of the Special

Referee in this matter, but it does not replace or supplant the Order of Reference, which was not appealed and is the law of this case. This Order does relate back to the Order of Reference.

It appearing that this action is one which was properly referred to the Special Referee and the Court holds that the Order of Reference is hereby clarified as follows. Because the referral was a reference from the Circuit Court to a Special Referee, Rule 53 of the South Carolina Rules of Civil Procedure, (hereinafter as, "SCRCP") is applicable. It is clarified that the referral, was and is, with all power and authority to dispose of this case pursuant to the terms of Rule 53, SCRCP. Special Referee Harrison shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter. Special Referee Harrison will enter a final Judgment and any appeal from the decision of the Special Referee shall be directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

THEREFORE, IT IS ORDERED that:

- I. The Motion to Vacate the Order of Reference is denied.
- II. The Motion to Dismiss Defendants' Amended Counterclaims shall be heard by Special Referee Harrison, along with all pending and subsequent Motions.
- III. The Order of Reference, filed May 30, 2001, is hereby clarified as set forth hereinabove.

AND IT IS SO ORDERED, this the 29 day of July 2010.

Lancaster, South Carolina

The Honorable Brooks P. Goldsmith

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CLERK OF COURT
CHESTER CO S.C.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

) IN THE COURT OF COMMON PLEAS
) FOR THE SIXTH JUDICIAL CIRCUIT
)

) Patricia E. King and Robbie King Jones, as
) representatives of W.R. King and Ellen King,
)

Case No.: 1998-CP-12-00325

) Plaintiffs,
)

) v.
)

ORDER

) Margie B. King and Robbie Patricia Ione
) King, Individually and as Co-personal
) representatives of the Estate of Christopher
) C. King, deceased, and Nelson M. King,
)

) Defendants.
)

INTRODUCTION

Plaintiffs served a Motion to Dismiss Defendants' Amended Counterclaims in this matter on June 23, 2010. This Court heard Plaintiffs' Motion, with counsel for affected parties present on August 5, 2010, and this Court denied the Plaintiffs' Motion to Dismiss Counterclaims. The Court's Order follows:

ORDER **PROCEDURAL HISTORY**

Defendants' Counterclaims were filed on December 14, 1998. Plaintiffs did not reply to Defendants' Counterclaims until, June 2, 2010. Defendants filed amended Counterclaims on June 11, 2010. Plaintiffs filed a Motion to Dismiss Defendants' Amended Counterclaims on June 23, 2010. Plaintiffs replied to Defendants' Amended Counterclaims on July 12, 2010.

PLAINTIFFS' MOTION

Plaintiffs based their Motion on a claim that Defendants failed to comply with Rule 15(a) of the South Carolina Rules of Civil Procedure (hereinafter, "SCRCP"). Plaintiffs maintain that Defendants were required to obtain leave of the Court to file their Amended Counterclaims. Plaintiffs made reference to Rules 15(a), 13(e) and 13(f) of the SCRCP.

DISCUSSION

This Court heard oral argument from counsel and carefully considered Plaintiffs' argument that Defendants were required to obtain leave of Court to amend their Counterclaims. This Court believes that the first sentence of Rule 15(a), SCRCP controls this dispute. Rule 15(a), SCRCP reads as follows,

"A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served..."

It is uncontroverted that the Plaintiffs did not reply to Defendants' Counterclaims until June 2, 2010, and the Plaintiffs did not file a responsive pleading (Reply) to Defendants' amended Counterclaims until July 12, 2010. Defendants' amended Counterclaims, filed on June 11, 2010, were filed before or within, 30 days of any responsive pleading (Reply) filed by Plaintiffs and therefore Defendants' filing was in compliance with Rule 15(a), SCRCP.

Defendants' amendment of their Counterclaims was filed as a matter of right, pursuant to Rule 15(a), SCRCP and leave of the Court was not required.

FINDINGS OF FACT

1. This Court finds that Defendants' Counterclaims were filed on December 14, 1998.
2. This Court finds that Plaintiffs did not reply to Defendants' Counterclaims until, June 2, 2010.
3. This Court finds that Defendants filed Amended Counterclaims on June 11, 2010.
4. This Court finds that Plaintiffs replied to Defendants' Amended Counterclaims on July 12, 2010.
5. This Court finds that Rule 15(a), SCRCP is controlling.
6. This Court finds that Plaintiffs were not required to obtain leave of Court to amend their Counterclaims, pursuant to Rule 15(a), SCRCP.

CONCLUSIONS OF LAW

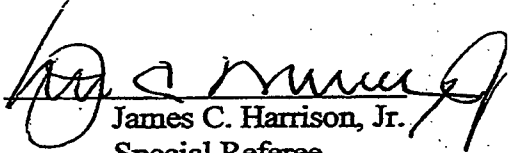
This Court, based on the pleadings and files of this matter, the South Carolina Rules of Civil Procedure, applicable case law and the findings in this matter, makes the following Conclusions of Law:

1. This Court concludes as a matter of law that the Defendants were not required to obtain leave of Court to amend Defendants' Counterclaims.

THEREFORE, IT IS ORDERED that:

(1) Plaintiffs' Motion to Dismiss Defendants' Counterclaims is hereby dismissed.

AND IT IS SO ORDERED, this the 18th day of October 2010.


James C. Harrison, Jr.
Special Referee

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Patricia E. King and Robbie King Jones,
as representatives of W.R. King and Ellen
King,

Plaintiffs,

v.

Margie B. King and Robbie Patricia Ione
King, individually and as co-personal
representatives of the Estate of
Christopher C. King, deceased and
Nelson M. King, Chester Telephone
Company,

Defendants.

THE COURT OF COMMON PLEAS

SIXTH JUDICIAL CIRCUIT

Civil Action No.: 98-CP-12-325

ORDER

(As to Accounting Counterclaim)

PROCEDURAL HISTORY

Plaintiffs filed a summons and complaint against Defendants on November 12, 1998, asserting various claims arising from the operation of a business known as King's Funeral Home. At the time, Plaintiffs were represented by Cletus K. Okpalaeke of The Cromartie Law Firm. Plaintiff Patricia E. King is currently represented by Kenneth Wingate and John E. Tyler of Sweeny, Wingate & Barrow, P.A. The Plaintiffs in their complaint alleged that their parents, W.R. King, who died in 1975, and Ellen King, who died in 1987, purchased a funeral home in the 1930s or 1940s and operated the same until the time of their deaths. Plaintiffs also alleged that all of the children of their parents, including themselves and their late brother, Christopher C. King, at one time or another, worked for the funeral home. The complaint further alleged that in June of 1997 Plaintiff Patricia E. King discovered that her name had been removed as an authorized signatory on the bank account of the that funeral home business and that the funeral home telephone line that rang in her residence had been turned off without her consent, thus

denying her access "to the good will built up over the years from the time her parents ran the King's Funeral Home business till the time she ran it in concert with the late Christopher C. King". The complaint further alleged that under the applicable intestacy laws the ownership of King's Funeral Home "ultimately passed in equal shares to the surviving children of W.R. King and Ellen King, including the Plaintiff's and Christopher C. King". Some of the children of Christopher C. King along with his widow, Margie B. King, are the Defendants in this action. The complaint alleged numerous causes of action, the first being for an accounting and distribution of profits of King's Funeral Home, which cause of action alleged that the Plaintiffs were "entitled to have the Defendant's account for the profits of King's Funeral Home, to inspect the books and records of King's Funeral Home, and to have their proportional share of the profits distributed to them". This Order in referring herein to the "Defendants" does not include Chester Telephone Company.

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The Defendants filed an answer and counterclaim on December 14, 1998, in which Defendants denied that King's Funeral Home passed in equal shares to the surviving children of W.R. King and Ellen King and alleged that W.R. King and Ellen King made an inter vivos gift of the funeral home to Christopher C. King. Defendants denied that the Plaintiffs had a right to an accounting and distribution of profits. The Defendants at the time were represented by Ruskin C. Foster and Anthony W. Livoti of the law firm of McCutchen, Blanton, Rhodes & Johnson, L.L.P. The Defendants are now represented by Timothy F. Rogers, Richard L. Whitt, and W. Michael Duncan of the law firm of Austin & Rogers, P.A.

By Order of Reference filed May 30, 2001, the Honorable Lee S. Alford appointed the undersigned Special Referee to issue his "recommendation" on certain issues and causes of

action "to direct the accounting in this matter as to the original funeral home business and to decide whether there was an actual transfer of this business during the life of W.R. and/or Ellen King. If there was an inter vivos transfer by W.R. and/or Ellen King to the late Christopher King, then no accounting will be necessary. If the Special Referee finds that there was not an inter vivos transfer of this funeral home business by W.R. and/or Ellen King during their lifetime, then there shall be an accounting, as stated above, directed by the Special Referee."

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The Defendants made a motion to dismiss this action for failure of the Plaintiffs to prosecute and failure to comply with Orders of the Court. By Order filed August 6, 2004, the Honorable Kenneth G. Goode dismissed the Plaintiffs' action with prejudice and ordered that the counterclaims of Defendants remained viable and intact. This decision was appealed by the Plaintiffs to the South Carolina Court of Appeals, and in Unpublished Opinion No. 2007-UP-132, filed March 28, 2007, the South Carolina Court of Appeals concluded Judge Goode did not err in dismissing the Plaintiffs' case for failure to prosecute and allowing the Defendants' counterclaims to remain viable.

As noted by the undersigned at a June 14, 2010, hearing, after learning of Judge Alford's Order of Reference the undersigned wrote a letter in 2001 to the lawyers who were then counsel in this action outlining his concerns about the case being referred to him. (Those attorneys no longer represent any parties in this action.) No action on the Order of Reference was taken by counsel for the parties until current counsel for the Plaintiffs, Timothy F. Rogers, wrote a letter to the undersigned on August 26, 2008, requesting a status conference. At that time, Plaintiffs were not represented by counsel. A status conference was initially set for September 11, 2008, but was postponed at the request of Plaintiff Patricia E. King, acting pro se. Thereafter, Kenneth Winchester Gaines appeared on behalf of Plaintiffs and lengthy settlement negotiations were

pursued but did not come to fruition. A status conference was held on November 11, 2009, attended by the parties and counsel. The undersigned issued a Scheduling Order on January 11, 2010, in this case and a related Case No. 2007-CP-12-407. Mr. Gaines was counsel of record for the Plaintiffs at that time. By Order of the undersigned dated May 24, 2010, Kenneth Wingate and John E. Tyler of Sweeny, Wingate & Barrow, P. A. were substituted for Mr. Gaines.

On June 11, 2010, Defendants filed amended counterclaims, to which the Plaintiff on July 12, 2010, filed an answer dated July 9, 2010. These amended counterclaims re-alleged the contents of their previous counterclaims. In their amended counterclaims, the Defendants assert for the first time a cause of action for an accounting regarding the profits of King's Funeral Home, alleging that the May 18, 2001, Order of Judge Alford requires the same. The amended pleading also alleges that the King's Funeral Home business passed by intestacy to the children of W.R. King and Ellen King. That position is opposite to the position taken in the original answer and counterclaim, which was to the effect that King's Funeral Home was "gifted" to Christopher C. King during his lifetime and therefore did not pass through the estates of W. R. King and Ellen King..

By motion dated June 23, 2010, Plaintiffs moved to dismiss the Defendants' amended counterclaims. This motion was heard on August 5, 2010, and denied. An Order to this effect was filed on October 21, 2010.

Upon Plaintiff's motion to vacate the Order of Reference, the Honorable Brooks. G. Goldsmith issued an Order dated July 29, 2010, clarifying that this case is properly before the undersigned with the same power and authority of a Circuit Judge to hear and dispose of this case pursuant to the terms of Rule 53, SCRCP, and enter final judgment.

By motion dated July 26, 2010, and heard on August 5, 2010, the Defendants moved for this Court to order an accounting, issue an attachment, and appoint a receiver. These motions were orally denied without prejudice at the date of hearing.

On August 16, 2010, this court held an evidentiary hearing to determine whether the Defendants are entitled to an accounting as asserted by the second counterclaim of their amended counterclaims. This Order solely disposes of this accounting cause of action, and all other issues are reserved for hearing at a subsequent time.

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The Defendants' position is that under Judge Alford's Order they are due an accounting of profits of King's Funeral Home from the date Patricia C. King took possession of the premises upon which the business was located in December, 1998. They also argue that they are due an accounting of the profits of King's Funeral Home because King's Funeral Home, now being operated by Patricia C. King, passed by intestacy to the nine children of W.R King and Ellen N. King at the time of their respective deaths in 1975 and 1987 and because the assets of the business were never distributed at the deaths of the elder Kings. They argue that Chris King was operating the business on behalf of the entire family, that is, on behalf of the heirs of W. R. King and Ellen N. King.

FINDINGS OF FACT

1) W. R. King and his wife Ellen N. King commenced operating a funeral home sometime in the 1930s or 1940s. Mr. King died in 1975, and Mrs. King died in 1987. That funeral home business was known as King's Funeral Home. Until 1980, King's Funeral Home was located at 127 Cemetery Street in Chester, South Carolina. The business was not incorporated. During the time that W. R. King and Ellen N. King ran the funeral home, a number of their nine children, possibly all of them, worked in the funeral home including both Patricia E.

King (sometimes referred to herein as "Patricia") and Christopher C. King (sometimes referred to herein as "Chris"). The property at 127 Cemetery Street is now the residence of Patricia.

2) W. R. King died intestate, and his wife Ellen N. King was the administrator (personal representative) of his estate. There is no evidence in the record that Mrs. King as the personal representative of the estate of W.R. King claimed the funeral home was an asset of the estate of Mr. King. After the death of Mr. King in 1975, the funeral home was operated primarily by Chris with the assistance of his mother and his sister Patricia. The name King's Funeral Home was used for those business operations.

3) In 1980 Chris King built a new funeral home at 135 Cemetery Street on three parcels of real property which were titled in the name of Patricia and derived from conveyances of separate contiguous parcels by Robbie K. and Howard Jones in 1977, from Chris King and his wife Marge B. King in 1980, and from Robbie K. Jones in 1980. Although some limited funds to pay for the construction of the funeral home building may have been contributed by Ellen N. King and Chris King, the construction of the building was almost solely paid for with financing provided by Patricia from the proceeds of a mortgage loan from The Chester Building and Loan Association made on July 30, 1980, and her personal funds. The first payment due on this loan was November 1, 1980, in the amount of \$1,080.15. The maturity date of the loan was October 1, 1995.

4) By lease agreement entered on July 16, 1980, and signed by the parties on July 30, 1980, the same date as the mortgage loan above, Christopher C. King and Patricia E. King entered into an agreement whereby Chris, "doing business as King's Funeral Home[.]" leased the premises located at 135 Cemetery Street.

5) Although it is possible that Chris was the sole proprietor of this funeral business at an earlier date, the evidence establishes that by at least July 16, 1980, he was the sole proprietor of the business operating as King's Funeral Home at 135 Cemetery Street. As stated by Moses Caldwell, who started employment with the elder Kings' funeral home in 1964, Chris was the person who was "basically in charge." As stated by Patricia, Chris maintained possession of the funeral home premises until his death in 1997, and thereafter his wife and children had possession of it. Until Patricia commenced operating a funeral business at 135 Cemetery Street, the stationery of King's Funeral Home stated that Christopher C. King was its owner. There is no evidence in the record that Chris distributed any profits of the funeral business that he operated to any members of the family. I find that Chris King was not operating this business for the benefit of anyone else.

Mr. Caldwell managed the business for Chris and, after Chris' death, for his family. In 1991 Chris took Mr. Caldwell to the "South Carolina State Board of Funeral Service" and appointed Mr. Caldwell as manager of the business.

6) Ellen N. King died intestate on March 2, 1987. Until her death Ellen N. King continued to have an active role in the business. The inventory and appraisal of her assets filed in the Probate Court in 87ES1200178 did not show that she owned an interest in the real property located at 135 Cemetery Street nor in any personal property at that address, nor did it list an interest in King's Funeral Home. The administrators of her estate were discharged by Order of the Probate Judge on October 20, 1989.

7) On July 31, 1992, the Plaintiffs individually, Christopher C. King individually, and "King (sic) Funeral Home by Christopher C. King as Proprietor" signed a promissory note for a loan of \$225,000.00 from Mechanics and Farmers Bank. This loan matured on July 30,

1997. The proceeds of the loan were given to Chris for the purpose of paying his debts for a failed car business. This loan was paid off on October 10, 1997, by the Plaintiff's individually from the proceeds of a new loan to them in the amount of \$186,165.16.

8) On August 20, 1997, Patricia mailed a notice addressed to "Christopher C. King, and All Other Occupants of the Premises Located at 135 Cemetery Street, Chester, Cemetery Street, Chester, South Carolina" requiring them to vacate the premises within 30 days. Chris King died on September 1, 1997. Shortly after the death of Chris, Patricia got his family together, including the Defendants, and advised them that they had to vacate the building in which the funeral home was located. They did not vacate the building until on or about December 8, 1998. On that date all personal property being used at that time in the operation of King's Funeral Home was removed by persons not identified in the record. Removed were business records, pews, conference room furniture, desks, cabinets, embalming machine, embalming table, hearses, and limousines. The telephone number that had previously rung at the premises ceased to be routed to the building. In the words of the manager, Mr. Caldwell, what was removed was "everything that would cause you to operate." Patricia King's name was removed from the business bank account by Defendant Margie B. King in 1997.

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9) Christopher C. King died intestate and his estate was probated under Probate File 1997ES1200194 in Chester County. Margie B. King and Robbie P. King were his estate's personal representatives. The estate's inventory and appraisal was filed on March 2, 2001. Schedule E of the inventory and appraisal listed as an asset of the estate "King's Funeral Home 135 Cemetery Street Chester, SC (Business) Sole Proprietor[.]"

10) Between Chris King's death and December 8, 1998, the funeral home business operated at 135 Cemetery Street was managed by Mr. Caldwell and operated by Chris' widow,

Defendant Margie King, and his surviving children, including John R. King and Defendants Robbie Patricia Ione King and Nelson M. King.

11) On December 8, 1998, John R. King began funeral home operations at 703 Old York Road in Chester, South Carolina, under the name Christopher King's Funeral Home. He used the telephone number of the King's Funeral Home owned and operated by his father, Christopher King, (803) 377-1144.

12) After the family of Christopher King vacated the premises located at 135 Cemetery Street, Plaintiff Patricia King began operating a sole proprietorship there under the name King's Funeral Home. With the help of Mr. Caldwell, she equipped the building there with new equipment necessary to operate a funeral home and opened up a new bank account. Mr. Caldwell manages this funeral home business. He made arrangements for this business to obtain a telephone number.

CONCLUSIONS OF LAW

1. Defendants in their request for an accounting primarily rely upon the Order of the Honorable Lee S. Alford dated May 18, 2001, and argue that Judge Alford ordered an accounting. This is an incorrect reading of that Order.

At the time Judge Alford issued that Order, the posture of this case was that, among numerous causes of action, the Plaintiffs had pled a cause of action for an accounting. The Defendants denied that allegation in their answer and counterclaim, therefore denying that the Court should order an accounting. The Plaintiffs' entire complaint was dismissed by Judge Goode on July 30, 2004, and that order was later upheld by the South Carolina Court of Appeals. The Defendants' counterclaims were to remain viable according to Judge Goode's Order. The counterclaims of the Defendants did not plead a claim for an accounting and, as stated above, in

fact denied that the Plaintiffs' request for an accounting should be granted. Therefore, at the time the Plaintiffs' case was dismissed there was no pleading in this case that requested an accounting. The issue was no longer before the Court. The issue of whether an accounting should be had was not before the Court again until the Defendants amended their counterclaims. Whether *the Defendants* are entitled to an accounting is a new issue that was not determined by Judge Alford's Order.

Moreover, a review of the Order of Judge Alford indicates that the accounting was only to be done after the Special Referee determined that there had been no inter vivos transfer of the business to Christopher C. King during the lives of W.R. and/or Ellen King. Even if one were to believe the Plaintiffs' accounting cause of action survived the dismissal of Judge Goode, the Order as to the accounting was conditional upon the Special Referee determining that Christopher C. King was not the sole owner of King's Funeral Home. That determination had not been made by the time of the hearing subject of the instant Order.

2. A sole proprietorship is not a distinct entity from its owner. Moore v. Moore, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004) ("[b]ecause Appellant's business was a sole proprietorship, he and his business were not distinct entities"). Black's Law Dictionary (Fourth Edition) defines "proprietor" as "one who has the legal right or exclusive title to anything. In many instances it is synonymous with owner." Webster's New Universal Unabridged Dictionary defines "proprietor" as "... the owner of a business establishment ...". The testimony and evidence adduced in this action show that Christopher C. King became the sole proprietor of King's Funeral Home by at least July 16, 1980. He possessed it, he operated it for at least 20 years, he was in charge of it, he appointed its manager, he stated he did business as King's Funeral Home when he entered a Lease Agreement with Patricia E. King on July 16, 1980, and

he signed a note and mortgage on July 31, 1992, stating he was signing on behalf of "King (sic) Funeral Home as Proprietor." In this same document his siblings Patricia E. King and Robbie K. Jones did not sign as proprietors of the funeral home but as individuals. In other words, during his lifetime, Christopher C. King was the owner of this business in its entirety. The Defendants Margie B. King and Robbie Ione King (now Robbie Patricia Ione King Boyd) as personal representatives of the estate of Christopher C. King listed the interest of Chris in King's Funeral Home as "Sole Proprietor". After his death on September 1, 1997, his family, among them the Defendants herein, operated the business at the 135 Cemetery Street location until they vacated the premises on December 8, 1998.

3. There is not sufficient evidence in the record to establish that the estates of either W.L. King or Ellen N. King claimed an interest in King's Funeral Home or any real or personal property associated therewith. No interest in this funeral home therefore passed to their heirs through these estates.

4. South Carolina law recognizes three types of accounting actions: one is based on a breach of a confidential or fiduciary relationship; a second type is to allow for the adjudication of detailed and complicated accounts which would not be practical for a determination by a jury; and third is designed to permit discovery. Randolph R. Lowell, Robert L. Lowell & Shealy Boland Reibold, South Carolina Equity: A Practitioner's Guide (S.C. Bar - CLE Division 2010).

A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter in equity and good conscience, is bound to act in good faith with due regard to the interest of the one imposing the confidence. Brown v. Pearson, 326 S.C. 409, 422, 483 S.E.2d 477, 484 (Ct. App. 1997)." [A]s a general rule, a fiduciary relationship cannot be established by the unilateral action of one party. The other party must have actually accepted or

induced the confidence placed in him.” Steele v Victory Sav. Bank, 295 S.C. 290, 295, 368 S.E.2d 91, 94 (Ct. App. 1988). The Defendants are not entitled to an accounting for profits of the business operated by Patricia King because they have not established the existence of a fiduciary relationship between themselves and Patricia King. Accounting for profits is defined as “[a]n action for equitable relief against a person in a fiduciary relationship to recover profits taken in a breach of the relationship.” Blacks Law Dictionary 9 (3d Pocket Ed. 2006). “An action for an accounting is . . . equitable in nature.” Byrd v. King, 245 S.C. 247, 255, 140 S.E.2d 158, 161 (1965). The party requesting an accounting has the burden to prove entitlement to such an account by the preponderance of the evidence. Id.

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An accounting will also be granted in actions involving long and complicated accounts where it would not be practical for a determination by a jury and where there is a need for discovery. See Rogers v. Salisbury Brick Corp., 299 S.C. 141, 382 S.E.2d (1989). Here, there is no jury and no need for discovery about the profits of the funeral home business operated by Patricia King because it is a distinct business entity. The funeral home business that Patricia has been operating since 1998 is a new business entity that Patricia started. The Defendant’s claim is for an accounting of the profits of the funeral home business operated by Patricia, however, that business is a separate entity and not a continuation of the business operated by Chris.

The Defendants have failed to present sufficient evidence showing that they are entitled to an accounting.

5. Since the Defendants have not established an entitlement to an accounting, the Court does not need to consider the affirmative defenses of the Plaintiffs in deciding this issue.

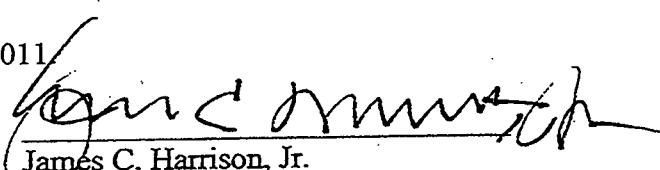
6. All other issues in this case are reserved for subsequent hearing.

THEREFORE, IT IS ORDERED that:

- a. The Defendants' counterclaim for an accounting is denied.
- b. All other issues in this case are reserved for subsequent hearing.
- c. The court reporter's fees and costs of \$1,432.41 shall be paid within ten days of the date of this order to Verbatim, Inc. and shall be split equally between Plaintiff Patricia C. King and the Defendants.
- d. The fees of the Special Referee to date in the amount of \$9,000.00 shall be equally split between Plaintiff Patricia C. King and the Defendants and shall be paid within 30 days of the date of this Order.

AND IT IS SO ORDERED, this the 7th day of March, 2011.

Columbia, South Carolina


James C. Harrison, Jr.
Special Referee for Chester County

written

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Patricia E. King and Robbie
King Jones, as representatives of
W.R. King and Ellen King, Appellants,

v.

Margie B. King and Robbie
Patricia Ione King, Individually
and as co-personal
representatives of the Estate of
Christopher C. King, deceased
and Nelson M. King, Chester
Telephone Company and
Branch Banking & Trust
(BB&T), Respondents.

Appeal From Chester County
Kenneth G. Goode, Circuit Court Judge

Unpublished Opinion No. 2007-UP-132
Submitted March 1, 2007 – Filed March 28, 2007

AFFIRMED

Willie F. Bradley, Jr, of Columbia, for Appellants.

Raymon E. Lark, Jr. and Timothy F. Rogers, of Columbia, for Respondents.

PER CURIAM: Patricia E. King and Robbie King Jones (Appellants), as representatives of W.R. King and Ellen King (parents), appeal the circuit court's order dismissing this action for failure to prosecute and allowing Margie B. King and Robbie Patricia Ione King (Respondents) to proceed with their counterclaims. We affirm.¹

FACTS

In November 1998, Appellants filed this action for enforcement of a loan and ownership/operation of King's Funeral Home.² Respondents filed a timely answer. In November 1999, Appellants filed an amended complaint in which they dismissed one defendant. Respondents again filed a timely answer in which they asserted additional counterclaims.

In April 2001, Appellants served a "Request for Leave to Amend" and a "First Amended Complaint" on Respondents. Appellants sought to add plaintiffs and defendants and new causes of action. However, the "First

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

² In February 1998, Appellants, as individuals, originally filed this action in federal court. The federal court dismissed the action for lack of personal jurisdiction.

Amended Complaint" was neither authorized by an order of the circuit court nor by consent of the parties.

By letter dated May 3, 2001, Judge Alford informed Appellants they may amend their complaint to add new parties. Judge Alford instructed Appellants to "prepare a proposed order in that regard and send a copy of the prepared order to opposing counsel at the same time you send it to me."

In May 2001, Respondents deposed two of Appellants' witnesses: Robbie King Jones and Moses Caldwell. During the deposition of Robbie King Jones, a disagreement arose regarding Respondents' questioning and Appellants' counsel's interjections. Respondents terminated the deposition "until [they] could come before [the court] and get a ruling on" the objections and actions by Appellants. After Robbie King Jones' deposition ended, counsel for Appellants informed Caldwell he did not have to appear at his deposition. Although he initially refused to go to the deposition, the sheriff persuaded Caldwell to obey the subpoena and appear at his deposition. However, Caldwell refused to answer any of Respondents' questions because Appellants' counsel was not present. Thereafter, Respondents filed a motion for contempt, a motion to compel removal of a lis pendens, motion for protective order against Appellants' counsel's speaking objections during depositions, a motion for stay, and a motion to compel answers to discovery requests.

On June 1, 2001, the circuit court held a hearing to consider motions and matters of concern between the parties. During this hearing, the circuit court acknowledged both parties have at some point failed to cooperate with the discovery process.³ The circuit court then informed both parties discovery must be completed forthwith in order to get the case ready for trial. The circuit court also warned both parties that "if there are any further impediments to the discovery, any other problems with it, I will consider

³ The court noted Respondents failed to appear at various depositions called by Appellants in March 2001, a time when Appellants were not represented by counsel.

sanctions." The circuit court further noted the possible sanctions include dismissing the case altogether for failure to cooperate.

Also during the hearing, the circuit court held Appellants had ten days to provide supplemental answers to Respondents' interrogatories. In addition, the circuit court instructed Appellants to provide documents and answers to Respondents' discovery requests in compliance with the South Carolina Rules of Civil Procedure. Thereafter, the circuit court stated directly to Appellants: "Give [the Respondents] the information they want; quit stonewalling. You run the risk of getting this whole lawsuit thrown out."

As to the lis pendens on Respondents' property, the circuit court held the Respondents needed to provide information proving the property was not related to the law suit and then Appellants would have to remove the lis pendens.

The circuit court considered also Appellants' motion to amend the complaint. The court agreed the complaint should be amended to include all interested parties; however, the court also informed Appellants they "shouldn't serve an amended complaint until you get permission from the court to do that . . . file it and then you can file an amended complaint and serve people." The court then instructed Appellants to "prepare [the court] another order" to add the interested parties. The court also stated that "if [Appellants have] already submitted . . . an order, I'll sign it."

After the circuit court heard and ruled on all motions, the court asked Respondents to prepare an order extending the time for discovery to one hundred and twenty days to allow the new parties time to complete discovery. The court also told Appellants: "I'm going to allow you to amend to add the parties you want to add . . . and allow you to file an amended complaint." Then, before the hearing ended, Respondents asked whether they could "draft a proposed order and it won't be next week or the next week . . .;" the court answered affirmatively.

After the June 2001 hearing, neither party filed any order. A status conference was scheduled for March 18, 2004. The status conference was apparently cancelled when Appellants were late.

In April 2004, Respondents filed a motion to dismiss for failure to prosecute. After a hearing, the circuit court held dismissal was warranted based on Appellants' "willful violation and total disregard of [court orders]" and repeated failure to litigate this matter. The court also held Respondents' counterclaims remained viable. Appellants filed a motion to reconsider, which the circuit court denied. This appeal followed.

STANDARD OF REVIEW

"Whether an action should be dismissed for failure to prosecute is left to the discretion of the [circuit court], and [its] decision will not be disturbed, except upon a clear showing of an abuse of discretion." McComas v. Ross, 368 S.C. 59, 62, 626 S.E.2d 902, 904 (Ct. App. 2006). An abuse of discretion occurs (1) when the court's ruling is based upon an error of law, such as application of the wrong legal principle; (2) when based upon factual conclusions, the ruling is without evidentiary support; (3) when the court is vested with discretion, but the ruling reveals no discretion was exercised; or (4) when the ruling does not fall within the range of permissible decisions applicable in a particular case. Ex parte: Capital U-Drive-It, Inc., 369 S.C. 1, 5, 630 S.E.2d 464, 467 (2006).

LAW/ANALYSIS

I. Dismissal for Failure to Prosecute

Appellants contend the circuit court erred in dismissing their case for failure to prosecute. We disagree.

Rule 41(b), SCRCF, provides that a defendant may move for dismissal of an action for failure of the plaintiff to prosecute or to comply with the

South Carolina Rules of Civil Procedure or any order of court. "The plaintiff has the burden of prosecuting his action, and the trial court may properly dismiss an action for plaintiff's unreasonable neglect in proceeding with his cause." Don Shevey & Spires, Inc. v. Am. Motors Realty Corp., 279 S.C. 58, 60, 301 S.E.2d 757, 758 (1983). "Such power is deemed to be necessarily vested in trial courts [in order for them] to manage their own affairs so as to achieve orderly and expeditious disposition of cases." Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 212, 493 S.E.2d 826, 832 (1997) (citation omitted).

Generally, the dismissal of actions for failure to prosecute is appropriate in cases where: (1) the dismissals are imposed to maintain the orderly disposition of cases in the face of repeated warnings or multiple opportunities to proceed with trial; and (2) only then upon a finding of unreasonable neglect. McComas v. Ross, 368 S.C. 59, 62, 626 S.E.2d 902, 904 (Ct. App. 2006). In addition, "there must be some showing of indifference to the rights of the defendant." Id. at 63, 626 S.E.2d at 904.

As this court noted in McComas, the Fourth Circuit Court of Appeals requires trial courts to consider four factors before dismissing a case for failure to prosecute: 1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the presence of a drawn out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal." Id. at 63, 626 S.E.2d at 904-05 (citing Hillig v. Comm'r of Internal Revenue, 916 F.2d 171, 174 (4th Cir. 1990)).

In this case, we find the circuit court did not commit an abuse of discretion in dismissing Appellants' case for failure to prosecute because the dismissal came after repeated warnings, Appellants had infinite opportunities to move the case forward, Appellants unreasonably neglected to proceed with their cause of action, and Appellants demonstrated an indifference to Respondents' rights. The circuit court instructed Appellants numerous times to comply with discovery and file an amended complaint. The circuit court also warned Appellants that further illegitimate delays in discovery could lead to dismissal. The record fails to demonstrate that Appellants complied

with all of the court's requests.⁴ In addition, the only reason this case has not moved forward is because Appellants have neglected to file an amended complaint; therefore, Appellants had unlimited opportunities to proceed to trial. Further, from the June 2001 hearing through Respondents' filing of the motion to dismiss, Appellants failed to demonstrate that they took any steps toward moving this case forward, and thereby demonstrated an extreme indifference to the rights of the Respondents. Based on these facts, we cannot find the circuit court abused its discretion in dismissing this case.

Appellants assert the trial court erred in relying on Georganne Apparel, Inc. v. Todd, 303 S.C. 87, 399 S.E.2d 16 (Ct. App. 1990). We disagree.

Georganne Apparel involved a long history of delays by the plaintiffs. In September 1986 the circuit court, at the plaintiff's request, struck the case from the trial roster pursuant to Rule 40(c)(3), SCRCF. The case was reinstated a year later at the plaintiff's request. On February 22, 1988, the plaintiff and the defendant accountants entered into a consent order whereby the plaintiff agreed to limit its claim against the accountants to professional negligence only. On May 16, 1988, the circuit court, upon a motion by the defendant accountants, issued an order precluding the plaintiff from calling its designated accounting expert as a witness because the plaintiff had failed to cooperate with the defendant accountants in setting up a deposition of the expert witness. In an order of May 20, 1988, more than two years after the original complaint, the circuit court granted the plaintiff's motion to dismiss the case without prejudice pursuant to Rule 41(a)(2), SCRCF, on the conditions that it pay costs to the defendants before refiling and that it limit the refilled action to those causes of action set forth in the current complaint as limited by the consent order. On September 15, 1988, the plaintiff filed a new complaint which named a new defendant and added numerous causes of action, thereby violating the circuit court's order.

⁴ The Record on Appeal does not contain evidence that Appellant complied with the circuit court's order to provide the documents and information requested by Respondents. Medlock v. One 1985 Jeep Cherokee, 322 S.C. 127, 132, 470 S.E.2d 373, 376 (1996) (the appellant has the burden of presenting a record sufficient to allow the appellate court to make a decision).

The circuit court on November 30, 1988, dismissed the case with prejudice. The court found that the plaintiff's addition of a new defendant and causes of action were in blatant violation of the May 20, 1988, order. The court also stated that it was "mindful of the history of abuse this case presents." The court noted the plaintiff had made representations to the court that were contradicted by an affidavit. The court also found that the defendants were prejudiced by the plaintiff's actions. The circuit court concluded:

In sum, Plaintiff's willful and blatant violation of the expressed terms and conditions contained in [the circuit court's order] of May 20, 1988, is the final chapter in the history of Plaintiff's unwillingness to follow the rules and orders of this Court, which activity brings into disrepute our legal system and the rules under which it operates. Accordingly, and mindful of the totality of circumstances, the Court is of the opinion that it should exercise its discretion under Rule 41(a)(2) and (b) to dismiss these actions with prejudice.

Georganne Apparel, 303 S.C. at 92, 399 S.E.2d at 18-19.

This court held the trial court was clearly within its discretionary powers when it granted relief under the terms of Rule 41(a)(2) and (b) and that the relief granted was not too harsh under the totality of the circumstances. Id. at 92, 399 S.E.2d at 19.

The facts and procedural history in Georganne Apparel do differ from those in the present case as cases are rarely exactly alike. However, as in Georganne Apparel, this case also involves a "willful and blatant violation" of the court's order. The circuit court specifically instructed Appellants to provide an order allowing the amendment of the complaint and to comply with discovery. Appellants failed to comply with these instructions for over two and a half years. As this court stated in Georganne Apparel, "[t]here is a

limit beyond which the court should allow a litigant to consume time of the court and to prolong unnecessarily time, effort, and costs to defending parties.” Id. at 92, 399 S.E.2d at 19. We find no error in the circuit court’s citation of Georganne Apparel.

Appellants contend the circuit court erred in dismissing the case because any substantial delay in prosecuting the case was caused by identifying the numerous heirs to the estate involved and complicated issues not involved in ordinary litigation. This argument was neither raised to nor ruled on by the trial court. Therefore, it is not preserved for our review. See Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”). At the hearing, Appellants’ only argument against dismissal was their counsel’s contention that he believed Respondents’ counsel was going to prepare the order. Respondents’ counsel explained that he only volunteered to draft the discovery scheduling order. Earlier in the June 2001 hearing the circuit court had specifically instructed Appellants’ counsel to draft the order allowing the amendment of Appellants’ complaint. As this was a matter of judging the credibility of the parties, we defer to the circuit court and find the court did not err in declining to accept Appellants’ excuse. See Menne v. Keowee Key Property Owners’ Ass’n, Inc., 368 S.C. 557, 567, 629 S.E.2d 690, 696 (Ct. App. 2006) (“Because the appellate court lacks the opportunity for direct observation of the witnesses, it should accord great deference to trial court findings where matters of credibility are involved.”).

Appellants also argue that public policy favors sanctions be directed toward the individual responsible for violating the court order rather than the innocent parties. Thus, the circuit court should have sanctioned their attorney rather than dismissing their case. This issue was neither raised to nor ruled on by the circuit court. Thus, it is not properly before this court. See Wilder Corp., 330 S.C. at 76, 497 S.E.2d at 733 (“It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”).

II. Failure to Dismiss Respondents' Counterclaims

Appellants next assert the circuit court erred in allowing Respondents to proceed with their counterclaims. We disagree.⁵

On the merits, Rule 41(c), SCRCP, allows the circuit court to dismiss an action, upon a party's motion, for the other party's failure to prosecute a counterclaim, cross-claim, or third-party claim. Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 211, 493 S.E.2d 826, 832 (1997). This court's review of the circuit court's dismissal or non-dismissal of a counterclaim for failure to prosecute is the same as review of dismissal or non-dismissal of plaintiff's cause of action. See Rule 41(c) (providing "[t]he provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim.").

We find the circuit court did not commit an abuse of discretion in holding Respondents' counterclaims remain viable. In this case, Respondents have admittedly failed to take an assertive role in moving the case forward. Undeniably, Respondents impeded discovery by failing to attend depositions in March 2001. Also, Respondents failed to file a proposed order extending the time for discovery to 120 days as ordered by the court at the June 2001 hearing. However, Respondents differ from Appellants in two respects. First, Respondents did not fail to comply with a direct court order. While the court ordered Respondents to file a proposed order extending discovery, the proposed order was contingent upon Appellants' amended complaint as the whole purpose behind the proposed order was to allow new parties time to complete discovery; therefore the discovery order only needed to be filed after Appellants' amended complaint. Second, the onus of pushing for trial was on the Appellants and not the Respondents. As this court stated in Don Shevey & Spires, Inc. v. Am. Motors Realty Corp.:

⁵ We note, despite Respondents' contention, this issue is properly preserved. Appellants preserved this issue because they argued Respondents' counterclaims should be dismissed in their response to Appellants' Motion to Dismiss, and the circuit court ruled upon the issue.

The defendants, no less than the plaintiff, had the right . . . to press for trial; but the duty to do so was the plaintiff's, not theirs. While a defendant may bring about an expeditious trial of a case, he has no legal obligation to do so; except to meet such actions as are taken by the plaintiff, he may remain passive

279 S.C. 58, 60, 301 S.E.2d 757, 759 (1983) (quoting Thomas & Howard Co. v. Fowler, 238 S.C. 46, 52, 119 S.E.2d 97, 100 (1961)). Thus, Respondents were within their right to "remain passive" in the intervening years. Id. Therefore, we find the record supports the circuit court's holding that Respondents may proceed with their counterclaims.

CONCLUSION

Based on the foregoing, we find the circuit court did not err in dismissing Appellant's case for failure to prosecute and allowing Respondents' counterclaims to remain viable. Accordingly, the circuit court is

AFFIRMED.

HUFF and BEATTY, JJ., and CURETON, A.J., concur.

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

IN THE COURT OF
COMMON PLEAS OF
THE SIXTH JUDICIAL
CIRCUIT

Patricia E. King and)
Robbie King Jones, as Representatives of)
W.R. King and Ellen King)
PLAINTIFFS,)

vs.)

COMPLAINT

Margie B. King and Robbie Patricia)
Ione King,)
Individually, and as Co-Personal)
Representatives of Estate of)
Christopher C. King, Deceased and)
Nelson M. King and)
Chester Telephone Company and)
Branch Banking and Trust (BB&T))
DEFENDANTS.)

The above named Plaintiffs, Patricia E. King and Robbie King Jones, allege as follows:

1. The Plaintiff, Patricia E. King, is a citizen and resident of Chester County, South Carolina.
2. The Plaintiff, Robbie King Jones, is a citizen and resident of North Carolina.
3. The Defendants, Margie B. King, Robbie Patricia Ione King, and Nelson M. King are citizens and residents of Chester County South Carolina. The late Christopher C. King died a resident of Chester County, South Carolina on September 1, 1997. On information and belief Margie B. King and Robbie Patricia Ione King were appointed and qualified as Co-Personal Representatives of the Estate of Christopher C. King by the Probate Court for Chester County, South Carolina.

4. Defendant Chester Telephone Company is a duly authorized business enterprise engaged in the telecommunications business in the State of South Carolina.
5. Defendant Branch Banking and Trust Company (BB&T) is a corporation duly organized and authorized to engage in the business of Banking and Finance in the State of South Carolina.
6. This Court has subject matter jurisdiction.

STATEMENT OF FACTS

6. On information and belief, the Plaintiff's parents, W.R. King and Ellen King, purchased Ayres Funeral Home in the 1930's or 40's and subsequently operated this business under the name "King's Funeral Home" until their deaths in 1975 and 1987, respectively. King's Funeral Home was never incorporated.
7. W.R. King died intestate in 1975, and Ellen King died intestate in 1987. Under the applicable intestacy laws of the State of South Carolina, the ownership of King's Funeral Home ultimately passed in equal shares to the surviving children of W.R. King and Ellen King, including the Plaintiffs and the late Christopher C. King.
8. All the children of W.R. King and Ellen King, including the Plaintiffs and the late Christopher C. King, worked for the King's Funeral Home at one time or the other. After the death of Ellen King in 1987, the King children continued to operate the business as Kings Funeral Home. The Plaintiff, Patricia King and the late Christopher C. King were both licensed as Funeral Home Directors pursuant to the applicable state laws.

9. As a part of her responsibilities within the King's Funeral Home, in addition to actually directing funerals on site, the Plaintiff Patricia E. King maintained the books for the funeral home and was authorized to sign checks and pay bills for the business.
10. On or about July 31, 1992, Christopher C. King and the Plaintiffs gave a promissory note in the amount of Two Hundred twenty-five Thousand Dollars (\$225,000.00) to Mechanics and Farmers Bank, in Charlotte, North Carolina (loan) which indebtedness was secured by three insurance policies, two time accounts and two parcels of land, one being a house and lot located at 4332 Hyde Park Drive, Charlotte, North Carolina, owned by the Plaintiff, Robbie King Jones, and the other a building and lot located at 135 Cemetery Street, in Chester, South Carolina, owned by the Plaintiff, Patricia E. King and from which King's Funeral Home has operated since 1980.
11. The Plaintiffs signed the promissory note and allowed their properties to serve as collateral for the loan in an effort to assist their brother Christopher C. King in obtaining the loan to resolve a foreclosure action against a failed car dealership business of his. The late Christopher C. King received the sole benefit of the proceeds of the loan.
12. The Plaintiffs and Christopher C. King entered into an oral agreement (the agreement) whereby Christopher C. King was responsible for making the monthly payments on the loan and ultimately, a balloon payment on the loan in the amount of approximately One Hundred eighty-seven Thousand, Seven Hundred Seventy Six and 85/100 (\$187,776.86) which became due on July 30, 1997, (the balloon payment).

13. For a substantial period of time, and in partial performance of the agreement, Christopher C. King made the loan payments to Mechanics and Farmers Bank in accordance with the terms of the agreement.
14. On information and belief, for a period of time preceding his death On September 1, 1997, Christopher C. King was mentally incompetent as a result of medications he was taking for terminal cancer, and the Defendants, Robbie Patricia Ione King and Margie B. King, acted as his attorney-in-fact by durable power of attorney, dated February 27, 1997 and May 3, 1997, respectively.
15. After Christopher C. King became mentally incompetent, the Defendants, Robbie Patricia Ione King and Margie B. King, failed and refused to make the necessary payments in connection with the loan, and in particular failed and refused to make the Balloon Payment, which became delinquent, thus subjecting the collateral of the Plaintiffs to foreclosure.
16. Due to the failure of Christopher C. King or the Defendants acting as his attorney-in-fact, to make the loan payments as required under the loan agreement, the Plaintiffs were forced to obtain a new loan from Mechanics and Farmers Bank (the new loan) in order to refinance the loan and prevent foreclosure.
17. The Plaintiffs are presently indebted to Mechanics and Farmers Bank in the amount of approximately One Hundred eighty-six Thousand Dollars (\$186,000.00) as a result of their refinancing of the old loan.
18. Immediately prior to the death of Christopher C. King, at a time when the plaintiffs are informed and believe that Christopher C. King had been rendered mentally incompetent by his cancer medications, he substantially conveyed all of the assets of

his estate to his wife, the Defendant, Margie B. King by deeds dated August 20, 1997 in the office of the Clerk of Court for Chester County, South Carolina. The Plaintiffs are informed and believes that this deed was executed in an effort to avoid the claims of any creditors of the Estate of Christopher C. King.

19. In June of 1997, Plaintiff Patricia E. King discovered that her name had been removed as an authorized signatory from the bank account of King's Funeral Home at Branch Banking and Trust (BB&T), and subsequently the telephone for the King's Funeral Home business which rings in her residence was turned off by the telephone company on the urging of the Defendants without Plaintiff's consent, thereby denying her access to the good will built over the years from the time her parents ran the King's Funeral Home business till the time she ran it in concert with the late Christopher C. King.

COUNT I

20. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
21. By failing to make monthly payments and the Balloon Payment on the loan as required under the terms of the agreement, Christopher C. King and the Defendants, Margie B. King and Robbie Patricia Ione King, acting as his agents breached said agreement.
22. As a direct result of the said breach, the Plaintiffs have been damaged in that they were required to incur the expense of refinancing the loan and now remain responsible for the outstanding balance of the new loan.

COUNT II

RECOURSE AGAINST ACCOMODATION PARTY

23. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
24. The Plaintiffs were accommodation parties with respect to the loan pursuant to either Section 36-3-415 of the Code of Laws of South Carolina, 1976 as amended or Section 25-3-419 of the General Statutes of North Carolina.
25. As accommodation parties, the Plaintiffs are entitled to be reimbursed by the Defendants, Margie B. King and Robbie Patricia Ione King, both individually and as Co-Personal Representatives of the Estate of Christopher C. King, for the balance on the loan that they paid off and for all additional expenses incurred by the Plaintiffs in obtaining the new loan.

COUNT III

ACCOUNTING AND DISTRIBUTION OF PROFITS

26. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
27. The Plaintiffs have made demands but have not received any distributions of profits from King's Funeral Home since Christopher C. King became mentally incompetent. The Plaintiffs have also been denied access to the books and records of King's Funeral Home.
28. On information and belief, the Defendants, Margie B. King, Robbie Patricia Ione King and Nelson M. King are still receiving distributions from King's Funeral Home to the exclusion of the Plaintiffs.

29. By virtue of their ownership interest in King's Funeral Home, the Plaintiffs are entitled to have the Defendant's account for the profits of King's Funeral Home, to inspect the books and records of King's Funeral Home, and to have their proportional share of the profits distributed to them.

COUNT IV

APPOINTMENT OF RECEIVER

30. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
31. The Plaintiffs are informed and believes that the Defendants, Margie B. King, Robbie Patricia Ione King and Nelson M. King have operated King's Funeral Home since the death of Christopher C. King for their sole benefit to the exclusion of the Plaintiffs and the other children of W.R. King and Ellen King, and that the Defendants have diverted the revenue of King's Funeral Home to their own uses.
32. The Plaintiffs are informed and believes that there is a likelihood the assets and revenues of King's Funeral Home will be dissipated during the pendency of this litigation and thus are entitle to have a receiver appointed to manage the financial affairs of King's Funeral Home and to protect the ownership interests of the Plaintiffs and the other children of W.R King and Ellen King.

COUNT V

INJUNCTION

33. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein to the extent not inconsistent herewith.

34. The Plaintiffs are informed and believes that there is a substantial risk that the business and assets of King's Funeral Home will be irreparably harmed if the Defendants are allowed to continue operating the business for their own benefit during the pendency of this action.
35. Plaintiffs are informed and believe that they are entitled to a temporary restraining order, and preliminary and permanent injunctions to enjoin the Defendants from removing or directing to their own use any of the assets of King's Funeral Home, including but not limited to any mail, monies in the bank accounts, pre-need contracts, and customer accounts and requiring that all revenues generated by the business be held in escrow during the pendency of the action.
36. Plaintiff further prays this court for a temporary and permanent injunction, enjoining the Defendants from expropriating any assets of King's Funeral Home including the good will cultivated and gained over the years by transferring the phone number or expropriating the phone number the business has come to be identified by.

COUNT VI

FRAUDULENT CONVEYANCE PURSUANT

TO S.C. CODE SECTION 27-23-10

37. The Preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
38. On information and belief, the deed from Christopher C. King to Margie B. King dated August 19, 1997 and recorded August 20, 1997 in the office of the Clerk of Court for

Chester County, South Carolina (the Deed) was executed with fraudulent intent and in an attempt to avoid the claims of creditors against the Estate of Christopher C. King.

39. On information and belief, the Deed was executed without the receipt of valuable consideration by Christopher C. King.
40. On information and belief, in light of the mental capacity of Christopher C. King during the months preceding his deaths or may have been subject to undue influence and coercion in executing the deed.
41. On information and belief, the Defendants caused the deed to be executed with willful, wanton or reckless disregard of the Plaintiffs' rights and in all attempt to avoid the claims of creditors against the Estate of Christopher C. King.
42. At the time the Deed was executed, Christopher C. King was indebted to the Plaintiffs in various amounts for the claims set forth in this Complaint, all of which claims are hereby incorporated by reference.
43. Pursuant to Section 62-1-106 of the Code of Laws of South Carolina, 1976 as amended, any person injured by an act of fraud "used to avoid or circumvent the provisions or purposes of this probate code" is entitled to obtain appropriate relief against the perpetrators of the fraud.
44. Pursuant to Section 62-3-710 of the Code of Laws of South Carolina, 1976 as amended, the personal representative of an estate has the authority to avoid any transfer of property made by the decedent which would be void or voidable as against the decedents creditors.
45. The Plaintiffs are informed and believes that they have been damaged by the transfer of property from Christopher C. King to Margie B. King by way of the Deed in that there

are insufficient assets in the Estate of Christopher C. King to satisfy the Plaintiff's claims against the said estate.

46. Margie B. King became the attorney-in-fact of the late Christopher C. King in February of 1997, and in August of the same year the late Christopher C. King conveyed substantially all his Estate by a deed to the same Margie B. King.
47. The Plaintiffs are informed and believes that pursuant to Section 27-23-10 of the Code of laws of South Carolina 1976 as amended, they are entitled to an Order finding the Deed to be null and void as an attempt to avoid the claims of the Plaintiffs and other creditors of the Estate of Christopher C. King, and that they are entitled to punitive damages in such amount as shall be proven at trial.

COUNT VII

COMMON LAW FRAUDULENT CONVEYANCES

48. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
49. The Defendant Margie B. King was not a good faith purchaser for value of the real estate conveyed pursuant to the Deed.
50. Because the Deed was executed in an attempt to avoid the claims of creditors of the estate of Christopher C. King, including the claims of the Plaintiffs, the Plaintiffs are informed and believe that they are entitled to an Order finding the Deed null and void, and that they are entitled to punitive damages in such amount as shall be proven at trial.

COUNT VIII

BREACH OF TRUST

51. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
52. A defacto partnership existed between Christopher C. King and all of the other children of W.R. King and Ellen King, including the Plaintiffs for the operation of King's Funeral Home.
53. Christopher C. King and the Defendants Margie B. King and Robbie Patricia Ione King, acting as his agents, owed a fiduciary duty to the other partners of the partnership not to appropriate assets of the partnership to their own uses and personal benefits.
54. By failing to distribute any profits of the partnership to the other partners Christopher C. King and the Defendants breached their fiduciary obligation to the Plaintiffs and the other children of W.R. and Ellen King.
55. The Plaintiffs have been damaged by this breach of fiduciary duty, in that they have not been allowed to share in the profits of the partnership.

COUNT IX

CONVERSION

56. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
57. The assets of King's Funeral Home belong to the children of W.R. King and Ellen King, by virtue of such assets passing by intestacy at the death of W.R. and Ellen King.

58. The Defendants, Margie B. King, Robbie Patricia Ione King and Nelson M. King have executed all rights of ownership over the assets of King's Funeral Home in willful, wanton and reckless disregard of the Plaintiff's rights in the partnership.
59. The Plaintiffs have been damaged by the Defendants conversion of the assets of the King's Funeral Home.

COUNT X

FAILURE TO PAY RENT

60. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
61. On or about July 16, 1980, the Plaintiff Patricia E. King and Christopher C. King entered into a lease agreement (the Lease Agreement) whereby Christopher C. King leased the property located at 135 Cemetery Street, Chester, South Carolina from the Plaintiff in order to operate King's Funeral Home at said location.
62. On or about August 20, 1997, pursuant to the terms of the lease agreement, the Plaintiff Patricia E. King terminated the lease by delivering written notice to Christopher C. King and the Defendants.
63. Despite the Plaintiff Patricia E. King's termination of the lease agreement, the Defendants, Margie B. King, Robbie Patricia Ione King and Nelson M. King have continued to use the above described property for the operation of King's Funeral Home and have failed to pay any rent for the uses of the premises.
64. The Plaintiff Patricia E. King is informed and believes that she is entitled to receive back rent for the period of time the Defendants have occupied the premises following the termination of the lease agreement.

COUNT XI

EJECTMENT

65. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
66. The Plaintiff Patricia E. King is the owner of the premises located at 135 Cemetery Street, Chester County, South Carolina.
67. A landlord-tenant relationship existed between the Plaintiff Patricia E. King and Christopher C. King, as evidenced by the lease agreement.
68. By letter dated August 20, 1997, the plaintiff Patricia E. king terminated the lease agreement, but the Defendants, Margie B. King, Robbie Patricia Ione King, and Nelson M. King, have remained in possession of the premises.
69. The Plaintiff Patricia E. King is informed and believes that she is entitled to have the Defendants evicted from the said premises on the ground that the lease agreement has ended.

COUNT XII

DEFENDANT B B & T TORTOUS

INTERFERENCE WITH BUSINESS

70. As a partner of the king's Funeral Home business, the Plaintiff Patricia E. King has always been one of signatory for the Partnership bank account.
71. As a signatory to the partnership bank account, the Plaintiff had access to the bank account, and account balance.
72. On or about June 1997, plaintiff Patricia E. King's name as a signatory was intentionally and willfully deleted as a signatory to the King's Funeral Home account.

73. The Bank did not consult Plaintiff Patricia E. King before deleting her name from the King's Funeral Home account.
74. On numerous occasions since June 1997, plaintiff Patricia E. King has approached the bank to put her name back as a signatory to the funeral home accounts, and on each occasions the bank has refused to honor this request.
75. Plaintiff Patricia E. King is informed and believes that Defendants Margie B. King, Robbie Patricia Ione King and Nelson M. King have conspired with the bank to interfere with her business relationship with the King's Funeral Home.
76. Plaintiff Patricia E. King is informed and believes that the Bank (B B & T) has violated the fiduciary relationship owed to her as a signatory without notice and continuing to refuse to put her back as a signatory to King's Funeral Home account.
77. Plaintiff is informed and believes that the blatant action of (B B & T) has damaged her to an amount to be proven at trial and this continuous act of B B & T in refusing to put her back as a signatory will further damage business relationship with King's Funeral Home irreparably.

COUNT XIII

TORTUOUS INTERFERENCE WITH
BUSINESS ON THE PLAINTIFFS BY
CHESTER TELEPHONE COMPANY

79. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
80. As a partner of King's Funeral Home, Plaintiff has the King's Funeral Home assigned telephone number, assigned to her residence. This allows Plaintiff to monitor the

transactions of King's Funeral Home from her residence, for the protection of Plaintiff and this Plaintiff class. This phone number had been maintained at this residence for over 30 years.

81. On or about summer 1998; the telephone number at Plaintiff's residence which allows Plaintiff to monitor the transactions of Plaintiff's partnership (King's Funeral Home) was disconnected from ringing at Plaintiff's residence.
82. The assigned number of King's Funeral Home which is Plaintiff's only medium of monitoring the transactions of the funeral home no longer rings at Plaintiff Patricia E. King's residence, and only rings at the funeral home.
83. Plaintiff is informed and believes that the Chester Telephone Company was approached by the Defendants Margie B. King, Robbie Patricia Ione King and Nelson M. King to effect the disconnection of the telephone from ringing at the residence of the Plaintiff Patricia E. King.
84. The Chester Telephone Company did not bother to get permission of the Plaintiff before disconnecting the phone from ringing at her residence.
85. Plaintiff is informed and believes that the Chester Telephone Company by disconnecting the King's Funeral business telephone number from ringing at her residence without her consent, has interfered tortuously with her business relationship.
86. Plaintiff Patricia E. King, is informed and believes that the actions and conduct of Chester Telephone Company in disconnecting her business telephone without notice and consent has damaged her to an amount to be proven at the trial.

COUNT XIV

REMEDIAL WRIT OF MANDAMMUS,
COMPELLING DEFENDANTS B B & T
AND CHESTER TELEPHONE COMPANY

87. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
88. Plaintiff Patricia E. King as a representative of the siblings of W.R. King and Ellen King outside the Defendant class maintained in her residence the business phone of King's Funeral Home's assigned phone number to monitor the daily business transactions of the funeral home for over 30 years, this has been the mode of operation of the King's Funeral Home business.
89. By agreement, Plaintiff was maintained as a signatory of the King's Funeral Home bank account giving her access to the financial transactions of the business and allowing her to perform the duties of bookkeeper among her other duties with the King's Funeral Home.
90. On information and belief, on or about the summer of 1997, the Defendants Margie B. King, Robbie Patricia Ione King and Nelson M. King, in conjunction with the Bank (BB&T) conspired to delete Plaintiff as a signatory of the King's Funeral Home bank account and continues to do so.
91. On information and belief, on or about the Summer of 1998 Defendants Margie B. King and Robbie Patricia Ione King conspired with the telephone company to disconnect the King's Funeral Home business phone from ringing at Plaintiff Patricia E. King's residence.

92. Plaintiffs are informed and believe that they are entitled to a writ of mandamus compelling the Defendant Bank (B B& T) to restore the business status quo from Summer of 1997, and telephone company (Chester Telephone Company) to conform to the partnership status quo prior to the summer of 1998.

WHEREFORE, the Plaintiffs pray for relief against the Defendants as follows:

- a. For a judgment against the Defendants Margie B. King, Robbie Patricia Ione King, both individually and as Co-Personal Representatives of the Estate of Christopher C. King, for the amount of the outstanding balance of the new loan and all additional incidental expenses incurred by the Plaintiffs in obtaining the new loan.
- b. For an Order requiring the Defendants to account for the profits generated by king's Funeral Home since the incompetence of Christopher C. king and to distribute to the Plaintiffs their proportionate share of the said profits.
- c. For an Order appointing a receiver to manage the financial affairs of King's Funeral Home.
- d. For a Temporary Restraining Order and preliminary and permanent injunction to enjoin the Defendants Margie B. King, Robbie Patricia Ione King and Nelson M. king from removing any of the assets of king's Funeral Home, including but not limited to any mails, monies in bank accounts, pre-need contracts, and customer accounts and requiring that all subsequent revenues generated by King's Funeral Home be held in escrow during the pendency of this litigation.
- e. For an Order finding the conveyance made by the Deed from Christopher C. King to Margie B. King to be null and void to the extent necessary to satisfy any judgment of the Plaintiffs against the Estate of Christopher C. King.

- f. For a judgment against the Defendants Margie B. King and Robbie Patricia Ione King individually and as Co-Personal Representatives of the Estate of Christopher C. King, in an amount to be determined for the failure of Christopher C. King or the Defendants acting as his agents, to distribute profits to the Plaintiffs, as defacto partners in the business of the King's Funeral Home.
- g. For a Judgment against the Defendants Margie B. King, Robbie Patricia Ione King and Nelson M. King, in an amount to be determined for the rent due the Plaintiff Patricia E. King for the use of real estate owned individually by her for the operation of King's Funeral Home.
- h. For an Order evicting the Defendant's from the property owned by the Plaintiff Patricia E. King and located at 135 Cemetery Street, Chester, South Carolina.
- i. For an Order against Defendants Bank Branch Banking and Trust (B B & T) for its tortuous interference with Plaintiff's business relationship in an amount to be determined at trial.
- j. For an Order against Defendant Telephone Company (Chester Telephone Company) for its intentional tortuous interference with Plaintiff's business relationship in an amount to be determined at trial.
- k. For an Order against Defendant telephone company (Chester Telephone Company) for its intentional tortuous interference with plaintiff's business relationship in an amount to be determined at trial.
- l. For a writ of mandamus compelling both Defendants bank (B B & T) and telephone company (Chester Telephone Company) to maintain the King's Funeral Home business status quo prior to the summer of 1997.

m. For punitive damages, the cost of this action, including reasonable attorney fees and such other further relief as this Court deems just and proper.

Respectfully Submitted,



THE CROMARTIE LAW FIRM

Cletus K. Okpalaeke

1607 Harden Street

Columbia, South Carolina 29204

(803) 256-3462

Attorneys for the Plaintiff(s)

Columbia, South Carolina

Dated NOV 12, 1998

ORIGINAL FILED

FEB 09 1993

LARRY W. PROPER, CLERK
COLUMBIA, S. C.

Plaintiffs,

vs.

MARGIE B. KING and
ROBBIE PATRICIA IONE KING,
Individually, and as Co-Personal
Representatives of Estate of
CHRISTOPHER C. KING, Deceased,
and NELSON M. KING,

Defendants.

0 98-0346 19-

COMPLAINT
(NON-JURY)

Civil Action No. 98-

1. The Plaintiffs are citizens and residents of Mecklenburg County, North Carolina.

3. The amount in controversy in this action is in excess of \$75,000.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.

§ 1332.

5070559.2

Record pp. 51

STATEMENT OF FACTS

5. On information and belief, the Plaintiffs' parents, W.R. KING and ELLEN KING, purchased Ayres Funeral Home in the 1930's or 40's and subsequently operated this business under the name "King's Funeral Home" until their deaths in 1975 and 1987, respectively. King's Funeral Home was never incorporated.

6. W.R. KING died intestate in 1975, and ELLEN KING died intestate in 1987. Under the applicable intestacy laws of the State of South Carolina, the ownership of King's Funeral Home ultimately passed in equal shares to the surviving children of W.R. KING and ELLEN KING, including the Plaintiffs and the late CHRISTOPHER C. KING.

7. All of the children of W.R. KING and ELLEN KING, including the Plaintiffs and CHRISTOPHER C. KING worked for King's Funeral Home from time to time. After the death of ELLEN KING in 1987, the children continued to operate the business as King's Funeral Home. The Plaintiff PATRICIA E. KING and CHRISTOPHER C. KING were both licensed as funeral home directors pursuant to applicable law.

8. As a part of her responsibilities within King's Funeral Home, in addition to actually directing funerals on site, the Plaintiff PATRICIA E. KING maintained the books for King's Funeral Home and was authorized to sign checks and pay bills for the business.

9. On or about July 31, 1992, CHRISTOPHER C. KING and the Plaintiffs gave a promissory note in the amount of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) to Mechanics and Farmers Bank, in Charlotte, North Carolina (the "Loan"), which indebtedness was secured by three insurance policies, two time accounts, and two parcels of land, one being a

house and lot located at 4332 Hyde Park Drive, Charlotte, North Carolina, owned by the Plaintiff, ROBBIE KING JONES, and the other a building and lot located at 135 Cemetery Street, in Chester, South Carolina, owned by the Plaintiff, PATRICIA E. KING, and from which King's Funeral Home has been operated since 1980.

10. The Plaintiffs signed the promissory note and allowed their property to serve as collateral for the Loan in an effort to assist their brother CHRISTOPHER C. KING in obtaining the Loan to resolve a foreclosure action against a failed car dealership business of his. CHRISTOPHER C. KING received the sole benefit of the proceeds of the Loan.

11. The Plaintiffs and CHRISTOPHER C. KING entered into an oral agreement (the "Agreement"), whereby CHRISTOPHER C. KING was responsible for making the monthly payments on the Loan and, ultimately, a balloon payment on the Loan in the amount of approximately One Hundred Eighty-Seven Thousand Seven Hundred Seventy-Six and 86/100 (\$187,776.86), which became due on July 30, 1997 (the "Balloon Payment").

12. For a substantial period of time, and in partial performance of the Agreement, CHRISTOPHER C. KING made the loan payments to Mechanics and Farmers Bank in accordance with the terms of the Agreement.

13. On information and belief, for a period of time preceding his death on September 1, 1997, CHRISTOPHER C. KING was mentally incompetent as a result of medication he was taking for terminal cancer, and the Defendants, ROBBIE PATRICIA IONE KING and MARGIE B. KING, acted as his attorneys-in-fact by Durable Powers of Attorney dated February 27, 1997 and May 3, 1997, respectively.

14. After CHRISTOPHER C. KING became mentally incompetent, the Defendants, ROBBIE PATRICIA IONE KING and MARGIE B. KING, failed and refused to make the necessary payments in connection with the Loan, and, in particular, failed and refused to make the Balloon Payment, which became delinquent, thus subjecting the collateral of the Plaintiffs to foreclosure.

15. Due to the failure of CHRISTOPHER C. KING or the Defendants, acting as his attorneys-in-fact, to make the loan payments required under the Agreement, the Plaintiffs were required to obtain a new loan from Mechanics and Farmers Bank (the "New Loan") in order to refinance the Loan and to prevent foreclosure.

16. The Plaintiffs are presently indebted to Mechanics and Farmers Bank in the amount of approximately One Hundred Eighty-Six Thousand Dollars (\$186,000) as a result of their refinancing of the Loan.

17. Immediately prior to the death of CHRISTOPHER C. KING, at a time when the Plaintiffs are informed and believe he was mentally incompetent, CHRISTOPHER C. KING conveyed substantially all of the assets of his estate to his wife, the Defendant MARGIE B. KING by deed dated August 19, 1997 and recorded August 20, 1997 in the Office of the Clerk of Court for Chester County, South Carolina. The Plaintiffs are informed and believe that this Deed was executed in an effort to avoid the claims of any creditors of the Estate of CHRISTOPHER C. KING.

18. In June of 1997, said Plaintiff discovered that her name had been removed as an authorized signatory from the bank account of King's Funeral Home.

FIRST CAUSE OF ACTION

(Breach of Contract)

19. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.

20. By failing to make monthly payments and the Balloon Payment on the Loan, as required under the terms of the Agreement, CHRISTOPHER C. KING and the Defendants, MARGIE B. KING and ROBBIE PATRICIA IONE KING, acting as his agents, breached said Agreement.

21. As a result of this breach of agreement, the Plaintiffs have been damaged in that they were required to incur the expense of refinancing the Loan and now remain responsible for the outstanding balance of the New Loan.

SECOND CAUSE OF ACTION

(Recourse against Accommodated Party)

22. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.

23. The Plaintiffs were accommodation parties with respect to the Loan pursuant to either Section 36-3-415 of the Code of Laws of South Carolina, 1976, as amended, or Section 25-3-419 of the General Statutes of North Carolina.

24. As accommodation parties, the Plaintiffs are entitled to be reimbursed by the Defendants, MARGIE B. KING and ROBBIE PATRICIA IONE KING, both individually and as Co-Personal Representatives of the Estate of CHRISTOPHER C. KING, for the balance on the

Loan that they paid off and for all additional expenses incurred by the Plaintiffs in obtaining the New Loan.

THIRD CAUSE OF ACTION

(Accounting and Distribution of Profits)

25. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.

26. The Plaintiffs have made demands but have not received any distributions of profits from King's Funeral Home since CHRISTOPHER C. KING became mentally incompetent. The Plaintiffs have also been denied access to the books and records of King's Funeral Home.

27. On information and belief, the Defendants, MARGIE B. KING, ROBBIE PATRICIA IONE KING and NELSON M. KING, are still receiving distributions from King's Funeral Home.

28. By virtue of their ownership interest in King's Funeral Home, the Plaintiffs are entitled to have the Defendants account for the profits of King's Funeral Home, to inspect the books and records of King's Funeral Home, and to have their proportionate share of the profits distributed to them.

FOURTH CAUSE OF ACTION

(Appointment of Receiver)

29. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.

30. The Plaintiffs are informed and believe that the Defendants, MARGIE B. KING, ROBBIE PATRICIA IONE KING and NELSON M. KING, have operated King's Funeral Home since the death of CHRISTOPHER C. KING for their sole benefit, to the exclusion of the Plaintiffs and the other children of W.R. KING and ELLEN KING, and that the Defendants have diverted the revenues of King's Funeral Home to their own uses.

31. The Plaintiffs are informed and believe that there is a likelihood the assets and revenues of King's Funeral Home will be dissipated during the pendency of this litigation and thus are entitled to have a receiver appointed to manage the financial affairs of King's Funeral Home and to protect the ownership interests of the Plaintiffs and the other children of W.R. KING and ELLEN KING.

FIFTH CAUSE OF ACTION

(Injunction)

32. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.

33. The Plaintiffs are informed and believe that there is a substantial risk that the business and assets of King's Funeral Home will be irreparably harmed if the Defendants are allowed to continue operating King's Funeral Home for their own benefit during the pendency of this litigation.

34. The Plaintiffs are informed and believe that they are entitled to a temporary restraining order, and preliminary and permanent injunctions, to enjoin the Defendants from removing or diverting to their own use any of the assets of King's Funeral Home, including but not limited to any mail, monies in bank accounts, pre-need contracts, and customer accounts, and

requiring that all revenues generated by King's Funeral Home be held in escrow during the pendency of this litigation.

SIXTH CAUSE OF ACTION

(Fraudulent Conveyances pursuant to S.C. Code § 27-23-10)

35. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.

36. On information and belief, the deed from CHRISTOPHER C. KING to MARGIE B. KING dated August 19, 1997 and recorded August 20, 1997 in the Office of the Clerk of Court for Chester County, South Carolina (the "Deed"), was executed with fraudulent intent and in an attempt to avoid the claims of creditors against the Estate of CHRISTOPHER C. KING.

37. On information and belief, the Deed was executed without the receipt of valuable consideration by CHRISTOPHER C. KING.

38. On information and belief, in light of the mental incapacity of CHRISTOPHER C. KING during the months preceding his death, he was or may have been subject to undue influence and coercion in executing the Deed.

39. On information and belief, the Defendants caused the Deed to be executed with willful, wanton or reckless disregard of the Plaintiffs' rights, and in an attempt to avoid the claims of creditors against the Estate of CHRISTOPHER C. KING.

40. At the time the Deed was executed, CHRISTOPHER C. KING was indebted to the Plaintiffs in various amounts for the claims set forth in this Complaint, all of which claims are hereby incorporated herein by reference.

46. The Defendant MARGIE B. KING was not a good-faith purchaser for value of the real estate conveyed pursuant to the Deed.

47. Because the Deed was executed in an attempt to avoid the claims of creditors of the Estate of CHRISTOPHER C. KING, including the claims of the Plaintiffs, the Plaintiffs are informed and believe that they are entitled to an order finding the Deed to be null and void, and that they are entitled to punitive damages in such amount as shall be proven at trial.

EIGHTH CAUSE OF ACTION

(Breach of Trust)

48. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.

49. A de facto partnership existed between CHRISTOPHER C. KING and all of the other children of W.R. KING and ELLEN KING, including the Plaintiffs, for the operation of King's Funeral Home.

50. CHRISTOPHER C. KING and the Defendants, MARGIE B. KING and ROBBIE PATRICIA IONE KING, acting as his agents, owed a fiduciary duty to the other partners of the partnership not to appropriate assets of the partnership to their own personal benefit.

51. By failing to distribute any of the profits of the partnership to the other partners, CHRISTOPHER C. KING and the Defendants breached this fiduciary duty to the Plaintiffs and the other children of W.R. KING and ELLEN KING.

52. The Plaintiffs have been damaged by this breach of fiduciary duty, in that they have not been allowed to share in the profits of the partnership.

NINTH CAUSE OF ACTION

(Conversion)

53. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.

54. The assets of King's Funeral home belong to the children of W.R. KING and ELLEN KING, by virtue of such assets passing by intestacy at the deaths of W.R. KING and ELLEN KING.

55. The Defendants, MARGIE B. KING, ROBBIE PATRICIA IONE KING and NELSON M. KING, have exercised all rights of ownership over the assets of King's Funeral Home, in willful, wanton and reckless disregard of the Plaintiffs' rights in the partnership.

56. The Plaintiffs have been damaged by the Defendants' conversion of the assets of King's Funeral Home.

TENTH CAUSE OF ACTION

(Failure to Pay Rent)

57. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.

58. On or about July 16, 1980, the Plaintiff PATRICIA E. KING and CHRISTOPHER C. KING entered into a lease agreement (the "Lease Agreement"), whereby CHRISTOPHER C. KING leased the property located at 135 Cemetery Street, Chester, South Carolina, from said Plaintiff in order to operate King's Funeral Home at said location.

59. On or about August 20, 1997, pursuant to the terms of the Lease Agreement, the Plaintiff PATRICIA E. KING terminated the lease by delivering written notice to CHRISTOPHER C. KING and the Defendants.

60. Despite the Plaintiff PATRICIA E. KING's termination of the Lease Agreement, the Defendants, MARGIE B. KING, ROBBIE PATRICIA IONE KING and NELSON M. KING, have continued to use the above-described property for the operation of King's Funeral Home and have failed to pay any rent for the use of the premises.

61. The Plaintiff PATRICIA E. KING is informed and believes that she is entitled to receive back rent for the period of time the Defendants have occupied the premises following the termination of the Lease Agreement.

ELEVENTH CAUSE OF ACTION

(Ejectment)

62. The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.

63. The Plaintiff PATRICIA E. KING is the owner of the premises located at 135 Cemetery Street, Chester, Chester County, South Carolina.

64. A landlord-tenant relationship existed between the Plaintiff PATRICIA E. KING and CHRISTOPHER C. KING, as evidenced by the Lease Agreement.

65. By letter dated August 20, 1997, the Plaintiff PATRICIA E. KING terminated the Lease Agreement, but the Defendants, MARGIE B. KING, ROBBIE PATRICIA IONE KING and NELSON M. KING, have remained in possession of the premises.

66. The Plaintiff PATRICIA E. KING is informed and believes that she is entitled to have the Defendants evicted from the said premises on the ground that the Lease Agreement has ended.

WHEREFORE, the Plaintiffs pray for relief against the Defendants as follows:

A. For a judgment against the Defendants, MARGIE B. KING and ROBBIE PATRICIA IONE KING, both individually and as Co-Personal Representatives of the Estate of CHRISTOPHER C. KING, for the amount of the outstanding balance of the New Loan and all additional expenses incurred by the Plaintiffs in obtaining the New Loan.

B. For an order requiring the Defendants to account for the profits generated by King's Funeral Home since the incompetency of CHRISTOPHER C. KING and to distribute to the Plaintiffs their proportionate share of said profits.

C. For an order appointing a receiver to manage the financial affairs of King's Funeral Home.

D. For a temporary restraining order, and preliminary and permanent injunctions, to enjoin the Defendants from removing any of the assets of King's Funeral Home, including but not limited to any mail, monies in bank accounts, pre-need contracts, and customer accounts, and requiring that all subsequent revenues generated by King's Funeral Home be held in escrow during the pendency of this litigation.

E. For an order finding the conveyances made by the Deed from CHRISTOPHER C. KING to MARGIE B. KING to be null and void to the extent necessary to satisfy any judgments of the Plaintiffs against the Estate of CHRISTOPHER C. KING.

F. For a judgment against the Defendants, MARGIE B. KING and ROBBIE PATRICIA IONE KING, both individually and as Co-Personal Representatives of the Estate of CHRISTOPHER C. KING, in an amount to be determined for the failure of CHRISTOPHER C. KING or the Defendants, acting as his agents, to distribute profits to the Plaintiffs, as de facto partners in the business of King's Funeral Home.

G. For a judgment against the Defendants in an amount to be determined for the Defendants' conversion of the assets of King's Funeral Home.

H. For a judgment against the Defendants in an amount to be determined for the rent due the Plaintiff PATRICIA E. KING for the use of real estate owned by her for the operation of King's Funeral Home.

I. For an order evicting the Defendants from the property owned by the Plaintiff PATRICIA E. KING and located at 135 Cemetery Street, Chester, South Carolina.

J. For punitive damages, the costs of this action, including reasonable attorney fees, and such other and further relief as this court may deem just and proper.

This 5th day of February, 1998.

W. Keith Martens
Herbert W. Hamilton
W. Keith Martens
KENNEDY COVINGTON LOBDELL &
HICKMAN, L.L.P.
113 East Main Street
Rock Hill, South Carolina 29731-1429
(803) 329-7600
Attorneys for Plaintiffs

5070569.2

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

C/A No.: 98-CP-12-325

Patricia E. King and Robbie
King Jones, as representatives of
W.R. King and Ellen King,

Plaintiffs,

vs.

Margie B. King and Robbie
Patricia Ione King,
individually and as co-personal
representatives of the Estate
of Christopher C. King, deceased
and Nelson M. King, Chester
Telephone Company and Branch
Banking & Trust (BB&T),

Defendants.

ANSWER & COUNTERCLAIM

FILED

1998 OCT 14 A 9 45

SIXTH JUDICIAL CIRCUIT
SOUTH CAROLINA

The Defendants, Margie B. King and Robbie Patricia Ione King, individually and as co-personal representatives of the Estate of Christopher C. King, deceased and Nelson M. King (the King Defendants) not waiving but specifically reserving their rights to be heard under all Rule 12 Motions, answering the Complaint herein, would respectfully show unto this Court that:

FOR A FIRST DEFENSE

1. Any allegations not specifically admitted or qualified are hereby denied.
2. These Defendants lack sufficient information to admit or deny the allegations of Paragraph One of the Complaint.
3. These Defendants lack sufficient information to admit or deny the allegations of Paragraph Two of the Complaint.
4. These Defendants admit the allegations of Paragraph Three of the Complaint.

5. These Defendants lack sufficient information to admit or deny the allegations of Paragraph Four of the Complaint.

6. These Defendants lack sufficient information to admit or deny the allegations of Paragraph Five of the Complaint.

7. These Defendants admit the allegations of Paragraph Six of the Complaint.

8. The allegations contained in the second Paragraph numbered 6 are denied as worded.

9. In response to the allegations of Paragraph Seven of the Complaint, these Defendants deny the allegations of Paragraph Seven as worded and would allege that on information and belief that W.R. King died with a will in 1975. These Defendants also deny the allegations in the Complaint which allege that the Funeral Home passed in equal shares to the surviving children of W.R. King and Ellen King. These Defendants allege that W.R. King and Ellen King made an *inter vivos* gift of the Funeral Home to Christopher C. King.

10. These Defendants deny the allegations of Paragraph Eight of the Complaint that state that all of the children of W.R. King and Ellen King including the Plaintiffs worked for King's Funeral Home from time to time. These Defendants would allege that only Christopher C. King operated King's Funeral Home and that none of the other children of W.R. King and Ellen King were involved in the running of King's Funeral Home. On information and belief, these Defendants admit that Patricia E. King is a licensed funeral home director pursuant to applicable law.

11. These Defendants deny the allegations of Paragraph Nine of the Complaint and would only admit that portion of Paragraph Nine which alleges that Plaintiff Patricia E. King was authorized to sign checks for the limited purposes of making lease payments.

12. These Defendants deny the allegations of Paragraph Ten of the Complaint as worded.

13. These Defendants are without sufficient information to admit or deny the allegations of Paragraph Eleven of the Complaint and deny the same.

14. These Defendants are without sufficient information or knowledge to form an opinion or belief as to the allegations contained in Paragraphs 12 and 13 of the Complaint and therefore deny the same and demand strict proof thereof.

15. These Defendants deny the allegations of Paragraph Fourteen of the Complaint that state that Christopher C. King was mentally incompetent up until the time of his death. These Defendants admit that Robbie Patricia Ione King and Margie B. King were granted powers of attorney for Christopher C. King.

16. These Defendants deny the allegations of Paragraph Fifteen of the Complaint.

17. On information and belief, these Defendants deny the allegations of Paragraph Sixteen of the Complaint and would allege that the Plaintiffs, as co-makers of the promissory note, were equally liable on the note and that their refusal to make payments on the loan required them to obtain a new loan.

18. These Defendants lack sufficient information to respond to the allegations of Paragraph Seventeen of the Complaint.

19. These Defendants deny the allegations of Paragraph Eighteen of the Complaint that state that Christopher C. King was mentally incompetent. These Defendants deny the remaining allegations of Paragraph Eighteen of the Complaint.

20. These Defendants deny the allegations of Paragraph Nineteen of the Complaint as worded.

21. The allegations contained in Paragraph Twenty of the Complaint are denied.

22. These Defendants deny the allegations of Paragraph Twenty-One of the Complaint in that the Plaintiffs were co-makers on the promissory note and were equally liable on the note and that Margie B. King and Robbie Patricia Ione King, individually, can not be held liable on the note.

23. These Defendants deny the allegations of Paragraph Twenty-Two of the Complaint.

24. The allegations contained in Paragraph Twenty-Three of the Complaint are denied.
25. These Defendants deny the allegations of Paragraph Twenty-Four and Twenty-Five of the Complaint that allege the Plaintiffs were accommodation parties. These Defendants would further allege that the Plaintiffs were co-makers and were primarily liable on the note in that capacity.
26. The allegations contained in Paragraph Twenty-Six of the Complaint are denied.
27. These Defendants deny the allegations of Paragraph Twenty-Seven of the Complaint.
28. The allegations of Paragraph Twenty-Eight of the Complaint are denied as worded.
29. These Defendants deny the allegations of Paragraph Twenty-Nine of the Complaint.
30. These Defendants deny the allegations of Paragraphs Thirty through Sixty of the Complaint.
31. These Defendants admit only so much of Paragraph Sixty-One that states the Plaintiff Patricia E. King and Christopher C. King entered into a lease agreement.
32. These Defendants deny the allegations of Paragraph Sixty-Two through Sixty-Nine of the Complaint.
33. These Defendants deny the remaining allegations of the Complaint.

FOR A SECOND DEFENSE
(Inter Vivos Gift)

34. The parents of Christopher C. King, W.R. King and Ellen King, gifted all ownership interests and rights in King's Funeral Home to Christopher C. King. This gift was made during the lifetime of W.R. King and Ellen King. W.R. King and Ellen King intended to make the gift and in fact delivered the gift to Christopher C. King and Christopher C. King accepted the gift.
35. These Defendants would allege that at the time of the death of W.R. King and at the time of the death of Ellen King, King's Funeral Home was owned and operated by Christopher C.

King and that the ownership and all interests in King's Funeral Home did not pass by intestacy to the children of W.R. King and Ellen King.

36. Therefore neither Plaintiff or any of the other children of W.R. and Ellen King, except for Christopher C. King, are entitled to any interest or distribution from the operation of King's Funeral Home.

FOR A THIRD DEFENSE (Statute of Limitations)

37. Plaintiffs' claim to rights in the Funeral Home stem from their allegation that W.R. King and Ellen King died intestate and that they derive their rights in the Funeral Home through intestacy.

38. W.R. King died in 1975 and Ellen King died in 1987.

39. Because the Plaintiffs' claim their right to an ownership interest in the Funeral Home is based on the deaths of W.R. King and Ellen King, respectively, and the intestacy laws, their claims are time barred by the statute of limitations pursuant to S.C. Code § 62-2-801 et seq.

FOR A FOURTH DEFENSE

40. Plaintiffs have failed to state a cause of action for accounting and distribution of profits in that there is no *de facto* partnership nor do the Plaintiffs have an ownership interest in King's Funeral Home because of the *inter vivos* gift.

41. Plaintiffs' cause of action for accounting and distribution of profits fails to state a claim upon relief can be granted and should be dismissed pursuant to Rule 12(h)(2) of the *South Carolina Rules of Civil Procedure*.

FOR A FIFTH DEFENSE

42. These Defendants do hereby plead the doctrine of Laches as a complete bar to any recovery on the part of Plaintiffs herein.

**FOR A SIXTH DEFENSE BY WAY OF COUNTERCLAIM
(Intentional Interference With Contractual Relations)**

43. On information and belief, the Plaintiff Patricia King has intercepted mail from insurance companies addressed to King's Funeral Home and sought to receive insurance checks designated for King's Funeral Home.

44. On information and belief, Plaintiff Patricia King has taken letterhead from King's Funeral Home and inserted an address other than the address of the Funeral Home so that insurance companies would send the checks for funeral expenses to Plaintiff Patricia King rather than King's Funeral Home.

45. On information and belief, the Plaintiff Patricia E. King has come on the premises of King's Funeral Home and attempted to deal with potential customers and current customers and divert sales from King's Funeral Home to her own personal use and has interfered with these Defendants' contractual relations with these existing and potential customers.

46. As a result of Plaintiff Patricia King's actions, she has interfered with these Defendants' contractual relations with these insurance companies and customers of King's Funeral Home.

47. As a direct and proximate result of Plaintiff Patricia King's action, these Defendants have suffered damages for which they are entitled to recover.

**FOR A SEVENTH DEFENSE BY WAY OF COUNTERCLAIM
(Conversion)**

48. These Defendants reallege and restate the previous allegations as if restated verbatim herein.

49. By intercepting insurance proceeds designated for King's Funeral Home, Plaintiff Patricia King has converted funds designated for these Defendants to her own personal use.

50. As a direct and proximate result of Plaintiff Patricia King's actions, these Defendants have suffered and will continue to suffer damages.

51. These Defendants are entitled to recover damages from Plaintiff Patricia King.

**FOR AN EIGHTH DEFENSE BY WAY OF COUNTERCLAIM
(Action for Partition of Real Property)**

52. These Defendants reallege and restate the allegations above as if restated verbatim herein.

53. W.R. King and Ellen King owned several parcels of real property in South Carolina.

54. On information and belief, these parcels passed by intestacy to the children of W.R. King and Ellen King.

55. On information and belief, Plaintiff Patricia King has collected income from these properties to the exclusion of Christopher C. King, who had a one-ninth interest in these properties.

56. These Defendants, as the devisees of Christopher C. King's will, are entitled to receive the income owed to Christopher C. King both prior to and after his death.

57. These Defendants demand that all property held by Plaintiff Patricia King that she derived from the estate of W.R. King and Ellen King should be partitioned and sold and the interest divided among the heirs of W.R. King and Ellen King.

58. Plaintiff Patricia King has converted these funds to her own personal use and, as a direct and proximate result of her actions, inflicted damage on these Defendants to which they are entitled to recover.

FOR AN NINTH DEFENSE BY WAY OF COUNTERCLAIM

59. These Defendants reallege and restate the previous allegations as if restated verbatim herein.

60. On information and belief, Christopher C. King owned the real property located at 135 Cemetery Street, Chester, South Carolina in fee simple upon which King's Funeral Home sits.

61. On information and belief, sometime in 1979 or 1980, Christopher C. King deeded this real property to Plaintiff Patricia E. King in return for proceeds from a loan that Plaintiff Patricia E. King obtained on behalf of Christopher C. King.

62. On information and belief Christopher C. King and Plaintiff Patricia E. King had an agreement whereby Plaintiff Patricia E. King would lease the property back to Christopher C. King. In return, Christopher C. King would make lease payments to Plaintiff that would be applied to pay off the loan that Plaintiff obtained on behalf of Christopher C. King.

63. On information and belief, Plaintiff Patricia E. King agreed to deed the real property at 135 Cemetery Street back to Christopher C. King once the loan was paid off.

64. On information and belief, Christopher C. King paid off this loan in 1985.

65. Plaintiff Patricia E. King failed to return the property to Christopher C. King.

66. Plaintiff Patricia E. King and Christopher C. King were brother and sister, and, as such, had a fiduciary relationship and a close relationship of trust.

67. On information and belief, a constructive trust was imposed by law based on the agreement between Christopher C. King and Plaintiff Patricia E. King and also based on their fiduciary relationship and relationship of trust.

68. On information and belief, Plaintiff has held this property at 135 Cemetery Street in constructive trust for the benefit of Christopher C. King and now for the Estate of Christopher C. King.

69. Plaintiff Patricia E. King will be unjustly enriched if she is allowed to retain the real property at 135 Cemetery Street.

70. Defendants request an Order from the Court imposing a constructive trust on the property and that it be returned to the Estate of Christopher C. King or held in trust for the benefit of his estate.

**FOR A TENTH DEFENSE BY WAY OF COUNTERCLAIM
(Promissory Estoppel)**

71. These Defendants reallege and restate the previous allegations as if restated verbatim herein.

72. The Plaintiff made a promise to Christopher C. King that she would deed the property back to Christopher C. King once he paid the loan off.

73. Christopher C. King relied on this promise, to his detriment, by deeding the property to Plaintiff Patricia E. King.

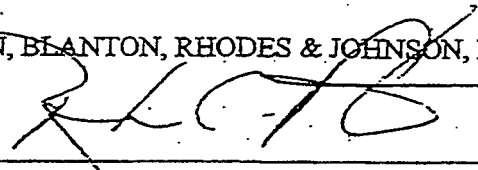
74. Plaintiff Patricia E. King knew or should have know that Christopher C. King would take some action in reliance on her promise.

75. Christopher C. King suffered damage as a result of Plaintiff's failure to deed the property back to Christopher C. King.

76. The Estate of Christopher C. King is entitled to the return of the real property located at 135 Cemetery Street, Chester, South Carolina on the basis of promissory estoppel.

WHEREFORE, the Defendants would move to dismiss this case based on the foregoing defenses and ask that judgment be entered in favor of the Defendants and that they recover damages both actual and punitive on their counterclaims in an amount to be determined by a jury and for such other and further relief as the Court may deem necessary and just.

MCCUTCHEN, BLANTON, RHODES & JOHNSON, L.L.P.

BY: 

Rnskin C. Foster
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Post Office Drawer 11209
Columbia, SC 29211-1209
(803) 799-9791

ATTORNEYS FOR THE DEFENDANTS MARGIE B. KING,
PATRICIA IONE KING, INDIVIDUALLY AND AS CO-
PERSONAL REPRESENTATIVES OF THE ESTATE OF
CHRISTOPHER C. KING, DECEASED, AND NELSON M. KING

Columbia, South Carolina
December 11th, 1998

STATE OF SOUTH CAROLINA)
COURT OF CHESTER)

IN THE COURT OF COMMON)
PLEAS FOR THE SIXTH)
JUDICIAL CIRCUIT)

Patricia E King and Robbie King)
Jones, individually and)
Patricia E. King as Representative)
Of Estate of W.R. and Ellen King)
And the following heirs of W.R. and)
Ellen King:)

DOCKET NO: 98-CP-12-325

Willie Mammie Powell, Angie King)
Corley, Robbie King Jones, Ellen)
King Ferguson, Ione King James and)
Ruby King Rucker)

**FIRST AMENDED
COMPLAINT**

Plaintiffs)

VS)

Margie B. King and Robbie Ione)
King, Individually and as Co-Personal)
Representatives of the Estate of)
Christopher C. King, Deceased, and)
Nelson King, and the following Heirs of)
Edward King, Deceased, William H.)
King, Helen King Walker, Ellen King)
Amudipe and Edward Johnson King II)
Defendants)

The above named Plaintiffs, Patricia E. King and Robbie King Jones, alleges as follows:

- 1) The plaintiff, Patricia E. King is a citizen and Resident of Chester County, South Carolina.
- 2) The plaintiff Robbie King Jones, is a citizen and Resident of North Carolina.
- 3) Plaintiff Willie Mammie Powell, Angie King Corley, Ruby King Rucker, Ione King James and Ellen King Ferguson are all children of W.R. and Ellen King, and all have executed a limited power of Attorney giving plaintiff Patricia E. King authority to represent their interest in this action.
- 4) Defendants Margie B. King, Robbie Patricia Ione King, and Nelson M. King are citizens and residents of Chester County South Carolina. The late Christopher C. King died a Resident of Chester County South Carolina on September 1, 1997. On information and belief Margie B. King and Robbie Patricia Ione King were appointed and qualified as co-personal Representatives of the Estate of Christopher C. King by the probate court for Chester County South Carolina.

- 5) Defendant, William H. King, Helen King Walker, Ellen King Amudipe, and Edward Johnson King II, are all heirs of Edward King deceased, one of the children of W.R. and Ellen King.
- 6) This court has jurisdiction to hear the issues raised by this complaint.

STATEMENT OF FACTS

- 7) On information and belief, the plaintiff's parents, W.R. and Ellen King purchased Ayres Funeral Home in the 1930's or 40's and subsequently operated this business under the name "King's Funeral Home" until their respective deaths in 1975 and 1987. King Funeral Home was never incorporated.
- 8) W.R. King died interstate in 1975, and Ellen King was appointed as the representative of his estate, however, The Estate was never probated before the death of Ellen King in 1987. Under the applicable intestacy Laws of the State of South Carolina the ownership of King's Funeral Home ultimately passed in equal shares to the surviving children of W.R. King and Ellen King, including the plaintiffs and the late Christopher and Edward King.
- 9) All the children of W.R. King and Ellen King including the plaintiffs and the Late Christopher C. King, worked for the King's Funeral Home at one time or another. After the death of Ellen King in 1987, the King Children continued to operate the business of the Funeral Home. The plaintiff, Patricia King and the Late Christopher C. King were both Licensed Funeral Home Directors pursuant to the applicable state laws.
- 10) As part of her responsibilities within the Kings Funeral Home, in addition to actually direction funerals on site, the plaintiff Patricia E King main tamed the books for the Funeral Home and was authorized to sign checks and pay bills for the business.
- 11) On or about July 31, 1992, Christopher C. King and the plaintiffs gave a promissory note in the amount of two Hundred and Twenty-Five Thousand (\$225,000) dollars to Mechanic and Farmers Bank, in Charlotte North Carolina (Loan) which indebtedness was secured by three insurance policies, two time accounts and two parcels of Land, One being a house and lot located at 4332 Hyde Park Drive, Charlotte NC owned by plaintiff, Robbie King Jones and the other, a building and lot located at 135 Cemetery Street, in Chester South Carolina owned by the plaintiff, Patricia E. King and from which the King Funeral Home business has operated since 1980.
- 12) The plaintiffs signed the promissory note and allowed their properties to serve as collateral for the loan in an effort to assist their brother Christopher C. King in obtaining the loan to resolve a foreclosure action against a failed car dealership business of the late Christopher C. King. The late Christopher C. King received the sole benefit of the proceeds of the loan.

- 13) The plaintiffs and Christopher C. King entered into an oral agreement (the agreement) whereby Christopher C. King was responsible for making the monthly payments on the loan and ultimately, a balloon payment on the loan in the amount of approximately One Hundred Eighty Seven Thousand-Seven Hundred seventy-six and eighty-six cents (\$187,776.86) which became due on July 30 1997, (the balloon payment).
- 14) For a substantial period of time, and in partial performance of the agreement Christopher C. King made loan payments to Mechanic and Farmers Bank in accordance with the terms of the agreement.
- 15) On information and belief, for a period of time preceding his death on September 1, 1997, Christopher C. King was mentally incompetent as a result of medications he was taking for terminal cancer, and the Defendants, Robbie Patricia Ione King and Margie B. King acted as his attorney-in-fact by durable power of Attorney, dated February 27, 1997 and May 3, 1997 respectively.
- 16) After Christopher C. King became mentally incompetent, the defendants, Robbie Patricia Ione King and Margie B. King, failed and refused to make the balloon payment, which became delinquent, thus subjecting the collateral of the plaintiffs to foreclosure.
- 17) Due to the failure of Christopher C. King or the defendants acting as his Attorney-In-Fact, to make the loan payments as required under the loan agreement, the plaintiffs were forced to obtain a new loan from Mechanic and Farmers Bank (the new loan) in order to refinance the loan and prevent foreclosure.
- 18) The plaintiffs are presently indebted to Mechanics and Farmer Bank in the amount of approximately One Hundred eighty-six Thousand dollars (\$186,000.00) as a result of their refinancing of the old loan.
- 19) Immediately prior to the death of Christopher C. King, at a time when the plaintiffs was informed and believe that Christopher C. King had been rendered mentally incompetent by his cancer medications, he substantially conveyed all of the assets of his estate to his wife, the defendant, Margie B. King by deeds dated August 20 1997 in the office of the Clerk of Court for Chester County, South Carolina. The plaintiffs are informed and believes that this deed was executed in an effort to avoid the claims of any creditors of the Estate of Christopher C. King.

Count 1

BREACH OF THE ORAL AGREEMENT TO MAKE
REQUIRED PAYMENTS ON THE MECHANICAND
FARMERS BANDS ORIGINAL LOAN

- 20) The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
- 21) By failing to make the monthly payments and the balloon payment on the Original Mechanic and Farmers Bank loan as required under the terms of the agreement, Christopher C. King and the defendant, Margie B. King and Robbie Ione King acting as his agent breached the terms of the agreement.
- 22) As a direct result of the said Breach the plaintiffs have been damaged in that they were required to incept the expense of refinancing the loan and now remain responsible for the outstanding balance of the new loan.

Count II

- 23) The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
- 24) The plaintiff were accommodation parties with respect to the loan pursuant to either section 36-3-415 of the code of laws of South Carolina, 1976 as Amended or Section 25-3-419 of the General statutes of North Carolina.
- 25) As accommodation parties, the plaintiffs are entitled to be reimbursed by the defendants, Margie B. King and Robbie Ione King, individually and as co-personal representatives of the Estate of Christopher C. King, for the balance on the loan that they paid off and for all additional expenses incurred by the plaintiff in obtaining the new loan.

Count III

ACCOUNTING AND DISTRIBUTION OF PROFITS

- 26) The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
- 27) The plaintiffs have made demands but have not received any distribution of profit from Original King Funeral Home now Chris King Funeral Home, since the illness and subsequent death of Christopher C. King. The plaintiffs have also been denied access to the financial records of the Original King Funeral Home (now Chris King Funeral Home).
- 28) On information and belief, the defendants, Margie B. King, Robbie Patricia Ione King and Nelson M. King are still receiving distributions from the Original King Funeral Home now Chris King Funeral Home to the exclusion of the plaintiffs.
- 29) By virtue of their ownership interest in the Original King's Funeral Home, now Chris King Funeral Home, the plaintiffs are entitled to have the defendant's account for the profits of Original King's Funeral Home now, Chris King Funeral Home, to inspect

the books and records of the funeral home, and to have their proportional share of the profits distributed to them.

Count IV

APPOINTMENT OF RECEIVER

- 30) The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
- 31) The plaintiffs are informed and believes that the defendants, Margie B. King, Robbie Patricia Ione King and Nelson M. King have operated Kings Funeral Home since the death of Christopher C. King for their sole benefit and to the exclusion of the plaintiffs and that the defendants have diverted the revenue of King's Funeral Home to their own uses.
- 32) The plaintiffs are informed and believes that there is a likelihood the assets and revenues of Kings Funeral Home will be dissipated during the pendency of this litigation and thus are entitled to have a receiver appointed to manage the financial affairs of the Funeral Home and to protect the ownership interest of the plaintiff and the other children of W.R. and Ellen King.

Count V

FRAUDULENT CONVEYANCE PURSUANT
TO S.C. CODE SECTION 27-3-10

- 33) The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
- 34) On information and belief, the deed from Christopher C. King to Margie B. King dated August 20, 1997 in the office of the Clerk of Court for Chester County South Carolina (the Deed was executed with fraudulent intent and in an attempt to avoid the claims of creditors against the Estate of Christopher C. King).
- 35) On information and belief, in light of the mental capacity of Christopher C. King during the months preceding his death or may have been subjected to undue influence and coercion in executing the deed.
- 36) On information and belief, the defendants caused the deed to be executed with willful, wanton or reckless disregard of the plaintiffs rights and in attempt to avoid the claims of creditors against the Estate of Christopher C. King.
- 37) At the time the Deed was executed Christopher C. King was indebted to the plaintiffs in various amounts for the claims set forth in this complaint, all of which claims are hereby incorporated by reference.
- 38) Pursuant to Section 62-1-106 of the Code of laws of South Carolina 1976, as Amended, any person injured by an act of fraud " used to avoid or circumvent the

provisions or purposes of this probate code" is relief against the perpetrators of the fraud.

- 39) Pursuant to Section 62-3-710 of the code of Laws of South Carolina 1976, as Amended, the personal representative of an estate has the authority to avoid any transfer of property made by the decedent, which would be void or violable as against the decedent creditors.
- 40) The plaintiff are informed and believes that they have been damaged by the transfer of property from Christopher C. King to Margie B. King by way of the Deed in that there are insufficient assets in the Estate of Christopher C. King to satisfy the plaintiffs' claim against the Estate.
- 41) Margie B. King became the attorney-in-fact of the late Christopher C. King in February of 1997, and in August of the same year the late Christopher C. King conveyed substantially all his Estates by a deed to the same Margie B. King.
- 42) The plaintiffs are informed and believed that pursuant to Section 27-13-10 of the Code of Laws of South Carolina 1976, as Amended, they are entitled to an order finding the Deed to be null and void as an attempt to avoid the claims of the plaintiffs and other creditors of the Estate of Christopher C. King, and that they are entitled to punitive damages in such amount as shall be proven at trial.

Count VI

COMMON LAW FRAUDULENT CONVEYANCES

- 43) The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
- 44) The defendant Margie B. King was not a good faith purchaser for value of the real estate conveyed pursuant to the Deed.
- 45) Because the Deed was executed in an attempt to avoid the claims of creditors of the Estate of Christopher C. King, including the claims of the plaintiffs, the plaintiff are informed and believes that they are entitled to an Order finding the Deed null and void, and that they are entitled to punitive damages in such amount as shall be proven at trial.

Count VII

BREACH OF TRUST

- 46) The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.

- 47) A defector partnership existed between Christopher C. King and all of the other children of W.R. King and Ellen King, including the plaintiffs in the operation of the King's Funeral Home business.
- 48) Christopher C. King and defendants Margie B. King and Robbie Patricia Ione King, acting as his agents owed a fiduciary duty to the other partners of the partnership not to appropriate assets of the partnership to their own uses and personal benefits.
- 49) By failing to distribute any profits of the partnership to the other partners, Christopher C. King and the defendants breached their fiduciary obligation to the plaintiffs and the other children of W.R. and Ellen King
- 50) The plaintiffs have been damaged by this breach of fiduciary obligation, in that they have not been allowed to share in the profits of the partnership, and have been made to bring suit for that purpose.

Count VIII

Conversion

- 51) The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.
- 52) The assets of King's Funeral Home belong to the children of W.R. King and Ellen King, by virtue of such assets passing by intestacy at the deaths of W.R. and Ellen King.
- 53) On or about December 14, 1998, the defendants Margie B. King, Robbie Patricia Ione King and Nelson M. King moved the business of King Funeral Home including all the assets of the Funeral Home to a new location on York Rd and coveted King Funeral Home to Chris King Funeral Home, including converting the assigned telephone number of King Funeral Home to Chris King Funeral Home.
- 54) The defendants, Margie B. King, Robbie Patricia Ione King and Nelson M. King have executed all rights of ownership over the assets of Kings Funeral home in willful, wanton and reckless disregard of the plaintiff's rights in the partnership.
- 55) Plaintiffs have been damaged and continue to be damaged by the defendants conversion of the assets of the Original King Funeral Home.

Count VIII

FAILURE TO PAY RENT

- 56) The preceding allegations are hereby realleged and incorporated by reference as if fully set forth herein, to the extent not inconsistent herewith.

- 57) On or about July 16, 1980, the plaintiff Patricia E. King and Christopher C. King (on behalf of King Funeral Home) entered into a lease agreement (the lease agreement) whereby Christopher C. King leased the property located at 135 Cemetery Street, on behalf of King Funeral Home.
- 58) On or about August 20, 1997 pursuant to the terms of the lease agreement the plaintiff Patricia E. King terminated the lease by delivering written notice to Christopher C. King and the defendants.
- 59) Despite the plaintiff Patricia E. King's termination of the lease agreement the defendants Margie B. King, Robbie Patricia Ione King and Nelson King refused to vacate the premises and continue to use the premises for the business of the Kings Funeral Home without either paying rent or making profit distribution.
- 60) The defendant continued to operate the King Funeral Home exclusively and from the above address until December 14, 1998 without making the necessary rental payments.
- 61) Plaintiffs Patricia E. King is informed and believes that as the owner of the prissiness, and pursuant to the lease agreement, that she is entitled to receive back rent for the period of time the defendants occupied the premises without the benefit of rent from July 1997 until December 15, 1998.

Wherefore, the Plaintiffs pray for relief against the Defendants as follows:

- a) For a judgment against the defendants Margie B. King, Robbie Patricia Ione King both individually and as co-personal representatives of the Estate of Christopher C. King, for the amount of the outstanding balance of the new loan and all additional incidental expenses incurred by the plaintiff in obtaining the new loan.
- b) For an Order requiring the defendants to account for the profits generated by King's Funeral Home since the incompetence of Christopher C. King and to distribute to the plaintiffs their proportionate share of the said profits.
- c) For an Order immediately appointing a Receiver to manage the Financial Affairs of the Original King's Funeral Home now, Chris King Funeral Home.
- d) For an Order finding the conveyance made by the Deed from Christopher C. King to Margie B. King to be null and void to the extent necessary to satisfy any judgment of the plaintiffs against the Estate of Christopher C. King.
- e) For a judgment against the defendants Margie B. King and Robbie Parricia Ione King individually and as co-personal representative of the Estate of Christopher C. King. In an amount to be determined for the failure of Christopher C. King or the defendants acting as his agents, to distribute profits to the plaintiffs, as defacto partners in the business of the King's Funeral Home.

- f) For a judgment against Margie B. King, Robbie Ione King and Nelson M. King in an amount to be determined for the rent due to Patricia E. King for the use of real estate owned individually by her for the operation of King's Funeral Home.
- g) For permtive damages, the cost of this litigation, including reasonable attorneys fees and such other and further relief that the court may deem just and proper.

Respectfully Submitted,

OKPALAEKE LAW FIRM



Cletus Kelech Okpalaeke
4701 Ridgewood Avenue
Columbia, SC 29203
(803) 799-7954
Attorney for the Plaintiffs

Columbia, South Carolina
Dated April 6th 2001

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
FOR THE SIXTH JUDICIAL CIRCUIT

Case No.: 1998-CP-12-00325

Patricia E. King and Robbie King Jones, as
representatives of W.R. King and Ellen King,

Plaintiffs,

v.

Margie B. King and Robbie Patricia Ione
King, Individually and as Co-personal
representatives of the Estate of Christopher
C. King, deceased, and Nelson M. King,

Defendants.

COUNTERCLAIMS
(Amended)

FILED

2000 JUN 11 P 3:22

CLERK OF COURT
CHESTER CO S.C.

The Defendants Margie B. King and Robbie Patricia Ione King, individually and as co-personal representatives of the Estate of Christopher C. King, deceased, and Nelson M. King (hereinafter as, "the Kings") aver that the main purpose to the Kings Counterclaims is to obtain an accounting, restitution and disgorgement and the Kings, who are not waiving, but specifically reserving all rights herein, hereby Amend their Counterclaims, pursuant to Rule 15(a) of the South Carolina Rules of Civil Procedure and would respectfully show unto this Court:

FOR A FIRST COUNTERCLAIM
(Restitution and Disgorgement)

1. Defendants re-allege the contents of their Counterclaims as if set forth herein verbatim.
2. Plaintiff Patricia E. King and Plaintiff Robbie King Jones (hereinafter together as the, "Plaintiffs") have collected, utilized and retained income from the funeral home business in an improper and unlawful manner, thereby depriving the Kings from their rightful access thereto.
3. As a result, the Kings are entitled to restitution and the Plaintiffs should be ordered to disgorge those funds.

FOR A SECOND COUNTERCLAIM
(Accounting)

4. Paragraphs one through three above, are re-alleged, as if set forth herein verbatim.
5. The May 18, 2001 Order of the Honorable Lee S. Alford (hereinafter as, "Order"), granted an Accounting in this matter, as to the, "Original Funeral Home Business."

Specifically, the Order held that the, "...Special Referee to direct the accounting in this matter as to the original funeral home business..." and "...there shall be an accounting, as stated above [in the Order], directed by the Special Referee." (Order, pg. 2).

6. The costs of the accounting must be borne by the Plaintiffs, who brought this action in their capacities as "representatives of W.R. King and Ellen King."

FOR A THIRD COUNTERCLAIM

(Attachment of Property)

(§ 15-19-10, *et seq.*, S.C. Code Ann. (1976, as amended))

7. Paragraphs one through six above, are re-alleged, as if set forth herein verbatim.

8. The Kings alleges that the Plaintiffs owe damages to the Kings, in the amount of at least \$500,000.00, which damages are *inchoate* and reasonably expected to increase therefrom.

9. Upon information and belief, Plaintiffs have assigned, disposed of or secreted or is about to assign, dispose of or secrete property with intent to defraud the Kings.

10. A Bond of \$250.00 should be required in this matter.

11. Although the debt, described hereinabove, is not yet liquidated and due, the Kings, upon information and belief, reasonably believe that the Plaintiffs have assigned, disposed of, or secreted or are about to assign, dispose of, or secrete property with intent to defraud the Kings, and this Court should issue its Warrant of Attachment as if such debt was now due and payable.

12. Upon the Affidavit described hereinabove, this Court should cause the Warrant of Attachment to be directed to any Sheriff or Constable of Chester County, South Carolina to attach and safely keep all the property of the Plaintiffs, within Chester County, South Carolina, or so much thereof as may be sufficient to satisfy the Kings' *inchoate* demand of at least \$500,000.00, together with attorneys fees, costs and expenses.

FOR A FOURTH COUNTERCLAIM

(Civil Conspiracy)

13. Paragraphs one through twelve above, are re-alleged, as if set forth herein verbatim.

14. From the time period beginning with the date the Plaintiffs took possession of the funeral home business, through the date of these presents and continuing, Plaintiffs met with and conspired with each other to receive and retain an unearned and unlawful income from the funeral home business and otherwise. In furtherance of that conspiracy the Plaintiffs, *inter alia*, filed this legal action in 1998, after the death of Christopher C. King.

15. The Plaintiffs conspired together, against the economic interest of the Kings to improperly and unlawfully retain the income from the funeral home business and otherwise.

16. The Kings were damaged by the Plaintiffs' actions, and the Kings suffered special damages including, but not limited to, their loss of use of income and damages to both their personal and business reputations, in an amount to be determined at trial.

FOR A FIFTH COUNTERCLAIM

(Unjust Enrichment)

17. Paragraphs one through sixteen above, are re-alleged, as if set forth herein verbatim.

18. The Plaintiffs have collected, utilized and retained income from the funeral home business in an improper and unlawful manner, from the time period beginning with the date the Plaintiffs took possession of the funeral home business, through the date of these presents and continuing, thereby depriving the Kings from their rightful access thereto.

19. The Plaintiffs will be unjustly enriched if they are allowed to retain the unlawful and improper income derived from the funeral home business.

20. As a result, the Kings are entitled to restitution and the Plaintiffs should be ordered to disgorge those funds.

FOR A SIXTH COUNTERCLAIM

(Action for Partition of Real Property)

21. Paragraphs one through twenty above, are re-alleged, as if set forth herein verbatim.

22. W.R. King and Ellen King, *inter alia*, owned the funeral home business located in Chester County, South Carolina.

23. On information and belief, the funeral home business passed by intestacy to the children of W.R. King and Ellen King.

24. The Kings, as the devisees of Christopher C. King's Will, are entitled to receive the income from the funeral home business, which is owed to Christopher C. King both prior to and after his death.

25. On information and belief, the Plaintiffs have collected income from the funeral home business, to the exclusion of Christopher C. King, who had a one-ninth interest in these properties, from the time period beginning with the date the Plaintiffs took possession of the funeral home business, through the date of these presents and continuing.

26. The Kings demand that the funeral home business, held by the Plaintiffs, which was derived from the estate of W.R. King and Ellen King, should be partitioned, in kind, or sold and the interest divided among the heirs of W.R. King and Ellen King.

27. The Kings demand for a petition, in kind or by judicial sale, is fair and equitable to all parties in this action.

FOR A SEVENTH COUNTERCLAIM
(Trespass to Land)

28. Paragraphs one through twenty-seven above, are re-alleged, as if set forth herein verbatim.

29. On information and belief, the Plaintiffs have committed several trespasses to the funeral home business owned by the Kings, from the time period beginning with the date the Plaintiffs took possession of the funeral home business, through the date of these presents and continuing.

30. As a direct and proximate result of the actions of the Plaintiffs, the Kings have suffered damages and will continue to suffer damages.

31. The Kings are entitled to recover damages from the Plaintiffs, in an amount to be determined at trial.

FOR A EIGHTH COUNTERCLAIM
(Conversion)

32. Paragraphs one through thirty-one above, are re-alleged, as if set forth herein verbatim.

33. The Plaintiffs improperly and without permission, retained the income derived from the funeral home business, from the time period beginning with the date the Plaintiffs took possession of the funeral home business, through the date of these presents and continuing.

34. Upon information and belief, the Kings believe that the Plaintiffs, immediately after the death of Christopher C. King, converted the income derived from the funeral home business to their own use. The Plaintiffs wrongfully retained the income derived from the funeral home business and illegally used the income for themselves, from the time period beginning with the date the Plaintiffs took possession of the funeral home business, through the date of these presents and continuing.

35. The Plaintiffs' actions are inconsistent with the Kings' possession of the income derived from the funeral home business and subversive to the Kings' rights to the income derived from the funeral home business. Furthermore, the Plaintiffs interfered with the Kings' rights to the income derived from the funeral home business and caused a disturbance to the Kings rights to the income derived from the funeral home business.

36. The Plaintiffs' refusal came after the Kings' demand for the Plaintiffs to surrender the income derived from the funeral home business, and the Plaintiffs' refusal was without justification or excuse.

37. The Plaintiffs' conversion was willful and intentional and done with the knowledge of the Kings rights to the income derived from the funeral home business and the Kings are thereby entitled to an enhancement of damages of interest and loss of use thereof, in an amount to be determined at trial, plus consequential damages and court costs, which damages are *inchoate* at the time of this filing.

38. The Kings were damaged by the Plaintiffs in an amount to be determined at trial.

39. The Plaintiffs' exhibited malice, ill will, a conscious indifference to the rights of the Kings and a reckless disregard of the Kings' rights and therefore the Kings are entitled to punitive damages.

FOR A NINTH COUNTERCLAIM

(Intentional Interference With Contractual Relations)

40. Paragraphs one through thirty-nine above, are re-alleged, as if set forth herein verbatim.

41. On information and belief, the Plaintiffs have intercepted mail from insurance companies addressed to the funeral home business and received insurance checks designated for the funeral home business.

42. On information and belief, the Plaintiffs have taken letterhead from the funeral home business and inserted an address other than the address of the funeral home business so that insurance companies would send the checks for funeral home business expenses to the Plaintiffs rather than directly to the funeral home business.

43. On information and belief, the Plaintiffs have come on the premises of the funeral home business to deal and interact with potential customers and current customers and divert sales from the funeral home business to the Plaintiffs' personal use and have interfered with the Kings' contractual relations with these existing and potential customers.

44. As a result of the Plaintiffs' actions, they have interfered with the Kings' contractual relations with these insurance companies and customers of the funeral home business.

45. As a direct and proximate result of the Plaintiffs' action, the Kings have been damages in an amount to be determined at trial.

FOR A TENTH COUNTERCLAIM

(Constructive Trust)

46. Paragraphs one through forty-five above, are re-alleged, as if set forth herein verbatim.

47. On information and belief, Christopher C. King owned the real property located at 135 Cemetery Street, Chester, South Carolina in fee simple upon which the funeral home business is located.

48. On information and belief, sometime in 1979 or 1980, Christopher C. King deeded this real property to the Plaintiffs in return for proceeds from a loan that the Plaintiffs obtained on behalf of Christopher C. King.

49. On information and belief Christopher C. King and the Plaintiffs had an agreement whereby the Plaintiffs would lease the property back to Christopher C. King. In return, Christopher C. King would make lease payments to the Plaintiffs that would be applied to pay off the loan that the Plaintiffs obtained on behalf of Christopher C. King.

50. On information and belief, the Plaintiffs agreed to deed the real property located at 135 Cemetery Street, Chester, South Carolina, upon which the funeral home business is located, back to Christopher C. King once the loan was paid off.

51. On information and belief, Christopher C. King paid off this loan in 1995 and the Plaintiffs failed to return the funeral home business property to Christopher C. King.

52. The Plaintiff Patricia King and Christopher C. King were brother and sister, and, as such, had a fiduciary relationship and a close relationship of trust.

53. The Kings are informed and believe that the Plaintiffs hold the funeral home business solely in their names through bad faith, subterfuge, artifice, abuse of confidence and/or breach of their fiduciary duty and that it would be inequitable for the Plaintiffs to retain all of the funeral home business solely in their name.

54. The Kings are informed and believe that they are entitled to the imposition of a constructive trust on the proceeds of any sale of the property by the Plaintiffs as described hereinabove, from the time period beginning with the date the Plaintiffs took possession of the funeral home business, through the date of these presents and continuing.

55. On information and belief, a constructive trust was imposed by law based on the agreement between Christopher C. King and the Plaintiffs and also based on their fiduciary relationship and relationship of trust.

56. On information and belief, the Plaintiffs have held the real property located at 135 Cemetery Street, Chester, South Carolina, upon which the funeral home business is located in constructive trust for the benefit of Christopher C. King and now for the Estate of Christopher C. King.

57. The Plaintiffs will be unjustly enriched if they is allowed to retain the real property located at 135 Cemetery Street, Chester, South Carolina, upon which the funeral home business is located.

FOR A ELEVENTH COUNTERCLAIM

(Promissory Estoppel)

58. Paragraphs one through fifty-seven above, are re-alleged, as if set forth herein verbatim.

59. The promise of the Plaintiffs to Christopher C. King that they would deed the property back to Christopher C. King once he paid the loan off was unambiguous in its terms.

60. Christopher C. King reasonably relied upon the promise of the Plaintiffs, to his detriment, by deeding the property to the Plaintiffs.

61. The reliance by Christopher C. King was expected and foreseeable.

62. Christopher C. King and the Estate of Christopher C. King suffered damage as a result of the Plaintiffs' failure to deed the property back to Christopher C. King, and sustained ascertainable economic damages and injury in reliance on the Plaintiffs' promise and Christopher C. King and the Estate of Christopher C. King are entitled to the return of the real property located at 135 Cemetery Street, Chester, South Carolina, upon which the funeral home business is located.

FOR A TWELFTH COUNTERCLAIM

(Trespass to Chattel)

63. Paragraphs one through sixty-two above, are re-alleged, as if set forth herein verbatim.

64. On information and belief, the Plaintiffs have committed several trespasses to chattel owned by the Kings and have converted and continue to convert and trespass various items of personal property owned by the Kings to their own use.

65. As a direct and proximate result of the actions of the Plaintiffs, the Kings have suffered damages and will continue to suffer damages.

66. The Kings have been damaged by the Plaintiffs and are entitled to recover in an amount to be determined at trial.

FOR A THIRTEENTH COUNTERCLAIM

(Breach of Fiduciary Duty of Care)

67. Paragraphs one through sixty-six above, are re-alleged, as if set forth herein verbatim.

68. The Plaintiffs owed a Fiduciary Duty of Care and Loyalty to the Kings.

69. The Plaintiffs actions, as described in more detail hereinabove, violated the Plaintiffs' duty of care and loyalty.

70. The Kings were prominently damages by the Plaintiffs actions and are entitled to an accounting, restitution and disgorgement.

FOR A FOURTEENTH COUNTERCLAIM

(Waste)

71. Paragraphs one through seventy above, are re-alleged, as if set forth herein verbatim.

72. Christopher C. King and the Estate of Christopher C. King and his successors and heirs, including the Kings, had a pecuniary interest in the funeral home business.

73. The Plaintiffs engaged in destruction, misuse, alteration or neglect of the funeral home business while the y Plaintiffs are in possession of the funeral home business in the prejudice of the interests in the funeral home business to Christopher C. King and the Estate of Christopher C. King and his successors, including the Kings.

74. As a result of the Plaintiffs destruction, misuse, alteration or neglect of the funeral home business while the Plaintiffs are in possession of the property, to the prejudice of the interest in the funeral home business of Christopher C. King and the Estate of Christopher C. King and his successors and heirs, including the Kings, the Kings have suffered damages in an amount to be determined at trial.

FOR A FIFTEENTH COUNTERCLAIM

(Appointment of Receiver)

(§ 15-65-10 (1), S.C. Code Ann. (1976, as amended))

75. Paragraphs one through seventy-four above, are re-alleged, as if set forth herein verbatim.

76. The Kings can and have, established a right to the funeral home business and the income thereof, which is now in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired.

77. Accordingly, the Kings are entitled to have a receiver appointed for the funeral home business and otherwise.

FOR A SIXTEENTH COUNTERCLAIM

(Punitive Damages)

78. Paragraphs one through seventy-seven above, are re-alleged, as if set forth herein verbatim.

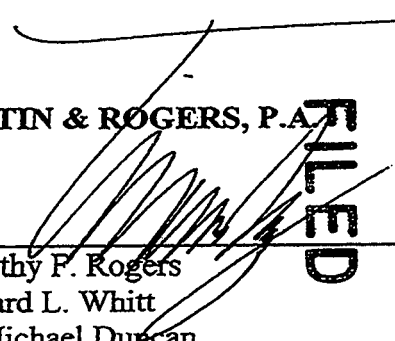
79. The Kings are entitled to an award of punitive damages on appropriate Causes of Action, to be proven at trial.

AS TO DEFENDANTS COUNTERCLAIMS, a Judgment against the Plaintiffs, individually and/or jointly and severally where applicable for actual, consequential and punitive damages on all causes of action in an amount to be determined at trial;

An award of attorney's fees and costs of this action as provided by law or contract; and

Such other and further relief as is equitable in the circumstances and this Court deems just and appropriate.

AUSTIN & ROGERS, P.A.


Timothy F. Rogers
Richard L. Whitt
W. Michael Duncan
508 Hampton Street, Suite 300
Columbia, South Carolina 29201
(803) 251-7442
(803) 252-3679 facsimile

Counsel for Defendants

FILED
2010 JUN 11 P 3:22
CLERK OF COURT
CHESTER CO S.C.

June 11, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Patricia E. King and Robbie King Jones,
as representatives of W.R. King and Ellen
King,

Plaintiffs,

v.

Margie B. King and Robbie Patricia Ione
King, individually and as co-personal
representatives of the Estate of
Christopher C. King, deceased and
Nelson M. King, Chester Telephone
Company,

Defendants.

) THE COURT OF COMMON PLEAS

) SIXTH JUDICIAL CIRCUIT

) Civil Action No.: 98-CP-12-325

) MOTION TO DISMISS DEFENDANTS'
) AMENDED COUNTERCLAIMS

TO: DEFENDANTS MARGIE B. KING AND ROBBIE PATRICIA IONE
KING, INDIVIDUALLY AND AS CO-PERSONAL REPRESENTATIVES
OF THE ESTATE OF CHRISTOPHER C. KING, DECEASED, AND
NELSON M. KING, ABOVE-NAMED:

PLEASE TAKE NOTICE that Plaintiff, Patricia King, will move before the Court
immediately, and does hereby so move, for an Order dismissing Defendants' Amended
Counterclaims for Defendants' failure to comply with Rule 15(a) of the *South Carolina
Rules of Civil Procedure*.

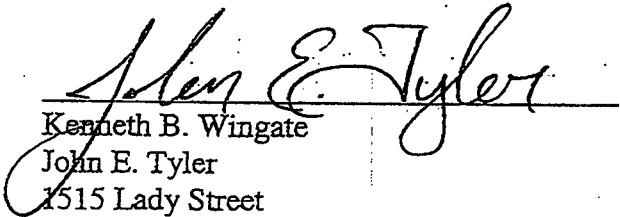
Defendants filed counterclaims against Plaintiff on or about December 14, 1998.
Nearly twelve years later, on June 11, 2010, Defendants filed amended counterclaims
without requesting leave of the Court. Therefore, Defendant's amended counterclaims
should be dismissed for failure to comply with Rule 15(a), Rule 13(e), and/or Rule 13(f).

In the alternative, Plaintiff requests that Defendants amended counterclaims be
stricken pursuant to Rule 12(f) for failure to comply with the rules of this Court.

This motion may be supplemented by a memorandum of law and supporting affidavits.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

John E. Tyler

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

Attorneys for Plaintiff Patricia King

Columbia, South Carolina

June 23, 2010

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Case No.: 1998-CP-12-00325

Patricia E. King and Robbie King Jones, as
representatives of W.R. King and Ellen King,

Plaintiffs,

v.

Margie B. King and Robbie Ione King,
Individually and as Co-personal
representatives of the Estate of Christopher
C. King, deceased, and Nelson M. King,

Defendants.

MOTION FOR EQUITABLE RELIEF

FILED
2010 JUL 29 PM 2:24
CLERK OF COURT
CHESTER CO. S.C.

**TO: PATRICIA E. KING AND ROBBIE KING JONES AND THEIR ATTORNEY OF
RECORD, KENNETH WINGATE.**

INTRODUCTION

Defendants Margie B. King and Robbie Ione King, Individually and as Co-personal representatives of the Estate of Christopher C. King, deceased, and Nelson M. King (hereinafter as, "the Kings"), moves as follows:

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE that Defendants the Kings, will argue this Motion before the Honorable James C. Harrison, Jr., as Special Referee, for the Sixth Judicial Circuit, at 923 Calhoun Street, Columbia, South Carolina, on August 5, 2010 at 2:30 PM, requesting an Order granting the relief described hereinbelow. The grounds for this Motion are as follows:

MOTION FOR EQUITABLE RELIEF

Defendants the Kings presently have pending Counterclaims, in this matter against Plaintiffs for, *inter alia*, an accounting, an attachment and an appointment of a receiver. In conformance with Defendants the Kings' position in this matter, Defendants the Kings seek the following by way of Motion:

Accounting

The May 18, 2001 Order of the Honorable Lee S. Alford (hereinafter as, "Order"), granted an Accounting in this matter, as to the, "Original Funeral Home Business." Specifically, the Order held that the, "...Special Referee to direct the accounting in this matter as to the original funeral home business..." and "...there shall be an accounting, as stated above [in the Order], directed by the Special Referee." (Order, pg. 2).

The Circuit Court expressed concerns in its Order of Reference of May 30, 2001, about the Plaintiffs' need to account for revenues from the funeral home business. Specifically, the Court required an accounting in this matter "... then there shall be an accounting, as stated above, directed by the Special Referee. This accounting must include all nine siblings and all related issues." (Order, pg. 2) (Emphasis supplied).

The costs of the accounting must be borne by the Plaintiffs, who brought this action in their capacities as "representatives of W.R. King and Ellen King." (See, the Affidavit of David W. Siddons, Esquire, filed with this Court on June 11, 2010).

Attachment of Property

(§ 15-19-10, *et seq.*, S.C. Code Ann. (1976, as amended))

Defendants the Kings allege that the Plaintiffs owe damages to Defendants the Kings, in the amount of at least \$500,000.00, which damages are *inchoate* and reasonably expected to increase therefrom.

Upon information and belief, Plaintiffs have assigned, disposed of or secreted or are about to assign, dispose of or secrete property with intent to defraud Defendants the Kings.

Although the debt, described hereinabove, is not yet liquidated and due, Defendants the Kings, upon information and belief, reasonably believe that the Plaintiffs have assigned, disposed of, or secreted or are about to assign, dispose of, or secrete property with intent to defraud Defendants the Kings, and this Court should issue its Warrant of Attachment as if such debt was now due and payable.

Upon the Affidavit described hereinabove, this Court should cause the Warrant of Attachment to be directed to any Sheriff or Constable of Chester County, South Carolina to attach and safely keep all the property of the Plaintiffs, within Chester County, South Carolina,

or so much thereof as may be sufficient to satisfy Defendants the Kings' *inchoate* demand of at least \$500,000.00, together with attorneys fees, costs and expenses (see, the Affidavit of Margie B. King, filed with this Court on June 11, 2010).

A Bond of \$250.00 should be required in this matter.

Appointment of a Receiver

(§ 15-65-10 (1), S.C. Code Ann. (1976, as amended))

Defendants the Kings can and have established a right to the funeral home business and the income thereof, which is now in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired (see, the Affidavit of Margie B. King, filed with this Court on June 11, 2010).

The Circuit Court expressed concerns, in its Order of Reference of May 30, 2001, about the Plaintiffs need to account for revenues from the funeral home business. Specifically, the Court required an accounting in this matter "... then there shall be an accounting, as stated above, directed by the Special Referee. This accounting must include all nine siblings and all related issues." (Order, pg. 2) (Emphasis supplied).

Accordingly, Defendants the Kings are entitled to have a receiver appointed for the funeral home business and otherwise.

RESERVATION OF RIGHTS

Defendants the Kings reserve all available rights and claims herein and all defenses as to Plaintiffs, whether heretofore asserted or not, and Defendants the Kings rights, amended counterclaims, defenses and causes of action are re-alleged herein and incorporated herein by reference, as if set forth verbatim.

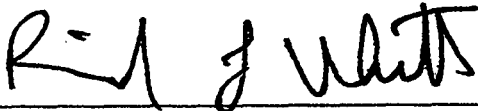
CONCLUSION

Therefore, based on the grounds set forth above and because Plaintiffs failed to account for revenues from the funeral home businesses, from 2001 until 2010, including through the date of this writing, which accrue to "nine siblings" and not simply the Plaintiffs, Defendants the

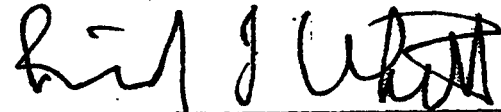
Kings' Motion should be granted and for such other and further relief as this Court deems just and appropriate.

RULE 11(a) SCRPC - CERTIFICATION

Pursuant to Rule 11(a) SCRPC, the undersigned affirms consultation would serve no useful purpose.


Richard L. Whitt

AUSTIN & ROGERS, P.A.



Timothy F. Rogers
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W. Michael Duncan
508 Hampton Street, Suite 300
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(803) 251-7442
(803) 252-3679 facsimile

Attorneys for Defendants

July 26, 2010
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Patricia E. King and Robbie King Jones, as
representatives of W.R. King and Ellen King,

Plaintiffs,

v.

Margie B. King and Robbie Ione King,
Individually and as Co-personal
representatives of the Estate of Christopher
C. King, deceased, and Nelson M. King,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Case No.: 1998-CP-12-00325

**NOTICE OF MOTION
AND
MOTION TO RECONSIDER,
REHEAR, ALTER OR AMEND
JUDGMENT**

CLERK OF COURT
CHESTER CO S.C.
MAR 17 A 9:51

**TO: PATRICIA E. KING AND ROBBIE KING JONES AND THEIR ATTORNEY OF
RECORD, KENNETH WINGATE.**

NOTICE

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 59(e), SCRPC, Defendants above, by and through their undersigned attorneys, will move the Court on the tenth day after service hereof, or as soon thereafter as counsel may be heard, for an Order reconsidering, rehearing, altering or amending Judgment, Namely, the Court's Order (As to Accounting Counterclaim) (hereinafter as, "Order"), Defendants received a copy of the Court's filed Order via U.S. Mails on March 10, 2011, Defendants respectfully request reconsideration, rehearing, alteration or amendment of the Order on the following grounds.

**MOTION
(SUMMARY OF ARGUMENT)**

This Court's Order misapprehended or overlooked Defendants' argument as to the "Law of the Case". Also, this Court's Order misapprehended or overlooked Defendants' arguments as to Plaintiff Patricia E. King's admission under Rule 801, South Carolina Rules of Evidence (hereinafter as, "SCRE"), and the applicability of estoppel.

The Law of the Case Doctrine precludes this Court from reviewing, altering, rehearing or disregarding the prior Orders of two Circuit Court Judges, as this Court did in the case, *sub judice*. Rule 801, SCRE also controls and binds Plaintiff Patricia E. King. Finally, Estoppel precludes Plaintiff Patricia E. King from taking an inconsistent position in this litigation.

Law of the Case

This Court is bound by the Order of Reference of May 30, 2001, of the Honorable Lee S. Alford (hereinafter as, "Order of Reference"), and this Court must give full deference to the Order of Reference which was not appealed and which Order is now the law of this case, Judy v. Martin, 674 SE 2d 151(2009).

Further, This Court is also bound by the July 29, 2010 Order of Honorable Brooks P. Goldsmith, filed on August 4, 2010, which reaffirmed the Order of Reference (hereinafter as, "Reaffirming Order"), which Order further and specifically held that the Order of Reference is now the Law of this Case. The Reaffirming Order was also not appealed.

The Order of Reference granted an Accounting in this matter, as to the, "Original Funeral Home Business." Specifically, the Order held that the, "...Special Referee to direct the accounting in this matter as to the original funeral home business..." and "...there shall be an accounting, as stated above [in the Order], directed by the Special Referee." (Emphasis supplied).

The Order of Reference contained verbiage about the Plaintiffs' need to account for revenues from the funeral home business. Specifically, the Court required an accounting in this matter, if there was no finding of a "...*inter vivos* transfer by W.R. and/or Ellen King to the late Christopher C. King...". The Defendants herein waived their argument as to an *inter vivos* transfer, in open Court with Counsel for all Parties present. Because of that waiver, this Court could never make such a finding and the accounting was required. "... then there shall be an accounting, as stated above, directed by the Special Referee. This accounting must include all nine siblings and all related issues."(Emphasis supplied).

One Circuit Court Judge may not review¹, reverse or modify another Circuit Court Judge's Order, Sheppard v. Kimbrough, 318 SE 2d 573 (S.C. Court of Appeals, 1984). South Carolina case law is clear, that one Circuit Court Judge must honor another Circuit Court Judge's Order and a Circuit Court Judge cannot set aside another Circuit Court Judge's Order, Cook v. Taylor, 252 SE 2d 923 (1979). Even if this Court disagreed with the methodology of the Order of Reference, this Court does not have the power to set aside the Order of Reference and the

¹ This Court's Order, on its face, indicates that it reviewed the Order of Reference, see page 10, of this Court's Order, "Moreover, a review of the Order of Judge Alford indicates...". Further, this Court's Order, on its face, indicates that this Court was making new Findings of Fact on the accounting issue and deciding that issue, notwithstanding the Order of Reference and Order and the reaffirming Order.

Law of the Case (cont.)

Reaffirming Order, Cook v. Taylor, 252 SE 2d 923 (1979), (Enoree Baptist Church v. Fletcher, 340 SE 2d 546 (1986).

The Law of the Case Doctrine in South Carolina is so well established that facts that are known to the Court to be inconsistent with settled law, become the Law of the Case if unappealed, as in the instant case.

Edwards v. Lexington County Sheriffs Department, Opinion No. 26758 (2010) ("Respondents filed a joint answer to the complaint asserting that the Lexington County Sheriff's Department and Lexington County were 'one and the same entity.' However, under South Carolina law, the sheriff and sheriff's deputies are State, not county, employees [internal citations omitted] Although Respondents' assertion is inconsistent with settled law, their position that they are the same entity is the Law of the Case. We therefore do not address the legally settled distinction between a county government and a sheriff's office for liability purposes [in this case].").

This Court cannot ignore or overrule the Order of Reference and the Reaffirming Order, as to whether or not an accounting must be conducted, Salmonsens v. CGD, INC, 661 SE 2d 81, (2008), Charleston Co. Social Serv. v. Father, 454 SE 2d 307(1995), (long-standing rule in South Carolina that one Circuit Court Judge may not overrule another Circuit Court Judge). Accordingly, the issue of an accounting and the subject matter of that accounting were settled by both the Order of Reference, and the Reaffirming Order.

Rule 801 (SCRE) Statement

The Plaintiffs are bound by the admission of its Representative, Patricia E. King, who alleged and admitted in the November 12, 1998, Complaint, CA # 98-CP-12-325, in Paragraph 7 that;

"W.R. King died intestate in 1975, and Ellen King died intestate in 1987. Under the applicable intestacy laws of the State of South Carolina, the ownership of King's Funeral Home ultimately passed in equal shares to the [nine] surviving children of W. R. King and Ellen King, including [Patricia E. King and Robbie King Jones] and the late Christopher C. King."

This remarkable admission by Patricia E. King forms the "linchpin" for Defendants' request for equitable relief. Patricia E. King has admittedly been converting all of the shares of the nine surviving children of W. R. and Ellen King's interests in the funeral home business from

Rule 801 (SCRE) Statement (cont.)

the time she seized control of the funeral home business in February, 1999 until the date of these presents.

Patricia E. King's statement indicates that she conclusively knew that there were nine shares to the interests in the funeral home business, and admitted that she was only entitled to 1/9 of the interests in the funeral home business, as alleged hereinabove. In summary, Patricia E. King has converted 9/9 of the funeral home business to her own use, in contravention of South Carolina Law on Intestacy, for 12 plus years.

This Court's Order, on page four, comments on Defendants' position that the Funeral Home Business passed by intestacy to the children of W.R. King and Ellen King. Oddly, that theory was first espoused by Plaintiffs, as set forth hereinabove.

Estoppel

On February 5, 1998², November 12, 1998³ and April 6, 2001⁴ the Plaintiffs herein, filed three different pleadings with a South Carolina Court, requesting an accounting for the Funeral Home business and thereby averring to the Court that such was proper, while Plaintiffs herein were not in possession of the Funeral Home business. Accordingly, the Plaintiffs herein are estopped from asserting a claim that an accounting is not proper, now that the Plaintiffs are in possession of the Funeral Home business.

The Hearing Required by This Court

Because the issue of accounting was settled, at the time this Court took jurisdiction, and because Defendants have consistently argued the Law of the Case, Rule 801 and estoppel, there was no basis for requiring Defendants to participate in a formal hearing on the accounting issue and that hearing was and should be declared void, *nunc pro tunc*.

² February 5, 1998 - Complaint (Non Jury) 1998-346-19 Patricia E. King and Robbie King Jones v. Margie B. King and Robbie Patricia lone King, Individually, and as Co-Personal Representatives of Estate of Christopher C. King, Deceased, and Nelson M. King

³ November 12, 1998 - Complaint Patricia E. King and Robbie King Jones, as Representatives of W.R. King and Ellen King v. Margie B. King and Robbie Patricia lone King, Individually, and as Co-Personal Representatives of Estate of Christopher C. King, Deceased and Nelson M. King and Chester Telephone Company and Branch Banking and Trust (BB&T)

⁴ April 6, 2001 - First Amended Complaint 1998-CP-12-00325 Patricia E. King and Robbie King Jones, individually and Patricia E. King as Representative of Estate of W.R. and Ellen King and the following heirs of W.R. and Ellen King: Willie Mammie Powell, Angie King Corley, Robbie King Jones, Ellen King Ferguson, lone King James and Ruby King Rucker v. Margie B. King and Robbie lone King, Individually and as Co-Personal Representatives of the Estate of Christopher C. King, Deceased, and Nelson King and the following Heirs of Edward King, Deceased, William H. King, Helen King Walker, Ellen King Annidige and Edward Johnson King II

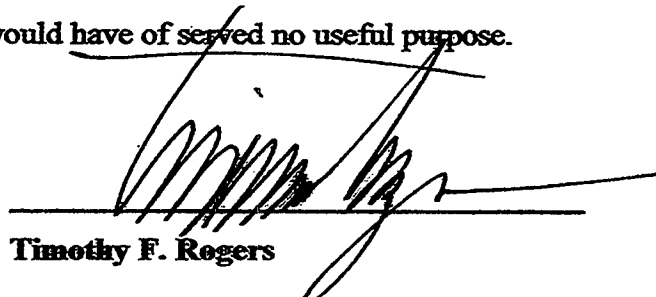
CONCLUSION

This Court herein failed to address several inconsistencies resulting by the Court, either overlooking or misapprehending applicable South Carolina Case Law and Rules.

WHEREFORE, based on the foregoing, Defendants respectfully request that this Court to reconsider, rehear, alter or amend its Order, grant the relief requested, void the hearing held in this matter and for such other and further relief that this Court deems just and appropriate.

RULE 11(a) SCRPC CERTIFICATION

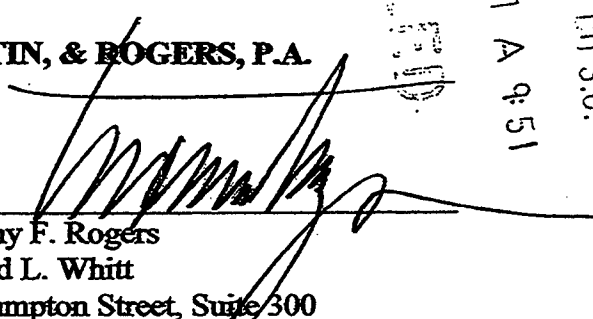
The Defendants' counsel herein, certify that, as to their Motion herein, consultation with opposing counsel was not held, because it would have of served no useful purpose.



Timothy F. Rogers

Respectfully submitted,

AUSTIN, & ROGERS, P.A.

By: 

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Richard L. Whitt
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Post Office Box 11716
Columbia, SC 29211
(803) 256-4000 (phone)
(803) 252-3679 (fax)
Attorneys for Defendants

FILED

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CLERK OF COURT
CHESTER CO S.C.

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Patricia E. King and Robbie King Jones,
as representatives of W.R. King and Ellen
King,

Plaintiffs,

v.

Margie B. King and Robbie Patricia Ione
King, individually and as co-personal
representatives of the Estate of
Christopher C. King, deceased and
Nelson M. King, Chester Telephone
Company,

Defendants.

) THE COURT OF COMMON PLEAS

) SIXTH JUDICIAL CIRCUIT

) Civil Action No.: 98-CP-12-325

) PLAINTIFF PATRICIA E. KING'S
) MOTION FOR SUMMARY JUDGMENT
) AND DISMISSAL OF DEFENDANTS'
) AMENDED COUNTERCLAIMS

TO: TIMOTHY ROGERS, ESQUIRE, ATTORNEY FOR DEFENDANTS MARGIE B.
KING AND ROBBIE PATRICIA IONE KING, INDIVIDUALLY AND AS CO-
PERSONAL REPRESENTATIVES OF THE ESTATE OF CHRISTOPHER C.
KING, DECEASED, AND NELSON M. KING, AND TO THE DEFENDANTS
HEREIN NAMED:

YOU WILL PLEASE TAKE NOTICE the undersigned, as attorney for Patricia E. King,
will move immediately, and does hereby move, for an Order granting it Summary Judgment in
this action. This motion is made under Rule 56 SCRPC on the grounds that Patricia E. King is
entitled to judgment as a matter of law as to Defendants' Amended Counterclaims, in light of the
Court's Order signed by Special Referee Harrison on March 7, 2011.

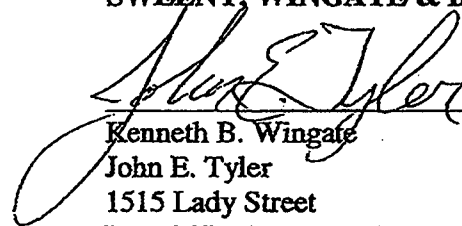
You will further take notice that the undersigned, as attorney for Patricia E. King, will
move immediately, and does hereby move, for an Order dismissing the claims against it set forth
in the Defendants' Amended Counterclaims. This Motion to Dismiss is based upon Rule 12

SCRCF because the Defendants' Amended Counterclaims fails to state a claim upon which relief can be granted.

This Motion may be supplemented by a memorandum of law and supporting testimony, affidavits, and/or other previously admitted evidence.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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Columbia, South Carolina 29211
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Attorneys for Patricia King

Columbia, South Carolina

March 25, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Civil Action No. 98-CP-12-325

COPY

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APR 04 2011

SC Court of Appeals

Patricia E. King and Robbie King Jones,
as representatives of W.R. King and Ellen King.....Plaintiffs,

v.

Margie B. King and Robbie Ione King,
Individually, and as Co-Representatives
of the Estate of Christopher G. King (Deceased)
and Nelson M. King, Chester Telephone and Telegraph
Company, and Branch Banking & Trust (BB&T).....Defendants,

Of whom, Margie B. King and Robbie Ione King,
Individually, and as Co-Representatives
of the Estate of Christopher G. King (Deceased)
and Nelson M. King, are Appellants.

NOTICE OF APPEAL

Margie B. King and Robbie Ione King, Individually, and as Co-Representatives
of the Estate of Christopher G. King (Deceased) and Nelson M. King, appeals the Order of
the Honorable James C. Harrison, Jr., dated March 7, 2011. Appellant received written notice
of entry of this Order on March 10, 2011.

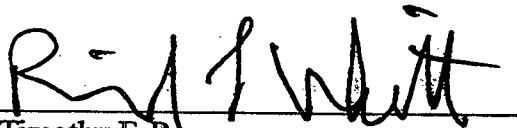
[Signature Page Follows]

Other Counsel of Record:

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AUSTIN & ROGERS, P.A.

By:



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Attorneys for Appellants

April 4, 2011

COPY

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Civil Action No. 98-CP-12-325

RECEIVED

APR 11 2011

SC Court of Appeals

Patricia E. King and Robbie King Jones, as representatives
of W.R. King and Ellen King.....Respondents,

v.

Margie B. King and Robbie Ione King, individually,
and as Co-Representatives of the Estate of Christopher
G. King (deceased) and Nelson M. King, Chester Telephone
Company, ...Defendants,

Of whom, Margie B. King and Robbie Ione King,
individually, and as Co-Representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are.....Appellants.

NOTICE OF APPEAL
(Amended)

Margie B. King and Robbie Ione King, Individually, and as Co-Representatives
of the Estate of Christopher G. King (Deceased) and Nelson M. King, hereby amend their
Notice of Appeal filed with this Court on April 5, 2011 which was served on all Parties of
record.

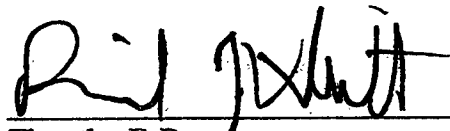
[Signature Page Follows]

Other Counsel of Record:

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AUSTIN & ROGERS, P.A.

By:

A handwritten signature in dark ink, appearing to read "Richard L. Whitt", is written over a horizontal line.

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Attorneys for Appellants

April 11, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL COURT
COUNTY OF CHESTER	)	DOCKET NO: 1998-CP-12-00325
	)	
PATRICIA E. KING AND ROBBIE	)	
KING JONES, AS	)	
REPRESENTATIVES OF W.R. KING	)	
AND ELLEN KING,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	
	)	
MARGIE B. KING AND ROBBIE	)	MOTION HEARING
IONE KING, INDIVIDUALLY AND AS)	)	
CO-PERSONAL REPRESENTATIVES	)	
OF THE ESTATE OF CHRISTOPHER	)	
C. KING, DECEASED, AND NELSON	)	
M. KING,	)	
	)	
DEFENDANTS.	)	

THE WITHIN HEARING WAS TAKEN BEFORE WENDY SHANNON SULLIVAN, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 2:31 P.M. ON THURSDAY, AUGUST 5TH, 2010, AT THE OFFICE OF HARRISON & RADEKER, P.A., 923 CALHOUN STREET, COLUMBIA, SOUTH CAROLINA 29201 .

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Record pp. 111

APPEARANCES

PRESIDING JUDGE:

JAMES C. HARRISON, JR., ESQUIRE
HARRISON & RADEKER, P.A.
923 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201

FOR THE PLAINTIFFS

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REPORTED BY

WENDY SHANNON SULLIVAN
VERBATIM, INC.
POST OFFICE BOX 7123
COLUMBIA, SOUTH CAROLINA 29202

INDEX

PROCEEDINGS-----	3
CERTIFICATE-----	71

*THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL
IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

1 Let's go.

2 MR. WHITT: All right, Your Honor. We agree
3 it should be fact-based, the new request for an
4 accounting, and not argument on Counsel, which is
5 in evidence. And we do also think that there's
6 two reasons why we're entitled to an accounting
7 today, Your Honor. One is the Order of Reference.
8 And just to come back to the Order of Reference,
9 Your Honor, in that document it says that if
10 there's no finding of an inter vivos claim, then
11 there shall be an accounting.

12 It's not, you know, wishy-washy. It shall
13 be. And we are not going to pursue because it
14 would take a bunch of money and a bunch of time.
15 We are not going to pursue the inter vivos claim,
16 so there won't be a finding by the Court that
17 there was a transfer under that argument.

18 So we then fall back to, there shall be an
19 accounting. Your Honor, the reason we think
20 that's so important is that when the --

21 THE COURT: The Order said if the Court --

22 MR. WHITT: Does not make a finding of an
23 inter vivos claim, there shall be an accounting.

24 THE COURT: -- does not find there is an
25 inter vivos gift --



1 MR. WHITT: Gift. There shall be an
2 accounting.

3 THE COURT: So essentially, what I understand
4 that essentially to say, is if that has not been
5 determined, that it's a gift, then it doesn't go
6 through the estate. It goes over here to
7 Christopher King by way of gift. And so,
8 therefore, there is no need for an accounting
9 because Christopher King is the only one involved.

10 MR. WHITT: That's right.

11 THE COURT: Is that the way you understand
12 it?

13 MR. WHITT: That's right.

14 THE COURT: That's the way I understand it.

15 MR. WHITT: That's correct, Your Honor. And
16 the way we're going now, that says there shall be
17 an accounting. And it also says, Your Honor --
18 and it's on this document in the second paragraph,
19 Your Honor, that this accounting must include all
20 nine siblings and all related issues. And it was
21 on Page 2 of that Order.

22 THE COURT: Well, I don't know what all that
23 means. What does that mean? Does that mean they
24 would have to be parties? Why would they have to
25 be parties?



1 MR. WHITT: No, not that they would have to
2 be parties, Your Honor. Let me elaborate on that.
3 We tested what this meant because we went in front
4 of Judge Goldsmith. And Co-Counsel argued that
5 your Order of Reference should be vacated.

6 THE COURT: I don't hold that against him.

7 MR. WHITT: Well, I'm just using that as a --
8 getting where we are. The Order of Reference
9 should be vacated. Then, we submitted Proposed
10 Orders. Well, their proposed order took out that
11 the Order of Reference was the law of the case,
12 and took out some of the language that explained
13 Your Honor's duties. Well --

14 THE COURT: And Judge Goldsmith didn't do
15 that. I noticed that.

16 MR. WHITT: Well, we argued it. The reason
17 we left it in there, Your Honor --

18 THE COURT: And y'all were very careful
19 arguing that Order of Reference. It occurs to me
20 now, after having some hindsight, which is
21 probably why y'all were in that, you wanted to
22 preserve the argument on the accounting that had
23 already been ordered.

24 MR. WHITT: Yes, Your Honor.

25 THE COURT: But anyway, I sent you over an

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1 email about a month ago, or whenever I did, saying
2 what led up to -- what was the record that was
3 before the Judge on this issue. Nobody sent
4 anything back to me. I tried to get the clerk to
5 send me the whole file so that I could see what,
6 you know, was going on at the time this Order was
7 issued. You know? What was it in the record --
8 was there a record on the issue of accounting? Is
9 already the issue of the entitlement, this
10 accounting, been litigated or not?

11 That's what my focus is on. And that's what
12 you're arguing. You're arguing that the Court has
13 already said we're entitled to accounting. Now,
14 we go on to the next step and have the accounting.

15 MR. WHITT: Well, that's one-half of our
16 argument.

17 THE COURT: All right. Well, that's one-half
18 of your argument. But that is clearly one-half --

19 MR. WHITT: That's clearly one-half the
20 argument because the Plaintiff removed the
21 language that this Order is the law of the case.
22 We put it in and he signed it, Your Honor. So I
23 think we're entitled to the plain-English meaning
24 of those words. But like you say, we don't know
25 what came before that. We don't know what led to



1 the Order of Reference, so that's the reason we
2 didn't respond. We really have been so pressed
3 getting ready for both matters, we really can't
4 even research it.

5 But Your Honor, let's just forget that for a
6 moment, then, and go to -- you said there should
7 be a factual reasoning to have an accounting.

8 THE COURT: I think so.

9 MR. WHITT: Yes, sir. We agree. That's
10 one-half of our argument. If you look at the
11 middle of the argument we gave you, Your Honor --

12 THE COURT: Yes, sir.

13 MR. WHITT: The estate is bound by the
14 admission of its representative Patricia E. King,
15 who alleged and admitted in the November 12th
16 Complaint --

17 THE COURT: You are dealing with a different
18 set of facts. Apparently, Patricia King was in
19 possession of the funeral home at the time. And
20 we're going to get to there. That's what I'm
21 assuming, because she's the one asking for the
22 accounting, because apparently Chris King and his
23 heirs, maybe -- this is the way I am just
24 interpolating, was that the posture of this case
25 is completely different than it was when it



1 accounting, have completely changed. But in any
2 event --

3 MR. WHITT: Yeah. Your Honor --

4 THE COURT: So that's my problem and
5 puzzlement --

6 MR. WHITT: But I think this clears it up,
7 Your Honor --

8 THE COURT: And you are asking for accounting
9 three times, and that's fine.

10 MR. WHITT: No, no, no, Your Honor. I'm on a
11 different paragraph, Your Honor.

12 THE COURT: Okay.

13 MR. WHITT: It says, under the applicable and
14 (unintelligible) laws of the State of South
15 Carolina, the ownership of King's Funeral Home
16 ultimately be passed in equal shares to the
17 surviving children of W.R. King and Ellen King.
18 And that included the Plaintiff, Patricia King,
19 and the late Christopher C. King, who is deceased.
20 What she has admitted here, Your Honor, and what
21 she stated to the Court, and her attorney signed
22 and filed with the Court, and she's bound by it
23 now, is that when this occurred, she was only
24 entitled to one-ninth of the estate, Your Honor.

25 Twelve years has passed and during that time

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1 she has never accounted for one penny of the other
2 eight-ninths of the funeral home business. She
3 has never accounted for it. She has never paid
4 them a penny. And she has just operated in
5 defiance of the law. And in her own statement,
6 she admitted that the funeral home passed to Ellen
7 King, but it only passed one-ninth to her. But
8 Your Honor, she gets every month, including this
9 month, nine-ninths of the revenue and benefit.
10 And she has for 12 years.

11 And we just implore Your Honor. This is the
12 one chance that we have for Your Honor to order an
13 accounting of this 12-year period which the
14 Circuit Court found egregious in 2001, that he
15 says there shall be an accounting. Well, here she
16 is admitting, Your Honor. It's factual-based.
17 Should there be an accounting? Is your question
18 you posed, is it fact-based? Yes, Your Honor.

19 She says, we know that the funeral home
20 didn't come to me. It went to nine of us. And
21 she's just entitled to one-ninth. But Your Honor,
22 she has co-opted nine-ninths of the revenue for
23 this 10- or 12-year period. Every bit of it. We
24 have never gotten a penny accounting. We have
25 never gotten a penny of money, none of the



1 beneficiaries of the estate.

2 So as Your Honor -- when we alluded to, the
3 accounting shall be for all nine beneficiaries,
4 all the members, we don't purport to represent
5 them. We don't purport to joining these parties
6 and complicating it any further.

7 Simply, the accounting will shake out as it
8 will. One-ninth of it will accrue to Mr. Rogers'
9 client and the rest will accrue to those people,
10 and they'll just get the benefit without hiring an
11 attorney and going through this fight.

12 THE COURT: If we were 12 years ago, and you
13 were in a hearing, and you presented some of those
14 arguments as facts in a hearing, I might be
15 inclined to go along with you here. But you've
16 had 12 years or 13 years here. And the facts have
17 changed, are different. And nobody has been out
18 here banging on the door, bring an accounting.

19 MR. WHITT: Your Honor, but this fact hasn't
20 changed.

21 THE COURT: And so -- I know it hasn't.
22 Well, I don't know if it has or not. There may be
23 defenses that he has that would defeat any of
24 that.

25 MR. WHITT: Well, I think she ought to be

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1 issue of accounting out of the way. I just don't
2 see a pre-judgment attachment or a receiver at
3 this point. I mean, if there are facts that are
4 presented, that would entitle you to that, I would
5 be willing to listen to that. So any denial of
6 your Motions on pre-judgment on an attachment
7 would be without prejudice. Bring that back
8 again.

9 MR. WHITT: So Your Honor's ruling would be
10 that that be heard on the 16th?

11 THE COURT: I haven't ruled on it yet. Let
12 me hear him first.

13 MR. WINGATE: As Your Honor has correctly
14 presumed, the Court simply has not made a
15 determination on the merits of the case, and that
16 it is pre-mature.

17 THE COURT: Well, what about this clear
18 wording in the order, that Mr. Whitt sent it to me
19 in the first place, to have an accounting?

20 MR. WINGATE: It says --

21 THE COURT: And why your client was the one
22 who was asking for an accounting? And now you're
23 saying, we don't want an accounting.

24 MR. WINGATE: It says, Your Honor -- and I'm
25 quoting the Order of Reference. If the special



1 referee finds that there was not an inter vivos
2 transfer --

3 THE COURT: But he said it's not an issue,
4 though. There isn't an inter vivos. That's not
5 an issue. He is not asserting that there was an
6 inter vivos.

7 MR. WINGATE: That's different from there
8 being a Merits Hearing on the totality of the
9 causes of action.

10 THE COURT: Is there any cases that help us
11 here? I went and read every case that I could
12 find on accounting. And there's not many cases on
13 accounting. But did you find anything that would
14 help us here?

15 MR. WINGATE: I can't cite you to a specific
16 South Carolina case. No, I cannot.

17 THE COURT: Yeah. But anyway, go ahead.

18 MR. WINGATE: So to that point, Your Honor,
19 that's different from their being, his just leap-
20 frogging forward and saying, well, we're just not
21 going to pursue the inter vivos transfer, because
22 we just want to go ahead and get the accounting.
23 There has been no press for however many years it
24 has been, 13 years.

25 And now, all of a sudden, on the eve of the



1 Merits Hearing, to come forward and to seek an
2 accounting, would be -- first of all, I don't see
3 how it would be practically achievable. Secondly,
4 it would be very expensive. I do accountings day-
5 in and day-out, as certainly everyone in the room
6 does.

7 And the Court, again, Your Honor, simply has
8 not made a factual determination; has not made a
9 determination based on facts presented as to
10 whether there is an underlying entitlement to such
11 an accounting.

12 THE COURT: He's saying there is an Order;
13 that the Court has already decided that issue.

14 MR. WINGATE: Well, to the extent that --

15 THE COURT: Hasn't it? Hasn't that Order of
16 Reference predominantly sent it to a special
17 referee to manage an accounting on a condition, as
18 you say? But isn't, fundamentally, what the Court
19 is saying, is I'm sending a special referee,
20 because we need to have an accounting of this
21 funeral home if it passed through these individual
22 children, the nine children? Isn't that
23 fundamentally what the Court was saying?

24 MR. WINGATE: I don't think it's that clear
25 at all. And among other things, you know, the so-



1 called Estoppel theory is that because an
2 allegation was made in a Complaint, which then was
3 subsequently, or has been dismissed, is -- that's
4 no longer a fact in the case. And to the extent
5 that in the original posturing of the case, the
6 Plaintiffs, as representatives of the two estates
7 were seeking an accounting; that is, as Your Honor
8 indicates, worlds apart from where we are here, 13
9 years later, as to the causes of action that are
10 pending before the Court. So until the
11 entitlement to an accounting has been established
12 through the facts presented in a Merits Hearing, I
13 think it is premature, Your Honor.

14 MR. WHITT: Your Honor, please, if I may,
15 hand you a reference to the timeline here, the
16 delay in this case timeline. Counsel has just
17 said that we have -- I'm not sure his exact words,
18 but it is presumptuous for us to ask for an
19 accounting on the eve of trial. Your Honor, we
20 came before you the first week in June, and we
21 tried to move this case forward, and reaffirm your
22 jurisdiction as you requested, Your Honor. The
23 Plaintiff refused to consent to our Order. The
24 Plaintiff didn't cooperate.

25 We went to Judge Goldsmith after learning



1 this. He was on vacation, the 4th of July, et
2 cetera. We have vigorously moved forward to try
3 to get a clarification of Your Honor's authority,
4 which was done. And unfortunately it took --
5 because of her opposition to clarifying Your
6 Honor's jurisdiction, it took us until July 29th.

7 We are on the eve of trial because they
8 refused to consent to clarify Your Honor's
9 jurisdictions. We think it's unfair to talk about
10 us coming in asking for that. We tried to ask for
11 an accounting on June 3rd. We had the paperwork
12 here. Mr. Rogers was going to make the argument
13 that day. He had the Request for Accounting there
14 and Your Honor said, well, I don't think I can
15 hear it, rightfully, until we clarify it. So
16 that's not an issue, in our humble opinion.

17 THE COURT: All right. All right, Mr.
18 Wingate, anything else?

19 MR. WINGATE: Nothing further, Your Honor.

20 THE COURT: All right. I want to deny all
21 the Motions made without prejudice. Make them
22 again. Now, here is where I'd like to go with it,
23 if it's appropriate. What I'm thinking that we
24 hear week after next -- I think it's August 16th.
25 Based upon the evolution of this case, and where



1 it has evolved now, is probably the entitlement to
2 the accounting, I think.

3 Now, whether or not we hear these other
4 issues, I'm kind of thinking that we don't. We
5 don't, I think. But I want to give y'all some
6 guidance about it, so that we can orderly get --
7 now that we've gotten these other matters out of
8 the way. But I'm very sensitive to get the issue,
9 as far as the accounting is concerned. And I'll
10 be glad to re-hear it that day, these Motions with
11 regard to receivership --

12 MR. WHITT: Yes, sir.

13 THE COURT: -- that I told you I was ruling
14 on this without prejudice. I would have to hear
15 some facts before I would agree to any such
16 Motions.

17 MR. WHITT: Can we include in your ruling
18 that there should be some minimal protection?

19 THE COURT: Y'all know how to litigate this
20 case. I'm not going to dictate how you litigate
21 it. I mean, I probably don't want to say anymore
22 about that. I'm going to say -- but other than
23 trying to get us in understanding what we're going
24 to do -- I mean, y'all can take whatever positions
25 and do whatever you want to do, because, you know,



1 it's your case. It is not my case. I'm just
2 trying to get it through in an orderly manner.
3 But I'm thinking that what happens when we have
4 this hearing on -- is it the 19th?

5 MR. WHITT: 16th.

6 THE COURT: I keep saying it differently.
7 I'm thinking what we hear, then is -- I know you
8 just argued against that, but the entitlement to
9 the accounting. And then, I'm concerned about
10 whatever else we hear, these other arguments,
11 these other issues that you have raised. Do you
12 think that we would have to -- and we can more
13 thoroughly explore this, I suppose, at the
14 hearing.

15 But I don't want y'all to go doing two weeks'
16 worth of preparation. The reason I'm having this
17 conversation is I don't want y'all to waste your
18 time, you know. So I'm trying to say, okay, now
19 that I clearly have jurisdiction of this case, you
20 know, I want to get it done as efficiently as we
21 can, and not waste your clients' time
22 unnecessarily, and waste your time unnecessarily.

23 So that's what I was trying -- that's why I'm
24 saying, let us now talk about what we do on that
25 date. Now, if we need to argue about what we do



1 after we find an accounting or we don't find an
2 accounting, then we can do that. But my
3 inclination would be -- it's just to decide on the
4 issue of the accounting and possibly these other
5 Motions.

6 And then, these other issues, try them -- set
7 them at a later time, maybe after the accounting.
8 The other thing that we would have to know, if the
9 Court were to order an accounting, y'all would
10 need to be prepared to determine how that would be
11 done. Now, I know there's an Affidavit in here of
12 that by David (unintelligible) or something.

13 I don't know whether who y'all got carved him
14 out to do an accounting, if the Court were to
15 order such an accounting, or not. But I think
16 that we will then -- if the Court were to Order an
17 accounting and would not rule as his defense as,
18 you know, arise to entitle y'all to an accounting,
19 how an accounting would be done.

20 And I don't want to go any further than that,
21 at this point, because I don't want to, you know,
22 we don't know how the Court would rule after --

23 MR. WHITT: Yes, sir.

24 THE COURT: You know, we'd have to hear that.
25 So I think, administratively, what we might can



1 do, is agree on what we'll hear. And I think what
2 we'll hear is the entitlement issue and any
3 Motions you have related. And then, if the Court
4 were to grant that, how to administer it. And
5 then, put a new schedule for the other claims, I
6 think. Would that be a sensible way to go or not?

7 MR. WHITT: From our perspective, yes, Your
8 Honor.

9 THE COURT: Ken, are you prepared today to at
10 least give me a preliminary idea about that? Is
11 that the way you would see it? You see, I don't
12 want y'all to have to go preparing these -- you've
13 got restitution and disclosurement, accounting,
14 attachment, you've restated that conspiracy,
15 unjust enrichment, partition, trespass -- would
16 not an accounting maybe elucidate some of these
17 issues?

18 MR. WHITT: Yes, Your Honor.

19 THE COURT: It would seem to me --

20 MR. WHITT: It's a key to all of the other.

21 THE COURT: It would seem to me -- and in the
22 past, my experience with it has been -- and there
23 may be a case that says this: that you do your
24 accounting before you do the -- I think before you
25 do the pendant claims. I think it says that.

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1 MR. WHITT: We didn't find one, Your Honor.
2 And I think Counsel said he didn't find any.

3 MR. WINGATE: No, I looked.

4 THE COURT: Well, I looked too. And maybe
5 I'm just thinking about Master Harrison's rules
6 back when I was on the bench. I don't know. But
7 it seems logical that you would do that.

8 MR. ROGERS: It does. And we certainly agree
9 with that, Your Honor.

10 THE COURT: So we don't try those issues
11 then. We wait and decide about the accounting,
12 and then we --

13 MR. WHITT: That will tell us where we're
14 going.

15 THE COURT: And I don't want to pre-judge any
16 of that by commenting, at all, about this issue of
17 accounting further. I think we should just try
18 the entitlement to it. And even though the Court
19 has denied your arguments here, I don't mind
20 hearing them again regarding this Order of
21 Reference, because we don't have the Court file,
22 because we're here in Columbia and not in Chester.

23 I will tell y'all this. I have asked the
24 clerk for the file. I asked the clerk if they
25 would make me a copy of the file, how big was it,



1 anything in front of me now to make such a rule,
2 other than your receivership motion which I'm not
3 inclined to grant. And I did give you the ability
4 to make it again or bring it back up again. So I
5 don't have anything, though I'm sympathetic for
6 things staying in -- I would try to work that out
7 with Ken if you can. If you can't work it out --

8 MR. ROGERS: We don't have any problem with
9 Ken, Judge. I ain't worried about Ken.

10 THE COURT: Well, Ken is responsible to his
11 client. We know that. And so, I don't really
12 have any basis to do anything for the Defendants
13 on that. Is there anything else, Tim, that you
14 wanted to --

15 MR. ROGERS: No, sir.

16 THE COURT: I just do not -- as sympathetic
17 as I am to parties wanting to keep things the
18 same, you know, I don't have any basis that
19 they're not going to stay the same right at this
20 point. And Ken is, quite correctly, without
21 discussing it with his client, can't agree. And
22 he says he can't. So the only thing I can suggest
23 is y'all try to discuss this and try to come to
24 some sort of solution. If you don't, I will be
25 glad to hear any Motions that are timely made, or

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1 whatever.

2 Again, to reiterate, on the next hearing,
3 what we will do will be on entitlement to
4 receivership, entitlement to accounting, and the
5 pendent matters relating to that, such as
6 accounting and receivership or any other Motion.
7 We will, at that point in time, if a receivership
8 is granted -- or pardon me, if an accounting is
9 ordered, decide about the timing of the other.
10 The other thing that if a Court were to say that a
11 receivership is not -- pardon me, an accounting is
12 not going to be ordered, then I think you would
13 need to look at whether these other claims have an
14 independent standing, so that, if the Court were
15 to deny the accounting, whether or not we would
16 set trial on the other claims.

17 And so, I would want you to be prepared to
18 tell me what y'all think of that, depending on
19 what we do. And I have, of course, no idea of
20 what we'll do from here, until I hear y'all's
21 arguments and your evidence. But I see this as a
22 hearing, a hearing kind-of-place, not only on the
23 arguments but the presentation of facts. We all
24 know case law on accountings are pretty slim in
25 South Carolina, but I imagine there is general

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1 case law on how you go about doing that. And I
2 would just suggest that you be prepared to do
3 whatever you want to do on that issue.

4 Because this case is old. And I feel my
5 mission is to get it resolved in an orderly a
6 manner as possible. And there are possibly rounds
7 of appeals that may follow. And so, I'm going to
8 push along, not unreasonably, I don't think, but
9 I'm going to move it along as quickly as I can,
10 which is consistent with y'all's requirements of
11 representing your client. Anything from anybody
12 else?

13 MR. WINGATE: No, Your Honor.

14 MR. ROGERS: No, Your Honor.

15 MR. WHITT: No. Thank you, Your Honor.

16 (WHEREUPON, THERE BEING NO FURTHER QUESTIONS, THE HEARING
17 WAS CONCLUDED AT 3:52 P.M.)



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTH JUDICIAL COURT
COUNTY OF CHESTER	)	DOCKET NO: 1998-CP-12-00325
	)	
PATRICIA E. KING AND ROBBIE	)	
KING JONES, AS	)	
REPRESENTATIVES OF W.R. KING	)	
AND ELLEN KING,	)	
	)	
PLAINTIFFS,	)	
	)	
VS.	)	
	)	
MARGIE B. KING AND ROBBIE	)	HEARING
IONE KING, INDIVIDUALLY AND AS	)	
CO-PERSONAL REPRESENTATIVES	)	
OF THE ESTATE OF CHRISTOPHER	)	
C. KING, DECEASED, AND NELSON	)	
M. KING,	)	
	)	
DEFENDANTS.	)	

THE WITHIN HEARING WAS TAKEN BEFORE WENDY SHANNON SULLIVAN, A NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF 10:10 A.M. ON MONDAY, AUGUST 16TH, 2010, AT THE OFFICE OF HARRISON & RADEKER, P.A., 923 CALHOUN STREET, COLUMBIA, SOUTH CAROLINA 29201.

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Record pp. 132

1 defined, I suppose would be the correct word for
2 it, because of the procedural and court rules in
3 this case. That order then was -- a subsequent
4 order was issued by the Honorable Brooks P.
5 Goldsmith dated July 29, 2010.

6 Part of the ruling in that case said the
7 order of reference filed on May 30, 2001 -- let's
8 see, if I clarify it, is set forth above and that
9 is, it's set forth on the July 29, 2010 order.
10 This case is referred to the Special Referee for
11 ruling on final judgment. In the appeals -- these
12 are two of the Court of Appeals, our Supreme
13 Court, pursuant to the rules.

14 I have read the submissions of the parties.
15 They came in -- I guess it was Friday and so
16 forth. The issue before the Court today is the
17 merits trial on the issue of entitlement by the
18 Defendants to an accounting or an account. I
19 really would prefer to say that. And so, we will
20 take testimony on that issue today, and the Court
21 will rule on that issue.

22 There are other claims made by the counter
23 claimants, which are not going to be heard today,
24 and will be adjourned, or continued until a later
25 date. It may be that how the Court rules on this



1 Head wherever you need to go. I don't mean to be
2 breaking up where you plan to testify, but I want
3 to let you know that I have no background,
4 whatsoever, as far as this case is concerned. And
5 I will need that if I'm to rule on this case.

6 I do not regard, as I have told y'all in the
7 past, the original order of reference to have --
8 it may have required an accounting, or it may have
9 sent an accounting to this Court back then. But
10 the facts are completely changed around since
11 then. And so, we are here to litigate the
12 necessity of accounting. And I know that y'all
13 have argued in the past that that order of
14 reference also had statements in it regarding an
15 accounting. But I thought that we had dispensed
16 of those during the motion period. In any event,
17 go ahead.

18 BY MR. WHITT:

19 Q Ms. King, tell us about the funeral home business, who
20 owned it to start with, and how it came to the state
21 that we're in now.

22 A Okay. I just know that my father moved -- well, he had
23 a business at 135 Cemetery Street in Chester, South
24 Carolina, King's Funeral Home.

25 Q And he ran it until his death. And what happened at



1 THE COURT: -- by your Aunt Patricia?

2 THE WITNESS: Right. She did an eviction
3 through the Magistrate's Court and we had to --

4 THE COURT: I'm sorry. Can you speak a
5 little louder?

6 THE WITNESS: She did an eviction through the
7 Magistrate's Court.

8 THE COURT: Yes, ma'am. When was that?

9 THE WITNESS: Around December of 1998.

10 THE COURT: What happened around December of
11 1998?

12 THE WITNESS: We were evicted from the
13 business.

14 THE COURT: Who is we?

15 THE WITNESS: My mother, my father --

16 THE COURT: Who was running the business at
17 that time?

18 THE WITNESS: Well, Mr. Caldwell. We had
19 trusted him because that's who was the funeral
20 director of the business. So he was still there.
21 I have a brother, Nelson King, who is a funeral
22 director. But Moses Caldwell stayed. Nelson
23 King, the funeral director, was evicted. Margie
24 King, funeral directress, was evicted. John King
25 -- at the time, I think he was a funeral director.



1 He was evicted. I might have been an apprentice
2 at the time, and I was evicted. I'm Robbie King
3 Boyd. I was evicted. All my siblings and my
4 mother were all evicted from the business, the
5 premises. We were told --

6 THE COURT: That was when?

7 THE WITNESS: December of 1998.

8 THE COURT: December of 1998?

9 THE WITNESS: Correct.

10 THE COURT: By the Magistrate?

11 THE WITNESS: By Patricia King through the
12 Magistrate.

13 THE COURT: Okay. Did your Aunt Patricia
14 work for the funeral home?

15 THE WITNESS: Not to my knowledge. She's an
16 attorney in Charlotte, North Carolina, and she had
17 a funeral home in Charlotte, North Carolina. She
18 never participated in any form of the business at
19 that time, that I could see. Because I was a
20 teacher in D.C. My father got sick. I relocated
21 back home to help him.

22 THE COURT: When?

23 THE WITNESS: In 1993 or 4. I moved back
24 because he called. He wasn't feeling well, so we
25 rode up to Michigan with my Aunt over there. We



1 went to see her son and he diagnosed my father
2 with cancer. At that point we came back home, and
3 he was trying to run the funeral business, and get
4 his business in order. And that's how I became
5 co-personal representative of the estate, because
6 my mom was still teaching at the time. So at that
7 point, I never did see my Aunt Patricia
8 participate in business. It was Mr. Caldwell, who
9 is sitting over there, the other guys that worked
10 around the funeral home, my brothers, me,
11 my mom --

12 THE COURT: Okay. Be specific. Who worked
13 in the funeral home?

14 THE WITNESS: Nelson King --

15 THE COURT: Nelson King.

16 THE WITNESS: John King --

17 THE COURT: Who is he?

18 THE WITNESS: My brother.

19 THE COURT: Okay. And John King? That's
20 also your --

21 THE WITNESS: Brother. William King, Marty
22 King --

23 THE COURT: Brothers?

24 THE WITNESS: All of them are my brothers.

25 And my mother is Margie King. And I'm Robbie



1 King.

2 THE COURT: Did she work in the funeral home?

3 THE WITNESS: Yes. All of us worked in some
4 capacity at the funeral home. Yes.

5 THE COURT: Okay. Who is the other gentleman
6 who was not in the family, that you mentioned?
7 You said he was here.

8 THE WITNESS: Mr. Moses Caldwell. He's the
9 one that my father entrusted everything into. And
10 we also trusted him as well. But he was a funeral
11 director. So he ran the business. So I don't
12 know if you all are aware but my father had other
13 ventures. He was elected as mayor so he was in a
14 political arena. He had rental properties, and he
15 also was a bail bondsman. So he entrusted Mr.
16 Caldwell to basically run the business.

17 THE COURT: So Mr. Caldwell -- when did he
18 start running it?

19 THE WITNESS: You would have to ask him that,
20 because he's here. And it happened way before I
21 was born, or around the time I was born.

22 THE COURT: Okay. And was he there at the
23 time that Patricia King brought the eviction
24 action?

25 THE WITNESS: Yes. And what happened -- we



1 BY MR. WINGATE:

2 Q If you would also look with me, Ms. King, at the bottom
3 of the first page, under the recapitulation, and tell
4 me how much real estate your father owned at his death.

5 A At his death? Zero.

6 Q So he was not the owner of 129 Cemetery Street, the old
7 King's Funeral Home, was he?

8 A Correct, not 129 Cemetery Street.

9 Q And he was not the owner of 135 Cemetery Street, which
10 you described as the new King's Funeral Home, was he?

11 A Legally, no.

12 Q If you would also look with me at the second page of
13 Exhibit 1. Well, I guess -- I'm sorry. It would be
14 the third page. It's the typed page headed Schedule E.
15 Look with me, please, at Item Number 4 on that Schedule
16 E. What ownership interest did you, as one of the co-
17 personal representatives, indicate to the Probate Court
18 that your father owned, not as real estate, but as
19 personal belongings?

20 A I don't understand your question.

21 Q What type of ownership interests did your father have,
22 according to your Exhibit E-4 in King's Funeral Home?

23 A Sole proprietor.

24 Q So he was a sole proprietor of the business called
25 King's Funeral Home; is that correct?



- 1 A Yes.
- 2 Q You listed several business ventures that your father
- 3 was in. I want to make sure I have a complete list. I
- 4 think you said he was a bail bondsman.
- 5 A Correct.
- 6 Q He had rental properties?
- 7 A Correct.
- 8 Q He was the mayor of Chester?
- 9 A Correct.
- 10 Q What years was he the mayor, roughly?
- 11 A Can't remember.
- 12 Q And that he was involved in the funeral business; is
- 13 that correct?
- 14 A Correct.
- 15 Q Did he also have a car dealership?
- 16 A He had. Yes.
- 17 Q What was the car dealership?
- 18 A It was a Chrysler Dealership.
- 19 Q And where was it located?
- 20 A Columbia Street in Chester.
- 21 Q And from approximately what date to what date did he
- 22 operate that car business?
- 23 A I have no idea.
- 24 Q Did the business succeed?
- 25 A I'm not sure.



David Siddons - (Cross)
Examination by Mr. Wingate

59

- 1 A The number? Yes.
- 2 Q What number was that?
- 3 A The number that Chester Telephone Company gave me.
- 4 Q And what number is that?
- 5 A 377-1144.
- 6 Q And just to make sure I got it properly, it's 377-1144?
- 7 A That's correct.
- 8 Q And is that the phone number that you use, today, at
- 9 Christopher King's Funeral Home at 703 Old York Road?
- 10 A That, along with my mother's home phone, 377-4109.
- 11 Q I'm sorry. Say the number again.
- 12 A 377-4109.
- 13 Q What was the number of the telephone at King's Funeral
- 14 Home at 135 Cemetery Street when your father died?
- 15 A 377. -- you talking about the number that Patricia sued
- 16 Chester Telephone Company and got money for? 377-1144.
- 17 Q Okay. So the number at 135 Cemetery Street, at the
- 18 time of your father's death, was 377-1144?
- 19 A That's correct.
- 20 Q And the number of your business, today, on Old York
- 21 Road, is 377-1144?
- 22 A That's correct.
- 23 Q Did you have some pews that you used in Old York Road
- 24 when you opened business on December 8th, 1998?
- 25 A Some pews that I bought out of Atlanta, Georgia, from a



1 been in the ground a good hour.

2 THE COURT: And she told you what?

3 THE WITNESS: She told us that we had to get
4 out.

5 THE COURT: Be a little more --

6 THE WITNESS: She told us that we had to
7 leave the premises. And that's when -- we
8 refused, because we were always under the
9 impression that the business was my father's. And
10 she evicted us, I guess, a year later, through the
11 court process.

12 THE COURT: She evicted you a year later?

13 THE WITNESS: Yes.

14 THE COURT: So y'all did not leave -- or your
15 mother did not leave --

16 THE WITNESS: She filed -- from my
17 understanding -- because I left and went to school
18 on September the 8th at Gupton Jones College of
19 Funeral Services. I left. We buried my father on
20 Saturday. I left that Monday going to school.
21 What happened in between there -- yeah. I don't
22 really know a whole lot about it, because I was in
23 Atlanta.

24 THE COURT: You were in Atlanta? All right.
25 But so, about a year later you understand an

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1 A Yes.

2 Q Are you aware of the chronology and timeline in this
3 case?

4 A Yes, I have reviewed that as well.

5 Q Have you had a chance to review documents sufficiently,
6 that would allow you to give the Court your opinion on
7 whether or not an accounting would be advisable in this
8 case?

9 A Yes, I have.

10 Q Based on your knowledge, skill, experience, training,
11 education --

12 MR. WINGATE: I object, Your Honor. Have
13 they offered him as a witness, an expert witness?

14 THE COURT: Well, ask your question and then
15 you can object. So what's the question?

16 MR. WHITT: Well, you're right, Your Honor.
17 We would offer Mr. Siddons as an expert in tax
18 matters in South Carolina.

19 THE COURT: All right.

20 MR. WINGATE: I have no objection.

21 THE COURT: All right. Without objection,
22 what is your question?

23 BY MR. WHITT:

24 Q Based on your review of documents, your knowledge,
25 skill, experience, training, or education, do you have



1 A I think that I'm --
2 Q First, just, do you have an opinion?
3 A Yes, I do.
4 Q I'm sorry. Could you please give that to the Court?
5 A I believe that Patricia should pay for the accounting.
6 Q Can you give us some basis for your statement?
7 A Well, I mean, this has dragged on for what, nine, ten,
8 twelve years. And it's on behalf of the estates -- my
9 understanding is that both of the grandparents we're
10 talking about, their estates are still open. I haven't
11 independently verified that, but that's what I've been
12 told. And typically, in those matters, if it's on
13 behalf of the estate, then she would bear the cost of
14 the accounting.
15 Q We have no further questions, Your Honor.
16 MR. WINGATE: Your Honor, if you will just
17 bear with me for one minute.
18 THE COURT: Well, let me ask some questions
19 while you're getting ready.
20 MR. WINGATE: Yes, Your Honor..
21 THE COURT: Other than the order of
22 reference, do you have any other opinion as to why
23 an accounting is due the Plaintiffs?
24 THE WITNESS: Well, like I say, it was
25 ordered in '01.



1 THE COURT: I know it was. But I discount
2 that. The case is completely different today than
3 it was. But anyway --

4 THE WITNESS: Okay. But I don't really know
5 what has changed since '01. I mean, I don't think
6 there has been a whole lot of movement other than
7 the nine beneficiaries who thought they were going
8 to inherit something from the parents. I don't
9 believe they got it. So I mean, I don't have any
10 -- without having any numbers --

11 THE COURT: The nine beneficiaries of whom?

12 THE WITNESS: Of Mr. and Mrs. King, W.R., and
13 Ellen King. I may be wrong. Maybe there are
14 eight children.

15 THE COURT: Well, does it affect your opinion
16 that Mr. Christopher King's personal
17 representatives listed as funeral home, is owned
18 by Christopher King as a sole proprietorship, not
19 as any interest that was owned by his parents?
20 Does that affect your opinion?

21 THE WITNESS: Not really. You know, not to
22 discount these folks -- they're in the funeral
23 home business. They're not necessarily in the
24 how-to-fill-out-a-form or ownership interest, so I
25 don't put a whole lot of weight on how the



1 inventory and appraisement is filled out, or how
2 the ownership was listed. I'm just going back.
3 W.R. and Ellen King had a funeral home. W.R. died
4 intestate. Ellen died intestate. And I believe
5 there were either eight or nine children that
6 survived, that under laws of intestacy would have
7 inherited.

8 THE COURT: So it's your opinion that the
9 business that existed, that Chris King ran for --
10 his daughter testified, for over 40 years, was an
11 asset of his parents, and passed through their
12 estate? Is that what your opinion is?

13 THE WITNESS: My understanding is that's a
14 separate -- I think we're talking about a
15 different funeral home. The mother, W.R. and
16 Ellen King, the grandparents of the folks that
17 testified, had a funeral home business that passed
18 from W.R., I believe when he died in '75 or
19 somewhere here and there. And then, Ellen
20 survived. W.R. had his wife, Ellen, and either
21 eight or nine children -- maybe it's eight.

22 THE COURT: One of them is Christopher
23 King --

24 THE WITNESS: Right.

25 THE COURT: -- and one of them is Patricia

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1 had seen to date in the pleadings is that W.R. and
2 Ellen -- I think we're talking about a separate
3 business.

4 THE COURT: Okay. Tell me about that.

5 THE WITNESS: Okay. W.R. and Ellen operated
6 a business for 40 or 50 years. I don't know about
7 Christopher King and his operations. I never even
8 looked into that part of it.

9 THE COURT: All right. Did you not hear the
10 testimony earlier today, that Christopher King ran
11 that business at that location?

12 THE WITNESS: Right. I did.

13 THE COURT: That were grandparents?

14 THE WITNESS: I heard that. Yes.

15 THE COURT: Okay. Does that make any
16 difference to your testimony?

17 THE WITNESS: I think it just further makes
18 this murky. We really need an accounting. I
19 mean, I don't know how else --

20 THE COURT: An accounting is not going to
21 establish the ownership.

22 THE WITNESS: Well, we're going to have to
23 get a baseline of ownership and then follow it
24 through.

25 THE COURT: Well, let me tell you where I am.



1 THE WITNESS: Okay.

2 THE COURT: There's not going to be any
3 accounting unless the Defendants can establish
4 that they're entitled to it.

5 THE WITNESS: Right.

6 THE COURT: And the way they're entitled to
7 it is the ownership issues, and that there is a
8 fiduciary obligation by Patricia King. That's
9 what I think that the issues are. You're kind of
10 jumping ahead to, there needs to be an accounting,
11 and I'm looking at, who owned it.

12 THE WITNESS: Right. Right.

13 THE COURT: And I was wondering if you could
14 help us with that issue.

15 THE WITNESS: Maybe we could -- I could be
16 engaged to do that. I have not been engaged on
17 that part of it. But I mean, if there's some
18 things that I can look at and regroup, I certainly
19 would, and give my opinion on that as well.

20 THE COURT: Okay. Do you know anything about
21 how Christopher King handled -- when he ran the
22 funeral home, apparently for over 40 years,
23 according to his daughter's testimony, how he
24 reported his income, and whether he distributed an
25 income to any of his siblings?



1 THE WITNESS: I do not know.

2 THE COURT: So as far as we know, based upon
3 the testimony that we've heard this morning, which
4 you have heard, he operated as a sole
5 proprietorship, and his heirs filed with the
6 Probate Court, a statement that that's what the
7 entity was, a sole proprietorship of Christopher
8 King. Is that not what you heard?

9 THE WITNESS: Well, that's what I heard. I
10 didn't even see the inventory and appraisalment
11 that was entered into evidence. I didn't even
12 examine that.

13 THE COURT: All right. I know you weren't
14 hired for this, Mr. Siddons, and if you can't
15 answer this, don't. But you are saying that your
16 basis for saying that there should be an
17 accounting, so that I can be clear about it, is
18 what?

19 THE WITNESS: I'm going back to the order of
20 reference, which mentions an accounting. In my
21 read of that is, we're talking about W.R. and
22 Ellen King, the operation, funeral home, that they
23 operated for -- I don't know how many years, 40,
24 50, that passed to their eight or nine children.

25 THE COURT: So your opinion, based upon

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1 entitlement to an accounting, is based on that
2 order of reference?

3 THE WITNESS: I'm looking at that order of
4 reference, and further, just listening here and
5 listening to how confused this is. I mean, you
6 know, you get -- I just don't know how -- and I
7 understand what you're saying about, we've got to
8 establish ownership. But that ownership would
9 have been what passes, by laws of intestacy, back
10 when W.R. died, Ellen died, and they only have
11 eight or nine children. So under the laws of
12 intestacy, it would have gone -- where did it go?
13 And what has happened in --

14 THE COURT: Well, let me ask you this: Have
15 you reviewed any documents as to how this was
16 treated under the estates of the two elder Kings?

17 THE WITNESS: No, I have not. I
18 understood -- I said I did not independently
19 verify, that those estates were still open in the
20 Probate Court.

21 THE COURT: And so, you don't know how they
22 may have treated this?

23 THE WITNESS: I do not know.

24 THE COURT: Okay.

25 THE WITNESS: And you know, I don't know what

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1 That's why they're here today, Your Honor,
2 asking for Your Honor to intercede and do the
3 accounting that another Circuit Court Judge said,
4 in 2001, should be done. And that Circuit Court
5 Judge, as busy as he might have been, took the
6 time to put in that order, this is not just an
7 accounting for these folks that hired attorneys
8 and came to court, I want an accounting for all
9 the beneficiaries of the funeral home business.

10 And Judge Goldsmith reaffirmed that order
11 later, Your Honor, saying the same things. And
12 Your Honor, we can't leave this admission, this
13 statement --

14 THE COURT: Had I believed that order of
15 reference controlled the situation, we wouldn't be
16 having this hearing today. So as far as that
17 order of reference and what it did is concerned,
18 it was done with a complete different set of
19 facts. It was based upon their motions for an
20 accounting, because at that point in time, they
21 were outside, and the other family was on the
22 inside.

23 So that order was based upon an accounting
24 that they requested. So the set of facts
25 completely changed, particularly after the Court



1 number. And maybe y'all got some business out of
2 the funeral home when it went over to Christopher
3 King's. I don't know.

4 But is what she ended up with quantifiable?
5 Is that distinguishable? Or is what she created
6 something that she created after she started
7 running it? I guess we'll hear from them on that.
8 But there is no evidence in here as what it is
9 that she appropriated.

10 You know, you just say, this funeral home was
11 in this location and she started running it. And
12 she ran the other part of the family out, because
13 she owned the building. You know, what did she
14 get? What did she convert? What is it that
15 she -- you're asking for an accounting, and you've
16 got to establish that you're entitled to an
17 accounting because of some relationship to this
18 asset.

19 And it seems like, to me, that at this point,
20 I would deny the motion for a directed verdict.
21 But I certainly would look at it again towards the
22 conclusion of the case. So I'm going to deny the
23 motion at this point and listen to the -- I
24 understand your position is that it has passed
25 through all these estates. And you're entitled to



Moses Caldwell - (Direct)
Examination by Mr. Wingate

143

1 Q Is your role as an employee?

2 A I am an employee. You know, in 1991 I entered the
3 business one morning and he was there. And he said to
4 me -- he said, let's go to Columbia. And I said,
5 Columbia? You know, we've got some things going on.
6 And he said, yeah, but it will wait. He said, let's go
7 to Columbia. So I said, well, what's going on in
8 Columbia? He said, well, we're going to the state
9 board. I said, okay.

10 So we went before the state board and he appointed
11 me manager of the business. And I said, well, you
12 know, if this what -- he said, no, I'm going to do it,
13 because you're actually doing the functional role of
14 this business. And when the families come in to do
15 things, I don't want you to be restricted in what you
16 do. And he actually appointed me through the South
17 Carolina State Board of Funeral Service in 1991 as
18 becoming manager.

19 Q You have always been an employee of --

20 A Yes, sir.

21 Q -- King's Funeral Home?

22 A Yes, sir.

23 Q Was Christopher King the owner of King's Funeral Home?

24 A That, you know, I do not know. I know on the
25 stationary headings and all, they would list his name



1 on all stationary as owner.

2 Q When Christopher King got sick -- and I believe the
3 testimony has been that he died on September 1 of 1997.
4 First, let me ask you, if I may: Does that date sound
5 right to you? Do you have any independent
6 recollection? Did he die September of 1997?

7 A That's correct.

8 Q What happened immediately after his death, in terms of
9 King's Funeral Home and its operation?

10 A After his death -- and you know, as I fore-stated, some
11 of the things, as far as technicalities, as far as
12 legal aspects, I didn't get into that. But I do know
13 on the night of possibly December 8th, I was in Fort
14 Long, South Carolina --

15 Q December 8th of what year, if I may ask?

16 A '98.

17 Q December 8th, 1998?

18 A '98.

19 Q A year later?

20 A Yeah. I was on a visitation at Fort Long, South
21 Carolina. And I received a call at a church that
22 everything was being moved out the funeral home. And
23 when I received that call I said, you know, well, I'm
24 in Fort Long. So get in contact with Patricia. My
25 wife was there at the time and some other people there.



1 I said, you know, whatever it be, let it be. They
2 said, the police is here, a rollback is here. They're
3 moving the pews. They're taking all the embalming
4 equipment.

5 And you know, that's kind of a frightening thing,
6 you know, when you're running a business, for something
7 like that to happen. But then, all along I didn't know
8 -- you know, I had got some word that there was going
9 to be another funeral operation --

10 MR. WHITT: Your Honor, I object.

11 THE COURT: Hold on. What is your objection?

12 MR. WHITT: To hearsay. I don't want him to
13 tell us what he heard.

14 THE WITNESS: Okay. Well, I'll state --

15 THE COURT: Sustained. Go ahead.

16 THE WITNESS: On December 8th, everything was
17 moved out of the funeral home. And when I got to
18 Fort Long, I had to bring his remains back into
19 this chapel with no pews or anything there. I had
20 some chairs. I set the chairs up in there because
21 the funeral wasn't going to be until the next day.
22 At that particular time, I had calls coming in
23 during the night.

24 There was a friend funeral director by the
25 name of James Baker, from Great Falls. I called

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1 THE COURT: Oh, pre-need burial.

2 THE WITNESS: Pre-need burial account. And I
3 wasn't there. I was on the funeral service. But
4 Ms. King was there when this gentleman came back
5 to pay on the account. And there was one of our
6 nephews who was going to receive the money and
7 carry it to his mother. And she told him to bring
8 it back --

9 MR. WHITT: Objection.

10 THE WITNESS: I was on a funeral. We don't
11 want to talk hearsay.

12 BY MR. WINGATE:

13 Q Do you have knowledge of where the telephone number was
14 moved to?

15 A It had to be -- the number was moved to 703 Old York
16 Road, because I had to go to the telephone company and
17 start from square one with a new telephone number, 385-
18 2020.

19 Q And so, you obtained a new telephone number for King's
20 funeral home?

21 A Sure.

22 Q And that number is what?

23 A 385-2020. I sat down with Mr. (unintelligible) at the
24 telephone office. He displayed many pages of numbers
25 to me. And he said, now, you go and look at the



1 numbers that you would be current with, that you would
2 like to be starting a business with a new start. So I
3 looked at this number, 385-2020. He said, why would
4 you take that number?

5 MR. ROGERS: Objection.

6 THE WITNESS: I said, because I have a
7 business.

8 THE COURT: Sustained.

9 BY MR. WINGATE:

10 Q Let me ask you if you're familiar with that photograph,
11 Mr. Caldwell.

12 A Sure, I am.

13 MR. WINGATE: I would move into evidence that
14 photograph, Your Honor.

15 THE COURT: Any objection? Is that the way
16 it looks today?

17 THE WITNESS: Yes, sir.

18 MR. ROGERS: No objection.

19 THE COURT: Okay. Without objection, the
20 picture of the sign.

21 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 7 WAS MARKED FOR
22 IDENTIFICATION PURPOSES, PHOTOGRAPH.)

23 BY MR. WINGATE:

24 Q What is the telephone number for King's Funeral Home as
25 it exists today, according to the photo in Number 7?



1 A 385-2020.

2 Q Is that the number that you obtained when you had to
3 start the business?

4 A That is correct.

5 Q What was your vision for King's Funeral Home when you
6 took 385-2020 as the number?

7 A My vision was that changing to a new number and trying
8 to get, you know, families acquainted with a new number
9 was -- I had several people call me and they said, what
10 is your --

11 MR. ROGERS: Objection.

12 THE WITNESS: -- new number? We've been
13 trying to reach you. And I --

14 MR. WINGATE: Without quoting what other
15 people said.

16 THE COURT: Yes.

17 THE WITNESS: Well, I have --

18 THE COURT: It's not hearsay. It's not
19 introduced for the truth of the matter.

20 THE WITNESS: It was a vision. It was a
21 vision using 20,20 as eyesight, vision for future
22 serving of families in the community.

23 THE COURT: But you're saying 385-2020
24 implies vision?

25 THE WITNESS: Yes. Vision, sight. There is



1 Q Thank you.

2 MR. WINGATE: I would move into evidence as
3 Plaintiff's next exhibit --

4 THE COURT: Objection? Any objection?

5 MR. WHITT: No, Your Honor.

6 THE COURT: Without objection.

7 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 16 WAS MARKED FOR
8 IDENTIFICATION PURPOSES, LETTERS DISMISSORY.)

9 BY MR. WINGATE:

10 Q As we sit here today, do you own the real property in
11 Chester that is known as 135 Cemetery Street?

12 A I do.

13 Q And is 135 Cemetery Street the King's Funeral Home
14 that's shown in Plaintiff's Exhibit Number 6?

15 A It is.

16 Q Did you ever had an occasion to get a plat prepared of
17 the property at 135 Cemetery Street?

18 A I did.

19 Q Are you familiar with this plat?

20 A I am.

21 Q Is this the plat that you had prepared for you of
22 King's Funeral Home building by Ashmark Land Surveyors?

23 A Yes, it is.

24 MR. WINGATE: Your Honor, I would move into
25 evidence the plat of King's Funeral Home.



1 THE COURT: Objection?

2 MR. WHITT: No, Your Honor.

3 THE COURT: All right. No objection.

4 MR. WINGATE: Let's set this one in a pile
5 and let her mark this. Then I'll give it back to
6 you.

7 THE COURT: What number is that?

8 THE COURT REPORTER: 17.

9 THE COURT: Thank you.

10 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBER 17 WAS MARKED
11 FOR IDENTIFICATION PURPOSES, PLAT.)

12 BY MR. WINGATE:

13 Q I'm going to let you work from this one since it has
14 been marked as the Exhibit. That extra is just if the
15 Judge cares to see it. When did you have this plat
16 prepared?

17 A Let's see.

18 Q I believe there's a date near the top.

19 A October 7th, 1997.

20 Q And does the plat list the three tax map parcel numbers
21 of the properties that comprise King's Funeral Home?

22 A Yes.

23 Q As a lawyer, are you familiar with tax map numbers?

24 A Yes. Do you want me to read them?

25 Q Yeah. Go ahead and read them. What are the three tax



1 map parcels that comprise King's Funeral Home, which is
2 135 Cemetery Street.

3 A One has 79-03-02-027, 201-4-21-017, 201-04-21-016.

4 Q For what purpose did you have this plat prepared by
5 Ashmark Land Surveyors in 1997?

6 A Because I had to get a loan on the funeral home.

7 Q Why did you have to get a loan on that funeral home?

8 A Initially, in 1992, I had to get a loan to bail my
9 brother out of bankruptcy. And then, 1997, when he
10 died, I had to refinance because none of his heirs
11 would go along with me to get the loan. So I had to
12 get a loan with my sister Robbie King Jones. We had to
13 put up the funeral home, plus we put up her house. And
14 I'm still paying the note on it.

15 Q Okay. You just covered a lot of territory. Let's go
16 back and break that down just a tad.

17 A Okay.

18 Q When you acquired the properties, the three that you
19 just testified about, that comprised King's Funeral
20 Home, were there any buildings on those three lots, or
21 was it a vacant lot?

22 A No. It wasn't any buildings. It was a building prior
23 to that, when I bought some property from my sister in
24 the 70's. I think we had the house torn down.

25 Q So there may have been an old home --



1 A Yeah. It might have been an old house.

2 Q -- at 135 Cemetery Street, but there was no office
3 building --

4 A No.

5 Q -- and certainly no funeral home building?

6 A No, it wasn't. No.

7 THE COURT: When was this that she's talking
8 about? What date? Is this October of '07, the
9 same date as the survey?

10 MR. WINGATE: As of 1997, Your Honor.

11 THE COURT: Okay.

12 MR. WINGATE: As she has alluded to, there
13 was an original mortgage and then a subsequent
14 mortgage. And we'll break those down. But this
15 plat was prepared in conjunction with the second
16 mortgage. It was a 1997 transaction.

17 THE COURT: Okay. Let me see if I'm
18 understanding her testimony. She prepared a plat
19 in October of 1997. It shows the King's Funeral
20 Home building.

21 MR. WINGATE: Correct.

22 THE COURT: She just testified that she got a
23 loan on the funeral home to bail out her brother
24 out of bankruptcy.

25 MR. WINGATE: Right.



Patricia E. King - (Direct)
Examination by Mr. Wingate

284

1 on the document?

2 MR. WINGATE: That is correct.

3 THE COURT: I think that's within the
4 parameters of the objection.

5 MR. WINGATE: Sure. Sure.

6 BY MR. WINGATE:

7 Q What does the document say? If you would read the
8 first paragraph of the document, that first sentence.

9 A Okay. I can read, the State of South Carolina, County
10 of Chester, Lease Agreement. This lease agreement made
11 and entered into this 16th day of July, 1980, by and
12 between Patricia E. King of Chester, South Carolina,
13 herein referred to as landlord, and Christopher C.
14 King, doing business as King's Funeral Home of
15 Chester --

16 THE COURT: Say that again. What is it?

17 BY MR. WINGATE:

18 Q Read it loudly and distinctly, please.

19 A Okay. Patricia E. King, referred to as landlord.
20 Christopher C. King, doing business as King's Funeral
21 Home of Chester, hereinafter referred to as tenant.

22 Q If you go to the second paragraph, how many years is
23 the term of the lease? Would you read the first
24 sentence of paragraph 2?

25 A The term of said lease should be for a period of 15



1 years, commencing on November the 1st, 1980, and ending
 2 on October 31st, 1995, and at for a monthly rental of
 3 \$1200.

4 Q Thank you.

5 THE COURT: Beginning in 1980?

6 THE WITNESS: Yeah.

7 THE COURT: Is that what you said?

8 THE WITNESS: Yes, sir.

9 THE COURT: And ending November --

10 THE WITNESS: October 31st, 1995.

11 THE COURT: Okay.

12 THE WITNESS: For rent of \$1200.

13 BY MR. WINGATE:

14 Q And then, if you look at paragraph 5 --

15 THE COURT: A month?

16 THE WITNESS: Yes, sir.

17 BY MR. WINGATE:

18 Q -- was the lease term renewable? Would you read just
 19 the first sentence of paragraph 5?

20 A Lease is hereby granted -- the tenant is hereby granted
 21 the further right to occupy said -- did you say first
 22 sentence?

23 Q First sentence.

24 A That's it.

25 Q Well, no. The whole first sentence after the period.



1 A Oh, okay. Premises under the terms and conditions
2 hereof by the exercise of one or more of three
3 successive options each for a period of five years, the
4 first optional period extending from November the 1st,
5 1995 until October the 31st of the year 2000.

6 Q Did Chris exercise that first five-year extension? Did
7 he remain as a tenant of the property?

8 A Until he died. Until September of 1997.

9 Q Thank you. After Chris leased the funeral home from
10 you in 1980, did you later take out another note and
11 mortgage -- sign a note and take out a mortgage on the
12 funeral home property?

13 A I did.

14 Q When?

15 A This note is dated July 31st, 1992.

16 MR. WINGATE: And Your Honor, I would move
17 into evidence the July 31, 1992, in the amount of
18 \$225,000.

19 THE COURT: \$225,000?

20 MR. WINGATE: Yes.

21 THE COURT: And that's a mortgage?

22 MR. WINGATE: This is the note.

23 THE COURT: Okay. Any objection?

24 MR. WHITT: Well Your Honor, we object to
25 relevance, and we also object to its by, the



1 because it was not at that point the Justice of --

2 MR. WINGATE: February 19th, 1999.

3 THE COURT: 1999? January of 1999?

4 MR. WINGATE: February of 1999.

5 THE COURT: February.

6 CROSS EXAMINATION

7 BY MR. WHITT:

8 Q Ms. King, in 1999, did you provide an accounting for
9 the profit and loss of the funeral home business at 135
10 Cemetery Road?

11 A 1999?

12 Q Yes, ma'am.

13 A Taxable year, 1999?

14 Q Just calendar year, 1999, did you provide an accounting
15 to your eight siblings, as to the profit and loss of
16 the funeral home at 135 Cemetery Road?

17 A My accountant did. I can't answer that, because my
18 accountant said that --

19 Q No, ma'am. I'm asking if you did.

20 A I didn't send none of my relatives any information as
21 to an accounting.

22 Q So that's a no?

23 A I would say it was a no.

24 Q What about the year 2000?

25 A No.



1 A No, sir.

2 Q And ten?

3 A No.

4 Q Thank you. Now, I think you testified, in a
5 conversation with your attorney, that you're an
6 admitted attorney in North Carolina; is that correct?
7 Practicing?

8 A That's correct.

9 Q And when was that?

10 A I think it was 1972 or '73, somewhere early 70's.

11 Q And in that period of time, have you ever had an sort
12 of enforcement action taken against you by the North
13 Carolina bar?

14 A Only thing I had, I had a young man in there who was
15 drawing up some documents for me one time. He was a
16 lawyer but he got in some kind of trouble. And I
17 wasn't there. One day he drew up a will, a power of
18 attorney, for someone. I wasn't there. And a friend
19 of his tried to sue me, which he's trying to do it
20 right now. He's been continuously, continuously. The
21 Judge has thrown it out several times, which he had no
22 interest in. So he tried -- yes, sir. He tried to sue
23 me.

24 Q Well, I was actually -- the first part of my question
25 was, any kind of enforcement action by the North



1 Q And let me ask you something else. You were here
2 earlier today, when we read paragraph 7, from your
3 Complaint that you filed. And this was filed by you
4 and your attorneys on November 12th, 1998. This is the
5 Complaint, paragraph 7. And even though mine is
6 slightly redacted, I'll try to read it as in the
7 original. Your attorney can object me. W.R. King died
8 intestate in 1975 and --

9 MR. WINGATE: Can I look at that one second?
10 You're at paragraph 7?

11 MR. WHITT: Paragraph 7, same as earlier.

12 MR. WINGATE: Okay.

13 BY MR. WHITT:

14 Q W.R. King died intestate in 1975, and Ellen King died
15 intestate in 1987. Under the applicable and intestacy
16 laws of the State of South Carolina, the ownership of
17 King's Funeral Home ultimately passed the equal shares
18 to the surviving children of W.R. King and Ellen King,
19 including the Plaintiffs and the late Christopher C.
20 King. Do you remember that?

21 A If that's what it says, yes, sir.

22 Q Well, ma'am, it's your pleading. You filed it with the
23 Court.

24 A I said, yes, sir.

25 Q So that was your position in 1998?

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1 A At that time, it was.

2 Q And is this not clear as a bell, on its face, as to
3 what happened to the asset that was King Funeral Home,
4 in 1998, that it passed, according to what you filed
5 with the clerk through the intestacy laws --

6 THE COURT: Can you just stop for one second?

7 MR. WHITT: Yes, Your Honor. I'm so sorry.

8 THE COURT: I am looking for mine.

9 MR. WHITT: A copy of the Complaint?

10 THE COURT: Well, yeah. I had --

11 MR. WHITT: Well, maybe -- you did hand it to
12 me and Mr. Rogers. So there is a possibility we
13 didn't hand it back.

14 THE COURT: It could be over here.

15 MR. ROGERS: I don't remember that.

16 MR. WHITT: Well, if he had it --

17 THE COURT: I have it. I have it. I have
18 it.

19 MR. WHITT: Okay.

20 THE COURT: Excuse me. I'm sorry. I wanted
21 to keep up.

22 MR. WHITT: Yes, Your Honor. I'm sorry.

23 THE COURT: Go ahead.

24 MR. WHITT: I was going pretty fast.

25 THE COURT: I am sorry I interrupted you.



1 MR. WHITT: So we are at paragraph 7 from the
2 Complaint, Your Honor.

3 THE COURT: Right.

4 BY MR. WHITT:

5 Q So it was clear to you, at that time, that it was an
6 asset, and it was called King's Funeral Home, and it
7 passed in equal shares to the surviving children of
8 W.R. King and Ellen King, which is you and your
9 siblings; is that correct?

10 A That's correct, at that time.

11 Q Well, at that time

12 A Uh-huh.

13 Q And so, that means that under this -- and there is some
14 question about the fraction was, but the fraction would
15 be meaningless. It would still be some fraction for
16 Ellen King and a fraction for the rest of the children.
17 But assuming that that fraction was correct, that it
18 would have passed to all nine of you, what part of the
19 King's Funeral Home have you ever, as personal
20 representative of Ellen King, at that point -- have you
21 ever distributed to your other siblings?

22 A No. Wasn't nothing to distribute. No money. Like,
23 Chris didn't ever distribute nothing to us.

24 Q Well ma'am, first, as you say, answer my question, and
25 then --

 **Verbatim, Inc.**
Realtime Voice Writing & Training
info@verbatiminc.com
(800) 787-7242

1 MR. WINGATE: Objection. Question asked and
2 answered, Your Honor.

3 THE COURT: Go ahead.

4 MR. WINGATE: My objection is that the
5 question is repetitive. It has been asked and
6 answered.

7 THE COURT: Sustained.

8 MR. WHITT: Okay.

9 BY MR. WHITT:

10 Q Are you aware of the May 30th, 2001 Order of Reference
11 that was issued in this case? Are you familiar with
12 that?

13 A I don't know. What does it say?

14 Q Well, it was the Order of Reference in this case. I
15 don't know that I have an unmarked-up copy of it here.

16 MR. WHITT: Do you have one, Tim?

17 MR. ROGERS: I believe.

18 MR. WHITT: Here it is. I'm sorry, Your
19 Honor.

20 THE COURT: Okay. Take your time to read
21 over it.

22 THE WITNESS: Okay.

23 BY MR. WHITT:

24 Q If I may have it back so I can reference it to you. So
25 this is dated May -- it's clocked in May 30th, 2001.

1 It was signed by the (unintelligible) Chief Judge at
2 that time for the Sixth Judicial Circuit. And what do
3 you make of the Judge's reference to, there shall be an
4 accounting directed by the special referee, who by
5 appointment is Judge Harrison. This accounting must
6 include all nine siblings and all related issues. What
7 does that mean to you?

8 MR. WINGATE: Your Honor, I object to the
9 question. He is asking her --

10 THE COURT: Sustained.

11 MR. WHITT: Well Your Honor, I asked what it
12 meant to her. She could say, I don't understand
13 it.

14 THE COURT: I'm not going to ask her to
15 interpret this Order.

16 MR. WHITT: Well --

17 THE COURT: I'm not going to let you ask
18 those questions.

19 MR. WHITT: Okay.

20 BY MR. WHITT:

21 Q Well, let's try this. Ms. King, did you read this
22 sentence, there shall be an accounting, including all
23 nine siblings and all related issues?

24 MR. WINGATE: Same objection, Your Honor.

25 THE COURT: Sustained. The Order is in the



1 house. It would ring in my house. And when we
2 got a death call at night I would call Moses
3 first. The he would call Chris. And Moses would
4 go and pick up the body. And on the weekends,
5 when I was home, I would check the books, and I
6 would get the deposit ready for Monday morning.
7 And my name --

8 THE COURT: You made the deposits?

9 THE WITNESS: Yes, sir. I would fix them
10 out. I went over the books. And sometimes --

11 THE COURT: When did you do that?

12 THE WITNESS: On the weekends.

13 THE COURT: I mean, from what period of time

14 THE WITNESS: Oh, after my momma died, and I
15 think some time before, too. Nobody's name was on
16 the bank account after my daddy died but Chris,
17 myself, and my momma.

18 THE COURT: Okay. Whose name was on the bank
19 account? Chris, you and your mother?

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay. What period of time was
22 that?

23 THE WITNESS: Until he died, until Margie
24 took it all, without my knowledge, in 1997.

25 THE COURT: Okay.



STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

PROBATE COURT

IN THE MATTER OF CHRISTOPHER C. KING

CASE NUMBER 1997ES1200194

INVENTORY AND APPRAISEMENT

☒ ORIGINAL
☐ SUPPLEMENTAL #

Personal Representative(s): MARGIE B. KING ROBBIE P. KING

Decedent's Social Security Number: 249-48-3031 Was there a will? ☒ YES ☐ NO
Decedent's Date of Death: Sept 1, 1998 Domicile at death: CHESTER SC

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to before me this 2nd day of March 2001

Neil M. K
Notary Public for South Carolina
My Commission Expires: 6-3-2003

Attorney: _____
Address: _____
Telephone: _____

Signature: *Margie B. King*
Name: Margie B. King
Address: 12 Cemetery St
Chester, SC 29702
Telephone (O): 803-377-1144
(H): 803-377-4109
Signature: *Robbie P. King*
Name: Robbie P. King
Address: 12 Cemetery St
Chester, SC 29702
Telephone (O): 803-377-1144
(H): 803-377-4109

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

Within ninety (90) days following appointment, a copy of the inventory and appraisement shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

	Out-of-state	In-state
Schedule A - Real Estate	\$ 0	\$ 0
Schedule B - Stocks and Bonds	0	0
Schedule C - Mortgages, Notes and Cash	0	0
Schedule D - Insurance on Decedent's Life: Part 1 - Payable to Estate		
Part 2 - Payable to Beneficiary	160,000	
Schedule E - Jointly Owned Property	0	
Schedule F - Other Miscellaneous	0	
Schedule G - Transfers during Decedent's life	0	
Schedule H - Powers of Appointment	0	
Schedule I - Annuities	0	
TOTAL GROSS VALUE	\$	\$
ENCUMBRANCES		
TOTAL NET WORTH	\$ 174,000	

A TRUE COPY

Neil M. K
NOTARY PUBLIC
CHESTER COUNTY, S.C.

NOTE: WHEN COMPLETING THE FOLLOWING SCHEDULES, PLEASE REMEMBER TO LIST ALL ASSETS, REGARDLESS OF SITUS. ALL OUT-OF-STATE ASSETS MUST BE DISCLOSED.

SCHEDULE A — Real Estate (All interest in real property except those held with right of survivorship) (If none, so state.) (For jointly owned property with right of survivorship, see schedule E.)

Item No.	Description	Tax Assessor's Fair Market Value for year of Decedent's Death	Appraised Value	Appraised Value of Decedent's Interest
----------	-------------	---	-----------------	--

NONE

TOTAL SCHEDULE A
(also enter under recapitulation, page 1)

\$ 0

SCHEDULE B — Stocks and Bonds (If none, so state.) (For jointly owned property with right of survivorship, see schedule E.)

Item No.	Description	Face Value	Appraised Value
----------	-------------	------------	-----------------

NONE

TOTAL SCHEDULE B
(also enter under recapitulation, page 1)

\$ 0

SCHEDULE C — Mortgages, Notes and Cash (If none, so state.) (For jointly owned property with right of survivorship, see schedule E.)

Item No.	Description	Value
----------	-------------	-------

NONE

TOTAL SCHEDULE C
(also enter under recapitulation, page 1)

\$ 0

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE D - Insurance (If none, so state.)

Part 1 - Life Insurance Payable to the Estate

Item No.	Description	Value
----------	-------------	-------

NONE

TOTAL PART 1

(also enter under recapitulation, page 1)

\$ 0

Part 2 - Life Insurance Payable to Beneficiaries

Item No.	Description	Beneficiary	Value
----------	-------------	-------------	-------

	City of Chester	M. B. King	10,000
	Kanawha	M. B. King	50,000
	MetLife Ins	M. B. King	100,000

see attachment

TOTAL PART 2

(also enter under recapitulation, page 1)

\$ 160,000

SCHEDULE E - Jointly owned Property (with right of survivorship) (If none, so state.)

NOTE: You must complete Schedule E if the decedent owned any property jointly with right of survivorship at the time of death, whether or not the decedent's interest is includible in the gross estate.

Percentage includible:

- 1 - Joint interest held by decedent and spouse — the amount included is one-half (50%) of the value in all cases.
- 2 - Other joint interest — Generally you must include the full value of the jointly owned property in the gross estate. However, the full value should not be included if you can show that a part of the property originally belonged to the other tenant(s). The amount included is the amount of the decedent's contribution to the joint account(s).

Item No.	Description	Joint Owner(s)	Percentage Includible	Appraised Value of Decedent's Interest
----------	-------------	----------------	-----------------------	--

1. Interest in W. R. King estate?
2. Interest in Ellen N. King estate?
3. King's Funeral Home 135 Cemetery St. (equity in building + land)
4. King's Funeral Home 135 Cemetery St. (BUSINESS) Sole Proprietor

see attachment

TOTAL SCHEDULE E

(also enter under recapitulation, page 1)

\$

(If more space is required, insert tax schedules or additional sheets of same size.)

FORM 706 (1976)

PAGE 3 OF 6

483

Record pp. 173

CHRISTOPHER C. KING

Schedule E 1-4 Pending Litigation

1. Interest in W. R. King estate
2. Interest in Ellen N. King estate
3. King's Funeral Home 135 Cemetery Street Chester, SC (equity in building and land)
4. King's Funeral Home 135 Cemetery Street Chester, SC
(Business) Sole Proprietor

5. *1/8 of Adeline McClinton Property Crosby Street*

Schedule F 1-3 Pending litigation

1. Kubato Tractor & Trailer
2. Dodge Van 88
3. Hearse 74 (?)

MAYOR OF CHESTER

1. BACK PAY

*1/8 of ~~at~~ Adeline McClinton property
101 Crosby Street*

SCHEDULE F - Miscellaneous Personal Property - (tangible personal property, employment bonus or award, interest in a partnership or unincorporated business, articles or collections having either artistic or intrinsic value, etc.) (If none, so state.) (For jointly owned property with right of survivorship, see schedule E.)

Item No.	Description	Value
----------	-------------	-------

1. Kubota Tractor + Trailer ?
2. Dodge Van 88 ?
3. Heave ?

see attachments

TOTAL SCHEDULE F
(also enter under recapitulation, page 1)

\$ _____

SCHEDULE G - Transfers During Decedent's Life - Transfers intended to take effect at death, United States Government Bonds "Payable on Death", Trust created by Decedent in which income for life was retained, life insurance transfers, Lifetime transfers of real property in which Decedent retains a life estate or other incidents of ownership. (If none, so state.)

Item No.	Description	Value
----------	-------------	-------

TOTAL SCHEDULE G
(also enter under recapitulation, page 1)

\$ _____

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE H - Powers of Appointment - Property over which Decedent possessed a Power of Appointment both real and personal, whether Testamentary or otherwise. (If none, so state.)

Item No.	Description	Value
----------	-------------	-------

NONE

TOTAL SCHEDULE H
(also enter under recapitulation, page 1)

\$ _____

SCHEDULE I - Annuities (If none, so state.) (IRA's, Keogh's, etc.)

Item No.	Description	Value
----------	-------------	-------

NONE

TOTAL SCHEDULE I
(also enter under recapitulation, page 1)

\$ _____

(If more space is required, insert tax schedules or additional sheets of same size.)

ENCUMBRANCES (e.g., mortgages, liens, judgements, etc., but not general debts of the estate) - List specific assets encumbered

Item No.	Schedule & Item Number Encumbered Thereby	Description & Amount
----------	--	----------------------

First Union
Founders

150,000
21,000

TOTAL ENCUMBRANCES
(also enter under recapitulation, page 1)

\$ 171,000

MANIFESTLY NON-TAXABLE

(To be executed by the Probate Court Judge in those cases where it appears that the estate is not REPORTABLE to the South Carolina Tax Commission under the provisions of the Estate Tax Laws of the State of South Carolina, i.e., the total gross value is indicated to be less than prescribed limits.)

It appears from the foregoing record of the above captioned estate on file in the Probate Court of this County, such estate is not reportable to the South Carolina Tax Commission.

Executed this 2 day of MARCH, 2001

Lois H. Roddy
LOIS H. RODDY, Probate Court Judge

(If more space is required, insert tax schedules or additional sheets of same size.)

STATE OF SOUTH CAROLINA
COUNTY OF Chester

PROBATE COURT

IN THE MATTER OF Ellen N. King

CASE NUMBER 87ES1200178

INVENTORY AND APPRAISEMENT

☒ ORIGINAL

☐ SUPPLEMENTAL # _____

Personal Representative(s): Patricia E. King

Decedent's Social Security Number: _____

Decedent's Date of Death: March 2, 1987

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

Copies of this inventory have been sent to the following interested persons,* and filed with the South Carolina Tax Commission, as appropriate.

SWORN to before me this 20 day of Oct. 19 87

Jessie H. Boyd

Notary Public for South Carolina

My Commission Expires: 6-9-96

Signature: Patricia E. King

Name: Patricia E. King

Address: 129 Cemetery Street

Chester, SC 29706

Telephone (O): 904 532-4691

(H): 803 577-1144

Signature: _____

Name: _____

Address: _____

Telephone (O): _____

(H): _____

For estates of decedents, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A certified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the item or items he/she appraised.

*Within sixty (60) days following appointment, a copy of the inventory and appraisal shall be sent to each interested person who requests it, and the original Inventory filed with the Probate Court.

RECAPITULATION

	Out-of-state	In-state
Schedule A - Real Estate	\$ <u>5000.00</u>	\$ <u>141,500.00</u>
Schedule B - Stocks and Bonds	<u>None</u>	<u>None</u>
Schedule C - Mortgages, Notes and Cash	<u>None</u>	<u>None</u>
Schedule D - Insurance on Decedent's Life: Part 1 - Payable to Estate	<u>None</u>	<u>None</u>
Part 2 - Payable to Beneficiary	<u>None</u>	<u>None</u>
Schedule E - Jointly Owned Property	<u>None</u>	<u>None</u>
Schedule F - Other Miscellaneous	<u>None</u>	<u>None</u>
Schedule G - Transfers during Decedent's Life	<u>None</u>	<u>None</u>
Schedule H - Powers of Appointment	<u>None</u>	<u>None</u>
Schedule I - Annuities	<u>None</u>	<u>None</u>
*TOTAL GROSS VALUE	\$ <u>None</u>	\$ <u>None</u>
ENCUMBRANCES	(<u>None</u>)	(<u>None</u>)
TOTAL NET WORTH	\$ <u>None</u>	\$ <u>None</u>

*If total gross value is \$120,000 or greater, Section 12-15-550, S.C. Code of Laws, 1976, as amended, requires that a copy of this inventory and Appraisal be furnished to the South Carolina Tax Commission.

FORM 635BFC (1/87)
S.C.G.S. 7-204, 7-205, 7-207, 7-208, 7-209

PAGE 1 OF 2

NOTE: WHEN COMPLETING THE FOLLOWING SCHEDULES, PLEASE REMEMBER TO LIST ALL ASSETS, REGARDLESS OF SITUS. ALL OUT-OF-STATE ASSETS MUST BE DISCLOSED.

SCHEDULE A — Real Estate (All interest in real property except those held with right of survivorship) (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Tax Assessor's Fair Market Value for year of Decedent's Death	Appraised Value	Appraised Value of Decedent's Interest
	129 Gentry St / Lot 3 bulidng	169,660		6,800
	114 Gentry St			1,800
	131 Gentry St			5,900
	Yule Beach			2,200
	156 Cornely St			4,250.00
	1 Lot OFF BTB St			
	310 Ashford St			
	1 Lot melbye st			
	114 Margus St			
	107 Odum St 2 Lots			
TOTAL SCHEDULE A				\$ 24,900
(also enter under recapitulation, page 1)				

SCHEDULE B - Stocks and Bonds (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Face Value	Appraised Value
	None		

TOTAL SCHEDULE B

(also enter under recapitulation, page 1)

SCHEDULE C - Mortgages, Notes and Cash (If none, so state.) (For jointly owned property with right of survivorship, see schedule E)

Item No.	Description	Value
	None	

TOTAL SCHEDULE C

(also enter under recapitulation, page 1)

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE D - Insurance (If none, so state.)**Part 1 - Life Insurance Payable to the Estate**

Item No.	Description	Value
----------	-------------	-------

None

TOTAL PART 1

(also enter under recapitulation, page 1)

\$

Part 2 - Life Insurance Payable to Beneficiaries

Item No.	Description	Value
----------	-------------	-------

LIFE of Ida Co.
United Assurance
Konaika
Shelton Life

60.00
2357.00
1000.00
1571

TOTAL PART 2

(also enter under recapitulation, page 1)

\$49,900.00

SCHEDULE E - Jointly owned Property (with right of survivorship) (If none, so state.)

NOTE: You must complete Schedule E if the decedent owned any property jointly with right of survivorship at the time of death, whether or not the decedent's interest is includible in the gross estate.

Percentage includible:

1 - Joint interest held by decedent and spouse - the amount included is one-half (50%) of the value in all cases.

2 - Other joint interest - Generally you must include the full value of the jointly owned property in the gross estate. However, the full value should not be included if you can show that a part of the property originally belonged to the other tenant(s). The amount included is the amount of the decedent's contribution to the joint account(s).

Item No.	Description	Percentage Includible	Appraised Value of Decedent's Interest
----------	-------------	-----------------------	--

Lot Byrd St
Lot McLure St
114 Marguerite St
310 Oxford St
124 County St

500.00
1500.00
2150.00
750.00
33850.00

TOTAL SCHEDULE E

(also enter under recapitulation, page 1)

\$ 38,750.00

(If more space is required, insert tax schedules or additional sheets of same size.)

SCHEDULE F - Miscellaneous Personal Property - (tangible personal property, employment bonus or award, interest in a partnership or unincorporated business, articles or collections having either artistic or intrinsic value, etc.) (If none, so state.) (For jointly owned property with right to survivorship, see schedule E.)

Item No.	Description	Value
----------	-------------	-------

None

TOTAL SCHEDULE F
(also enter under recapitulation, page 1)

\$ *none*

SCHEDULE G - Transfers During Decedent's Life - Transfers intended to take effect at death. United States Government Bonds "Payable on Death", Trust created by Decedent in which income for life was retained, life insurance transfers, Lifetime transfers of real property in which Decedent retained a life estate or other incidents of ownership. (If none, so state.)

Item No.	Description	Value
----------	-------------	-------

None

TOTAL SCHEDULE G
(also enter under recapitulation, page 1)

\$ *none*

(If more space is required, insert tax schedules or additional sheets of same size.)

FORM 1041PC (7/87)

PAGE 4 OF 5

529

Record pp. 181

SCHEDULE H - Powers of Appointment - Property over which Decedent possessed a Power of Appointment both real and personal, whether Testamentary or otherwise. (If none, so state.)

Item No.	Description	Value
----------	-------------	-------

None

TOTAL SCHEDULE H
(also enter under recapitulation, page 1)

\$ _____

SCHEDULE I - Annuities (If none, so state.) (IRA's, Keogh, etc.)

Item No.	Description	Value
----------	-------------	-------

None

TOTAL SCHEDULE I
(also enter under recapitulation, page 1)

\$ _____

(If more space is required, insert tax schedules or additional sheets of same size.)

ENCUMBRANCES

Item No.	Schedule & Item Number Encumbered Thereby	Description & Amount
----------	--	----------------------

None

TOTAL ENCUMBRANCES
(also enter under recapitulation, page 1)

None

MANIFESTLY NON-TAXABLE

(To be executed by the Probate Court Judge in those cases where it appears that the estate is not REPORTABLE to the South Carolina Tax Commission under the provisions of the Estate Tax Laws of the State of South Carolina, i.e., the total gross value is indicated to be less than \$120,000.)

It appears from the foregoing record of the above captioned estate on file in the Probate Court of this County, such estate is not reportable to the South Carolina Tax Commission.

Executed this _____ day of _____, 19 ____

Probate Court Judge

(If more space is required, insert tax schedules or additional sheets of same size.)

531

Record pp. 183

Property Cont

(12-2nd BRK 21) (123403012)

2 Lots Ft Lauderdale Florida. Convey Range

2 Lots Rock Hills WYKMAN ST

NOTE

US \$ 225,000.00

Charlotte
City North Carolina

July 31, 1992

FOR VALUE RECEIVED, the undersigned ("Borrower") promise(s) to pay MECHANICS AND FARMERS BANK, or order, the principal sum of Two Hundred Twenty Five Thousand & no/100 Dollars, with interest on the unpaid principal balance from the date of this Note, until paid, at the rate of Nine (9.0%) percent per annum. Principal and interest shall be payable at 116 West Parrish Street, Durham, NC, or such other place as the Note holder may designate, in consecutive monthly installments of \$ 2,282.10 and one final payment of \$ 182,434.91 on the 30th day of each month beginning August 30, 1992. Such monthly installments shall continue until the entire indebtedness evidenced by this Note is fully paid, except that any remaining indebtedness, if not sooner paid, shall be due and payable on July 30, 1997.

If any monthly installment under this Note is not paid when due and remains unpaid after a date specified by a notice to Borrower, the entire principal amount outstanding and accrued interest, thereon shall at once become due and payable at the option of the Note holder. The date specified shall not be less than thirty days from the date such notice is mailed. The Note holder may exercise this option to accelerate during any default by Borrower regardless of any prior forbearance. If suit is brought to collect this Note, the Note holder shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to, reasonable attorney's fees.

Borrower shall pay to the Note holder a late charge of Four (4.0%) percent of any monthly installment not received by the Note holder within Fifteen (15) days after the installment is due.

Borrower may prepay the principal amount outstanding in whole or in part. The Note holder may require that any partial prepayments (i) be made on the date monthly installments are due and (ii) be in the amount of that part of one or more monthly installments which would be applicable to principal. Any partial prepayment shall be applied against the principal amount outstanding and shall not postpone the due date of any subsequent monthly installments or change the amount of such installments, unless the Note holder shall otherwise agree in writing. No prepayment penalty shall be charged.

Presentment, notice of dishonor, and protest are hereby waived by all makers, sureties, guarantors and endorsers hereof. This Note shall be the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

Any notice to Borrower provided for in this Note shall be given by mailing such notice by certified mail addressed to Borrower at the Property Address stated below, or to such other address as Borrower may designate by notice to the Note holder. Any notice to the Note holder shall be given by mailing such notice by certified mail, return receipt requested, to the Note holder at the address stated in the first paragraph of this Note, or at such other address as may have been designated by notice to Borrower.

The indebtedness evidenced by this Note is secured by a Deed of Trust, dated July 31, 1992, and reference is made to the Deed of Trust for rights as to acceleration of the indebtedness and is further secured by assignments of cash value of life insurance policies Metropolitan evidenced by this Note. 8149346000, Southwestern 0090008911, and National Western 010039008, and assignments of time accounts with M & F Bank #31-01332 and 31-0133.

Witness the hand(s) and seal(s) of the undersigned.

King Funeral Home

by Christopher C. King, Proprietor (SEAL)

Patricia E. King, Individually (Seal)

Robbie K. Jones, Individually (Seal)

Christopher C. King, Individually (Seal)
(Execute Original Only)

135 Cemetery Street, Chester, SC

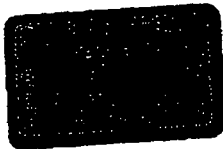
4332 Hyde Park Drive, Charlotte, NC

Property Address

NORTH CAROLINA — 1 to 4 Family — 6/75 — FNMA/FHLMC UNIFORM INSTRUMENT
LD-07-32

Record pp. 185

COPY



Patricia E. King
Counselor and Attorney at Law
4000 Beatties Ford Road
Charlotte, North Carolina 28216

(704) 398-0827
FAX: (704) 398-0831

AUGUST 20, 1997

Mr. Christopher C. King & All Other Occupants
of 135 Cemetery Street, Chester, South Carolina
Chester, South Carolina 29706

RE: TO CHRISTOPHER C. KING, AND ALL OTHER OCCUPANTS
OF THE PREMISES LOCATED AT 135 CEMETERY STREET,
CHESTER, SOUTH CAROLINA

NOTICE IS HEREBY GIVEN TO YOU, AND ALL OCCUPANTS of the premises located at 135 Cemetery Street, Chester, South Carolina, to vacate that premises within thirty (30) days following the receipt of this letter. This Notice To Vacate is pursuant to your violation of the terms of the Lease under which you have been occupying the premises. Failure to comply with this admonition will result in legal proceedings.

Yours truly,

Pat E. King
Patricia E. King
Lessor of the premises
known as 135 Cemetery Street
Chester, South Carolina

RLW Assist

From: Jim Harrison [jim@harrisonfirm.com]
Sent: Friday, March 25, 2011 4:43 PM
To: Tim Rogers; 'John E. Tyler'
Cc: Richard L. Whitt; 'Ken B. Wingate'; Angie A. Schroeder; RLW Assist
Subject: RE: King v. King, Case No. 98-CP-12-325; Order as to Accounting

I am not aware that the filing of such motion stays any other proceedings in the case. It is my present intention to rule on your pending motion as well as any other motions that may be made subsequent to the scheduled hearing, at the same time, so that the appeals, if any, will proceed at the same time. It seems to me this is the most orderly and efficient way to handle administration of this 1998 case.

If you are aware of any authority that would stay the completion of this case kindly let me know.

Jim Harrison
Harrison & Radeker, P. A.
P. O. Box 50143
Columbia, SC 29250
803-779-2211
803-779-6700 (facsimile)

Please note my new e-mail address is: jim@harrisonfirm.com

This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (803)779-2211 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Thank you.

Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

From: Tim Rogers [mailto:TFRogers@AustinRogersPA.com]
Sent: Friday, March 25, 2011 3:19 PM
To: Jim Harrison; John E. Tyler
Cc: Richard L. Whitt; Ken B. Wingate; Angie A. Schroeder; RLW Assist; Tim Rogers
Subject: RE: King v. King, Case No. 98-CP-12-325; Order as to Accounting

Judge --

Thank you. I would like to call to Your Honor's attention that we filed a Notice of Motion and Motion to Reconsider, Rehear, Alter or Amend Judgment in this case on March 17, 2011.

Thanks again and I certainly hope you have a great week-end.

Best regards,

Tim

Timothy F. Rogers
Austin & Rogers, P.A.
508 Hampton Street, Suite 300
Columbia, SC 29201
tfr Rogers@austinrogerspa.com

803-256-4000 Telephone
803-252-3679 Facsimile

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From: Jim Harrison [mailto:jim@harrisonfirm.com]
Sent: Friday, March 25, 2011 2:12 PM
To: Tim Rogers; 'John E. Tyler'
Cc: Richard L. Whitt; 'Ken B. Wingate'; Angie A. Schroeder; RLW Assist
Subject: RE: King v. King, Case No. 98-CP-12-325; Order as to Accounting

Gentlemen:

I'm looking to the final hearing scheduled for April 20, I believe it would be helpful for you to present Pre-Trial Briefs. Therefore kindly furnish to me your Pre-Trial Brief by April 15 following SCRPC Rule 16 (c). If the Defendant plans to abandon any counterclaim(s) or the Plaintiff any defenses and you have made that decision by April 15, kindly advise of that fact. If you think a status conference would be of assistance let me know. As to the hearing itself, I believe the previous hearing transcripts would be a part of the record and before the Court so you therefore would not need to repeat the testimony and you can simply call my attention any parts of the record you wish to emphasize.

Thank you and I trust you will have a nice weekend.

Jim

Jim Harrison
Harrison & Radeker, P. A.
P. O. Box 50143
Columbia, SC 29250
803-779-2211
803-779-6700 (facsimile)

Please note my new e-mail address is: jim@harrisonfirm.com

This e-mail message contains confidential, privileged information intended solely for the addressee. Please do not read, copy or disseminate it unless you are the addressee. If you have received it in error, please call us (collect) at (803)779-2211 and ask to speak with the message sender. Also, we would appreciate your forwarding the message back to us and deleting it from your system. Thank you.

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From: Jim Harrison [mailto:jim@harrisonfirm.com]
Sent: Tuesday, March 08, 2011 2:15 PM
To: 'Tim Rogers'; 'John E. Tyler'
Cc: 'Richard L. Whitt'; 'Ken B. Wingate'; 'Angie A. Schroeder'; 'RLW Assist'
Subject: RE: King v. King, Case No. 98-CP-12-325; Order as to Accounting

For your information, my order as to the accounting cause of action presented by Defendants' counterclaim will be mailed from my office to the Chester Clerk of Court today with copies to counsel. We will of course furnish you clocked copies when they are returned by the Clerk.

With best regards.

Jim Harrison
Harrison & Radeker, P. A.

P. O. Box 50143
Columbia, SC 29250
803-779-2211
803-779-6700 (facsimile)

Please note my new e-mail address is: jim@harrisonfirm.com

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From: Tim Rogers [mailto:TFRogers@AustinRogersPA.com]
Sent: Sunday, February 27, 2011 4:53 PM
To: Jim Harrison; John E. Tyler
Cc: Richard L. Whitt; Ken B. Wingate; Angie A. Schroeder; RLW Assist; Tim Rogers
Subject: RE: King v. King, Case No. 98-CP-12-325; Proposed Order re: Defendants' Motion for Sanctions

All right, sir, thank you.

Tim

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From: Jim Harrison [mailto:jim@harrisonfirm.com]
Sent: Sunday, February 27, 2011 4:49 PM
To: Tim Rogers; 'John E. Tyler'
Cc: Richard L. Whitt; 'Ken B. Wingate'; Angie A. Schroeder; RLW Assist
Subject: RE: King v. King, Case No. 98-CP-12-325; Proposed Order re: Defendants' Motion for Sanctions

Sorry, I do have the Answer to the Amended Counterclaims of Defendants which Answer was filed July 21, 2010.

Jim Harrison
Harrison & Radeker, P. A.
P. O. Box 50143
Columbia, SC 29250
803-779-2211
803-779-6700 (facsimile)

Please note my new e-mail address is: jim@harrisonfirm.com

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Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

From: Tim Rogers [mailto:TFRogers@AustinRogersPA.com]
Sent: Sunday, February 27, 2011 1:39 PM
To: Jim Harrison; John E. Tyler
Cc: Richard L. Whitt; Ken B. Wingate; Tim Rogers; Angie A. Schroeder; RLW Assist
Subject: RE: King v. King, Case No. 98-CP-12-325; Proposed Order re: Defendants' Motion for Sanctions

Judge – Will do.

Tim

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From: Jim Harrison [mailto:jim@harrisonfirm.com]
Sent: Sunday, February 27, 2011 1:24 PM
To: 'John E. Tyler'
Cc: Richard L. Whitt; Tim Rogers; 'Ken B. Wingate'
Subject: RE: King v. King, Case No. 98-CP-12-325; Proposed Order re: Defendants' Motion for Sanctions

I do not have a copy of the Plaintiff's Reply dated June 11, 2010, to the Counterclaims and the Reply to the Amended Counterclaims dated July 12, 2010. Can one of you gentlemen furnish me a copy of these documents as soon as reasonably possible. Thanks.

Jim Harrison
Harrison & Radeker, P. A.
P. O. Box 50143
Columbia, SC 29250
803-779-2211
803-779-6700 (facsimile)

Please note my new e-mail address is: jim@harrisonfirm.com

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From: John E. Tyler [mailto:jet@swblaw.com]
Sent: Wednesday, December 08, 2010 4:08 PM
To: jim@harrisonfirm.com
Cc: Richard L. Whitt; Tim Rogers; Ken B. Wingate
Subject: King v. King, Case No. 98-CP-12-325; Proposed Order re: Defendants' Motion for Sanctions

Dear Judge Harrison,

Attached please find the proposed Order which Your Honor requested this morning at the conclusion of the hearing on Defendants' motion for sanctions. Thank you for your consideration.

If I can be of further service, please let me know. By copy of this correspondence and attachment, opposing counsel is served with same.

Sincerely,

John

John E. Tyler
ATTORNEY AT LAW
Sweeny, Wingate & Barrow, P.A.
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Post Office Box 12129
Columbia, SC 29211
Office: (803)256-2233, ext. 110
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jet@swblaw.com

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Civil Action No. 98-CP-12-325

Patricia E. King and Robbie King Jones, as representatives
of W.R. King and Ellen King.....Plaintiffs,

Of whom Patricia E. King, as representative of
W.R. King and Ellen King, is.....Respondent,

v.

Margie B. King and Robbie Ione King, individually,
and as Co-Representatives of the Estate of Christopher
G. King (deceased) and Nelson M. King, Chester Telephone
Company, ...Defendants,

Of whom, Margie B. King and Robbie Ione King,
individually, and as Co-Representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are.....Appellants.

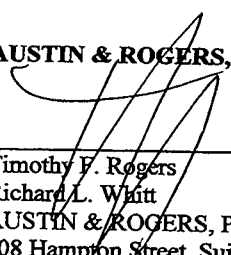
CERTIFICATE OF COUNSEL

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.

[Signature Page Follows]

Record pp. 192

AUSTIN & ROGERS, P.A.



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Attorneys for Appellants

August 24, 2011

Record pp 193

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Civil Action No. 98-CP-12-325

Patricia E. King and Robbie King Jones, as representatives
of W.R. King and Ellen King.....Plaintiffs,

Of whom, Patricia E. King, as representative of
W.R. King and Ellen King, is.....Respondent,
v.

Margie B. King and Robbie Ione King, individually,
and as Co-Representatives of the Estate of Christopher
G. King (deceased) and Nelson M. King, Chester Telephone
Company, ...Defendants,

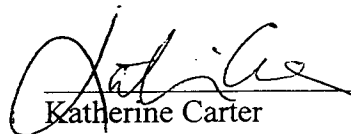
Of whom, Margie B. King and Robbie Ione King,
individually, and as Co-Representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are.....Appellants.

PROOF OF SERVICE

I, Katherine Carter, an employee of Austin & Rogers, P.A., certify that I have caused to
be served, a copy of the Record on Appeal, Certificate of Counsel and this Proof of Service, via
hand-delivery, on August 24, 2011, as addressed below:

Kenneth Wingate, Esquire
Sweeny, Wingate and Barrow, P.A.
1515 Lady Street
Columbia, South Carolina 29201

August 24, 2011


Katherine Carter

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2

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Civil Action No. 98-CP-12-325

Patricia E. King and Robbie King Jones, as representatives
of W.R. King and Ellen King.....Plaintiffs,

Of whom Patricia E. King, as representative of
W.R. King and Ellen King, is Respondent,
v.

Margie B. King and Robbie Ione King, individually,
and as Co-Representatives of the Estate of Christopher
G. King (deceased) and Nelson M. King, Chester Telephone
Company, ... Defendants,

Of whom, Margie B. King and Robbie Ione King,
individually, and as Co-Representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are Appellants.

APPENDIX

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Attorneys for Respondents

INDEX TO APPENDIX

TRANSCRIPT

Transcript of Record for August 16, 2010, Hearing before the
Honorable James C. Harrison, Jr., of the Chester County Circuit Court - pg. 146 only 152-A

Transcript of Record for August 16, 2010, Hearing before the
Honorable James C. Harrison, Jr., of the Chester County Circuit Court - pg. 147 only 152-B

Transcript of Record for August 16, 2010, Hearing before the
Honorable James C. Harrison, Jr., of the Chester County Circuit Court - pg. 297 only 163-A

OTHER MATERIALS

Certificate of Counsel, dated August 26, 2011 194

1 him and he said, come and get anything you need
2 until you get yourself back in operation. So at
3 that particular point, at that night, everything
4 was removed from the funeral home. It was an
5 empty building there.

6 BY MR. WINGATE:

7 Q Who removed the things on December 8th, 1998, if you
8 know?

9 A I wasn't there. I wasn't there. I can't -- I wasn't
10 there. We don't want to say -- they say no hearsay.
11 So I wasn't there. I was in Fort Long.

12 Q Do you know where the things were moved?

13 A Evidentially they were -- I don't know where they were
14 moved. I can't say where they were moved.

15 MR. WHITT: Your Honor, I object. If he
16 doesn't know, I don't want him to speculate.

17 THE COURT: Well I mean, overruled. Go
18 ahead. He can't speculate. He said he doesn't
19 know.

20 THE WITNESS: I don't know. I wasn't there.

21 THE COURT: His answer is his answer. Do you
22 have another?

23 MR. WINGATE: I do have another question.

24 THE WITNESS: Yes, sir.

25 BY MR. WINGATE:



1 Q Please list for us what was moved out on December 8th,
2 1998, with as much particularity as you can.

3 A Well, I can tell you: the pews, all the conference --

4 Q What?

5 A -- all the conference room, desks, cabinets and all,
6 embalming machine, embalming table, fluids, everything
7 that would cause you to operate was moved, hearse,
8 limousines, everything, telephone number.

9 Q What about bank records?

10 A There were some files that were removed, not all files.
11 But there were some files that were removed. I wasn't
12 there. But there was some files that was actually
13 missed, that I didn't have when I actually came back.

14 Q What kind of files were missing?

15 A Just some of the records files, the arrangement files
16 of the people who had been buried prior to that time.

17 Q Prior burials?

18 A Sure.

19 Q What about pre-need burial contracts?

20 A Pre-need burial contracts on -- it was a while later.
21 Pre-need, that was actually moved. The gentleman came
22 back in to pay monies on the pre-need and I believe we
23 had --

24 THE COURT: Pre-need what?

25 THE WITNESS: Pre-need burial.

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1 Q Same question for 2001.

2 A I did not.

3 Q 2002?

4 A No.

5 Q 2003?

6 A No.

7 THE COURT: You're not before a jury, but go
8 ahead.

9 MR. WHITT: Well, Your Honor, we asked if
10 they would stipulate to that and they said
11 absolutely not. Ask your questions, Mr. Rogers.

12 THE COURT: Go right ahead.

13 MR. WHITT: Thank you, Your Honor.

14 BY MR. WHITT:

15 Q 2004?

16 A No.

17 Q 2005?

18 A No, sir.

19 Q 2006?

20 A No, sir.

21 Q 2007?

22 A No, sir.

23 Q 2008?

24 A No, sir.

25 Q 2009?

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Civil Action No. 98-CP-12-325

Patricia E. King and Robbie King Jones, as representatives
of W.R. King and Ellen King.....Plaintiffs,

Of whom Patricia E. King, as representative of
W.R. King and Ellen King, is Respondent,
v.

Margie B. King and Robbie Ione King, individually,
and as Co-Representatives of the Estate of Christopher
G. King (deceased) and Nelson M. King, Chester Telephone
Company, ... Defendants,

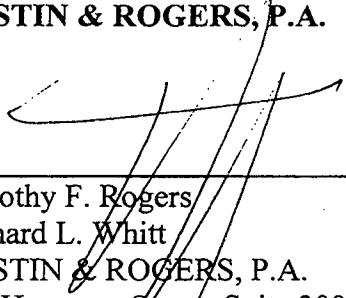
Of whom, Margie B. King and Robbie Ione King,
individually, and as Co-Representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are Appellants.

CERTIFICATE OF COUNSEL

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

[Signature Page Follows]

AUSTIN & ROGERS, P.A.



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August 26, 2011

3

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Civil Action No. 98-CP-12-325

Patricia E. King and Robbie King Jones, as representatives
of W.R. King and Ellen King..... Respondents,

v.

Margie B. King and Robbie Ione King, individually,
and as Co-Representatives of the Estate of Christopher
G. King (deceased) and Nelson M. King, Chester Telephone
Company, ... Defendants,

Of whom, Margie B. King and Robbie Ione King,
individually, and as Co-Representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are Appellants.

FINAL BRIEF OF APPELLANTS

Timothy F. Rogers
Richard L. Whitt
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508 Hampton Street, Suite 300
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(803) 251-7442
Attorneys for Appellants

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SC Court of Appeals

Table of Contents

TABLE OF AUTHORITIES	3
STATEMENT OF ISSUES ON APPEAL.....	4
STATEMENT OF THE CASE.....	5
STATEMENT OF FACTS	8
ARGUMENT	11
<i>Summary of Argument</i>	11
I. Did the Trial Court err in refusing to proceed with an accounting in this case, in contravention of the “Law of the Case Doctrine”, in light of the two existing Orders of Circuit Court Judges, previously issued in this matter?.....	11
II. Did the Trial Court err by ignoring the import of Plaintiffs’ earlier statements in that Plaintiffs were estopped from asserting a position different from the position they asserted earlier in this same litigation?.....	13
III. Were the findings of fact of the Trial Court improvidently made?.....	15
IV. Did the Trial Court err in conducting a “trial” on the issue of whether or not an accounting should have been conducted, in light of the two existing Orders of Circuit Court Judges previously issued in this matter?.....	15
CONCLUSION.....	16

TABLE OF AUTHORITIES

Cases

<u>Judy v. Martin</u> , 674 SE 2d 151(2009).....	11
<u>Sloan v. Friends of Hunley, Inc.</u> , Opinion No. 26986, (June 13, 2011).....	11
<u>Sheppard v. Kimbrough</u> , 318 SE 2d 573 (S.C. Court of Appeals, 1984)	12
<u>Cook v. Taylor</u> , 252 SE 2d 923 (1979).....	12
<u>Enoree Baptist Church v. Fletcher</u> , 340 SE 2d 546 (1986).....	12
<u>Edwards v. Lexington County Sheriffs Department</u> , Opinion No. 26758 (2010)	13
<u>Salmonsens v. CGD, INC</u> , 661 SE 2d 81, (2008)	13
<u>Charleston Co. Social Serv. v. Father</u> , 454 SE 2d 307(1995).....	13

STATEMENT OF ISSUES ON APPEAL

- I. Did the Trial Court err in refusing to proceed with an accounting in this case, in contravention of the “Law of the Case Doctrine”, in light of the two existing Orders of Circuit Court Judges, previously issued in this matter?
- II. Did the Trial Court err by ignoring the import of Plaintiffs’ earlier statements in that Plaintiffs were estopped from asserting a position different from the position they asserted earlier in this same litigation?
- III. Were the findings of fact of the Trial Court improvidently made?
- IV. Did the Trial Court err in conducting a “trial” on the issue of whether or not an accounting should have been conducted, in light of the two existing Orders of Circuit Court Judges previously issued in this matter?

STATEMENT OF THE CASE

The ownership and profits from King's Funeral Home, upon the intestate death of the owner, W.R. King and the subsequent intestate death of his wife, Ellen King, became the subject of this dispute.

Thereafter, on November 12, 1998, Plaintiffs filed a Summons and Complaint against Defendants¹ seeking, *inter alia*, an accounting and an appointment of receiver (R. p. 32). The Plaintiffs' Complaint further alleged that under the applicable intestacy laws, the ownership of the King's Funeral Home,

"...ultimately passed in equal shares to the surviving children² of W.R. King and Ellen King, including the Plaintiff's [Respondents herein] and Christopher C. King" (R. p. 33).

On December 14, 1998, Defendants filed and served an Answer and Counterclaims on Plaintiffs (R. pp. 65-74).

On May 30, 2001, The Honorable Lee S. Alford filed his "Order of Reference", referring the claims in this action to Special Referee, Harrison. Plaintiffs did not Appeal this Order (R. pp. 1-2).

On August 6, 2004, the Circuit Court dismissed all of Plaintiffs' Causes of Action, because of Plaintiffs' failure to prosecute the case (R. pp. 21-31).

Thereafter, in 2004, the Plaintiffs filed an Appeal with the South Carolina Court of Appeals (R. pp. 21-31).

On March 28, 2007, the South Carolina Court of Appeals issued a decision affirming the dismissal of Plaintiffs' claims, but affirming Defendants' Counterclaims as being viable (Unpublished Opinion No. 2007-UP-132), (R. pp. 21-31).

Thereafter, jurisdiction was returned to Special Referee, Harrison to hear the claims without a jury (R. pp. 1-2).

Thereafter, the Parties changed their counsel of record several times.

¹ Chester Telephone Company was removed as a Defendant early in these proceedings.

² Plaintiffs later, and in this same litigation, Plaintiffs took the opposite position.

STATEMENT OF THE CASE (CONT.)

On June 11, 2010, the Amended Counterclaims of Defendants were filed (R. pp. 84-93).

On June 23, 2010, the Plaintiffs moved to dismiss the Defendants' amended Counterclaims (R. pp. 94-95).

That Motion was heard on August 5, 2010, and an Order dated October 18, 2010, from The Honorable James C. Harrison, Jr., denied Plaintiffs' Motion to Dismiss Defendants' Counterclaims (R. pp. 5-7).

On July 26, 2010, Defendants' moved the Court to proceed with the accounting, citing the Law of the Case Doctrine, and pointing to the Order of Reference of Judge Alford, of May 30, 2001, which required, *inter alia*, an Accounting of the King's Funeral Home business (R. pp. 96-99).

On August 04, 2010, the Honorable Brooks P. Goldsmith filed his Order, which, *inter alia*, clarified the Order of Reference. Judge Goldsmith's Order further held that,

"This Order is issued to clarify the matters referred to the Special Referee in this case and his authority to hear the same. This Order clarifies the power and authority of the Special Referee in this matter, but it does not replace or supplant the Order of Reference, which was not appealed and [which] is the law of this case. This Order does relate back to the Order of Reference." (Plaintiffs did not appeal this Order), (R. pp. 3-4).

On August 5, 2010, the Trial Court denied Defendants' Motion to proceed with the Accounting (R. p. 123, Lines 10-21).

Thereafter, the Trial Court ordered a hearing, which was held on August 16, 2010, which the Trial Court described as, "A trial on the issue of accounting". The Trial Judge stated on August 16, 2010, "The issue before the Court today is the merits trial on the issue of entitlement by the Defendants to an accounting...", and "And so, we are here to litigate the necessity of (*sic*) accounting." (R. p. 132-A, Lines 16-21).

On March 7, 2011, the Trial Court issued its, "Order (As to Accounting Counterclaim)" (R. pp. 8-20).

STATEMENT OF THE CASE (CONT.)

Defendants received a copy of the Trial Court's Order (As to Accounting Counterclaim) on March 10, 2011, (R. pp. 8-20).

On March 17, 2011, Defendants filed a Motion to Reconsider, Rehear, Alter or Amend Judgment (R. pp. 100-104).

The Trial Court did not schedule a hearing on the Motion, and the Trial Judge indicated that he would hear the Motion later, as a "post trial" Motion, in an e-mail to all counsel on March 25, 2011, (R. p. 187).

On March 28, 2011 a Motion for Summary Judgment was filed, by Plaintiffs (this Motion was not ruled on by the Trial Court), (R. pp. 105-106).

Defendants' Notice of Appeal was filed with this Court on April 5, 2011, which Notice of Appeal was amended on April 12, 2011. (R. pp. 109-110) This Appeal follows:

STATEMENT OF FACTS

Appellants are the children of W. R. King, the owner of King's Funeral Home and Ellen King, both deceased (R. p. 33). Appellants are the intestate heirs of both of the Estates of W.R. King and Ellen King. W.R. King was deceased first and Ellen King deceased thereafter, both without wills (R. p. 33). The subject of this dispute is the business known as King's Funeral Home, located in Chester County, South Carolina (R. p. 33, p. 167, Lines 4-6).

Upon the intestate death of W.R. King, the King's Funeral Home business passed to his wife, Ellen King (R. p. 33). Upon the death of the W.R. King's wife, Ellen King, the King's Funeral Home passed to her heirs (Ellen King had nine heirs, of which Respondent Patricia E. King was one heir and Appellant Margie B. King, was also one heir of nine intestate heirs), (R. pp. 15, 33, p. 165, Lines 13-24, p. 167, Lines 4-12).

Patricia E. King, after much family turmoil, assumed control, and has maintained control of the King's Funeral Home business, including the profits therefrom (R. pp. 163- 164, and Appendix p. 163-A, p. 167, Lines 20-23). It is uncontroverted that Patricia E. King did not share, and has never shared any of the profits from the King's Funeral Home business with her eight siblings (R. pp. 163-164, and Appendix p. 163A, p. 167, Lines 20-23).

Certain of the other intestate heirs sought an accounting of the King's Funeral Home profits since the time that Patricia E. King took control of the King's Funeral Home (an accounting was ordered, see the discussion on "The First Relevant Court Order", hereinbelow).

It should be noted that during the brief period of time in which Patricia E. King was not in control of the King's Funeral Home business, Patricia E. King began this litigation by filing a Complaint against the Defendants/Appellants, which also sought, *inter alia*, an accounting of the King's Funeral Home business (R. pp. 51-64).

STATEMENT OF FACTS (CONT.)

The First Relevant Circuit Court Order (This Order was not appealed by Plaintiffs)

In May of 2001, the Honorable Lee S. Alford, Circuit Court Judge for Chester County, issued an Order of Reference which, *inter alia*, required an accounting in this matter. Specifically, Judge Alford's Order, which was never appealed, required,

"THEREFORE, IT IS HEREBY ORDERED that the Honorable James C. Harrison, Jr., shall be appointed Special Referee **to direct the accounting in this matter as to the original funeral home business** and to decide whether there was an actual transfer of this business during the life of W.R. King and/or Ellen King. IF there was an inter vivos transfer by W.R. and/or Ellen King to the late Christopher C. King, then no accounting will be necessary. IF the Special Referee finds that there was not a inter vivos transfer of this funeral home business by W.R. and/or Ellen King during their lifetime, then **there shall be an accounting**, as stated above, directed by the Special Referee. **This accounting must include all mine siblings and all related issues.**" (emphasis supplied), (R. pp. 1-2).

The Second Relevant Circuit Court Order (This Order was not appealed by Plaintiffs)

Later, in July 2010, Plaintiffs sought to have Judge Harrison removed as Special Referee in this matter. Judge Goldsmith, as Chief Judge for Chester County, heard and denied that Motion with his Order filed August 4, 2010, and held, *inter alia*,

"This Order is issued to clarify the matters referred to the Special Referee in this case and his authority to hear the same. This Order clarifies the power and authority of the Special Referee in this matter, but **it does not replace or supplant the Order of Reference, which was not appealed and [which] is the law of this case.** This Order does relate back to the Order of Reference." (emphasis supplied), (R. pp. 3-4).

Accordingly, and based on the May 30, 2001, Order of Judge Alford, requiring an accounting, (R. pp. 1-2) and the August 04, 2010 Order of Judge Goldsmith, (R. pp. 3-4) which reaffirmed the May 30, 2001, Order, the counsel for Defendants' Motioned the Trial Court to proceed with the accounting of the King's Funeral Home business, arguing that the right to an accounting was settled and was the Law of the Case (R. pp. 96-99).

STATEMENT OF FACTS (CONT.)

The Trial Judge disagreed and repeatedly indicated that he would not proceed with the accounting of the King's Funeral Home business, but instead the Trial Judge indicated that he would make a decision as to whether or not the Defendants were entitled to an accounting. (R., p. 132-A, Lines 16-21, p. 133, Lines 4-17, p. 145, Lines 2-5, p. 148, Lines 1-22, p. 169, Lines 14-25) Therefore, the Trial Judge held a hearing on August 16, 2010, which he described as, "a trial on the issue of accounting" (R. p. 132-A, Lines 16-21). Thereafter, the Trial Judge issued an Order holding that the Defendants were not entitled to an accounting, in his opinion (R. pp. 8-20).

Defendants' counsel filed a timely Motion to Reconsider, Rehear, Alter or Amend Judgment (R. pp. 100-104). The Trial Court did not schedule a hearing on that Motion, but instead indicated to all counsel of record that he intended to hear Defendants' Motion, in the future, as a "post-trial" Motion (R. p. 187-191).

ARGUMENT

Summary of Argument

The Trial Court misapprehended or overlooked Defendants' argument as to the "Law of the Case". Also, the Trial Court misapprehended or overlooked Defendants' arguments on the applicability of estoppel.

The Law of the Case Doctrine precluded the Trial Court from reviewing, altering, rehearing or disregarding the prior Orders of two Circuit Court Judges, as the Trial Court did in the case, *sub judice*. Finally, Estoppel precluded Plaintiff Patricia E. King from taking inconsistent positions in this litigation.

Because the two prior Orders of two Circuit Court Judges were controlling as to the issue of whether or not an accounting was to be conducted, the "trial on the accounting issue" should not have been conducted by the Trial Court and the "trial" should be declared a nullity by this Court (R. pp. 1-2, pp. 3-4).

I. Did the Trial Court err in refusing to proceed with an accounting in this case, in contravention of the "Law of the Case Doctrine", in light of the two existing Orders of Circuit Court Judges, previously issued in this matter?

The Law of the Case Doctrine precludes a Trial Court from reviewing, altering, rehearing or disregarding the prior Orders of two Circuit Court Judges, (R. pp. 1-2, R. pp. 3-4) as the Trial Court did in the case, *sub judice*. The Trial Judge indicated, many times, that he was deciding the issue of an accounting, (R. p. 128, Lines 15-18, p. 132-A, Lines 16-21, p. 133, Lines 4-17, p. 145, Lines 2-5, p. 148, Lines 1-22, p. 169, Lines 14-25). The Trial Court Judge indicated, many times, that he did not believe the Order of Reference requirement of an accounting was binding on him, (p. 128, Lines 15-18, p. 130, Lines 17-23, p. 132-A, Lines 16-21, p. 133, Lines 4-17, p. 145, Lines 2-5), and the Trial Judge indicated, many times, that he would make Findings of Fact as to the accounting issue, (R. p. 128, Lines 15-18, p. 132-A, Lines 16-21, p. 133, Lines 4-17, p. 145, Lines 2-5, p. 148, Lines 1-22) all without deference to the Circuit Court Orders mentioned above.

The Trial Court was bound by the Order of Reference of May 30, 2001, (R. pp. 1-2) of the Honorable Lee S. Alford (hereinafter as, "Order of Reference"), and the Trial Court should have given full deference to the Order of Reference, which was not appealed and which Order is now the Law of this Case, Judy v. Martin, 674 SE 2d 151(2009), (R. pp. 1-2).

ARGUMENT (CONT.)

Further, The Court was also bound by the July 29, 2010 Order of Honorable Brooks P. Goldsmith, filed on August 4, 2010, (R. pp. 3-4) which reaffirmed the Order of Reference (hereinafter as, "Reaffirming Order"), which Order further and specifically held that the Order of Reference was the Law of this Case. The Reaffirming Order was also not appealed, it is now the Law of this Case (R. pp. 3-4).

The Order of Reference granted an Accounting in this matter, as to the, "Original Funeral Home Business." (R. pp. 1-2). Specifically, the Order held that the, "...Special Referee to direct the accounting in this matter as to the original funeral home business..." and "...there shall be an accounting, as stated above [in the Order], directed by the Special Referee." (Emphasis supplied). (R. pp. 1-2) The Special Referee, the Trial Judge herein, should have acted in recognition of the clearer guidance of the Order of Reference and proceeded with an accounting, without inquiry into the issue of whether or not, an accounting should have been held.

The Order of Reference contained verbiage about the Plaintiffs' need to account for revenues from the funeral home business (R. pp. 1-2). Specifically, the Court required an accounting in this matter, if there was no finding of a "...*inter vivos* transfer by W.R. and/or Ellen King to the late Christopher C. King..." (R. pp. 1-2). The Defendants herein waived their argument as to an *inter vivos* transfer, in open Court with Counsel for all Parties present (R. p. 111A, Line 7- p.112, Line 15). The Trial Judge acknowledged the waiver in a discussion with Plaintiffs' counsel in open Court (R. p. 112, Lines 3-12). The Trial Judge also acknowledged in open Court that the *inter vivos* transfer issue was decided. (R. p. 112, Lines 3-12, p. 119, Line 24- p. 120, Line 6).

Because of that waiver, the Trial Court could never have made such a finding and the accounting was required."... then there shall be an accounting, as stated above, directed by the Special Referee. This accounting must include all nine siblings and all related issues."(Emphasis supplied), (R. pp. 1-2). Once the *inter vivos* transfer claim was settled, the Order of Reference was, on its face, clear that an accounting must then be held by the Special Referee (R. pp. 1-2, p. 119, Line 24- p. 120, Line 6).

One Circuit Court Judge may not review³, reverse or modify another Circuit Court \

³ The Trial Judge's Order, on its face, indicated that he improperly reviewed the Order of Reference, (R. pp. 1-2), Note, the Trial Judge's statement, "Moreover, a review of the Order of Judge Alford indicates..." (R. p. 17) Further, the Trial Judge's Order, on its face, indicates that the Trial Court was making new Findings of Fact (R. p. 12) on the accounting issue and deciding that issue, notwithstanding the Order of Reference (R. pp. 1-2) and the Reaffirming Order (R. pp. 3-4).

ARGUMENT (CONT.)

Judge's Order, Sheppard v. Kimbrough, 318 SE 2d 573 (S.C. Court of Appeals, 1984). South Carolina case law is clear in that a Circuit Court Judge must honor another Circuit Court Judge's Order and a Circuit Court Judge cannot set aside another Circuit Court Judge's Order, Cook v. Taylor, 252 SE 2d 923 (1979). Even if the Trial Court disagreed with the methodology of the Order of Reference, the Trial Court did not have the power to set aside the Order of Reference and the Reaffirming Order, Cook v. Taylor, 252 SE 2d 923 (1979), (Enoree Baptist Church v. Fletcher, 340 SE 2d 546 (1986)).

The Law of the Case Doctrine in South Carolina is so well established that facts that are known to the Court to be inconsistent with settled law, become the Law of the Case if unappealed, as in the instant case.

Edwards v. Lexington County Sheriffs Department, Opinion No. 26758 (2010) ("Respondents filed a joint answer to the complaint asserting that the Lexington County Sheriff's Department and Lexington County were 'one and the same entity.' However, under South Carolina law, the sheriff and sheriff's deputies are State, not county, employees [internal citations omitted] Although Respondents' assertion is inconsistent with settled law, their position that they are the same entity is the Law of the Case. We therefore do not address the legally settled distinction between a county government and a sheriff's office for liability purposes [in this case].").

The Trial Court could not properly ignore or overrule the Order of Reference and the Reaffirming Order, as to whether or not an accounting should be conducted, Salmonsens v. CGD, INC., 661 SE 2d 81, (2008), Charleston Co. Social Serv. v. Father, 454 SE 2d 307(1995), (long-standing rule in South Carolina that a Circuit Court Judge may not overrule another Circuit Court Judge). Accordingly, the issue of an accounting and the subject matter of that accounting was settled by both the Order of Reference, (R. pp. 1-2) and the Reaffirming Order, (R. pp. 3-4) and the Trial Judge in the instant case did not have authority to revisit the subject matter of an accounting.

Defendants provided an expert witness to testify on the issue of an accounting. (R. p. 141, Lines 1-15) It is worth noting that Defendants' expert witness consistently indicated that he felt the Order of Reference required an accounting before the Court proceeded on other issues.

ARGUMENT (CONT.)

II. Did the Trial Court err by ignoring the import of Plaintiffs' earlier statements in that Plaintiffs were estopped from asserting a position different from the position they asserted earlier in this same litigation?

On February 5, 1998⁴, November 12, 1998⁵ and April 6, 2001⁶ the Plaintiffs herein, filed three different pleadings with a South Carolina Court, requesting an accounting for the King's Funeral Home business and thereby averring to the Court that such was proper, while Plaintiffs herein were not in possession of the King's Funeral Home business. Accordingly, the Plaintiffs herein are estopped from asserting a claim that an accounting is not proper, now that the Plaintiffs are in possession of the Funeral Home business.

It is axiomatic that estoppel precludes Plaintiff Patricia E. King from taking an inconsistent position in this litigation. The Plaintiffs are bound by the admission of its Representative, Patricia E. King, who alleged and admitted in the November 12, 1998, Complaint, CA # 98-CP-12-325, in Paragraph 7 that;

“W.R. King died intestate in 1975, and Ellen King died intestate in 1987. Under the applicable intestacy laws of the State of South Carolina, the ownership of King's Funeral Home ultimately passed in equal shares to the [nine] surviving children of W. R. King and Ellen King, including [Patricia E. King and Robbie King Jones] and the late Christopher C. King.” (R. pp. 32-50)

Patricia E. King has admittedly been converting all of the shares of the nine surviving children of W. R. and Ellen King's interests in the funeral home business from the time she seized control of the funeral home business in February, 1999 until the date of these presents. (R. p. 163, Line 9- p. 163A, Line 25)

Patricia E. King's statement indicated that she conclusively knew that there were nine shares to the interests in the King's Funeral Home business, and admitted that she was only entitled to 1/9 of the interests in the King's Funeral Home business, as alleged hereinabove.

⁴ February 5, 1998 - Complaint (Non Jury) 1998-346-19 Patricia E. King and Robbie King Jones v. Margie B. King and Robbie Patricia lone King, Individually, and as Co-Personal Representatives of Estate of Christopher C. King, Deceased, and Nelson M. King. (R. p. 51)

⁵ November 12, 1998 – Complaint Patricia E. King and Robbie King Jones, as Representatives of W.R. King and Ellen King v. Margie B. King and Robbie Patricia lone King, Individually, and as Co-Personal Representatives of Estate of Christopher C. King, Deceased and Nelson M. King and Chester Telephone Company and Branch Banking and Trust (BB&T) (R. p. 32)

⁶ April 6, 2001 - First Amended Complaint 1998-CP-12-00325 Patricia E. King and Robbie King Jones, individually and Patricia E. King as Representative of Estate of W.R. and Ellen King *et al.* (R. 75)

ARGUMENT (CONT.)

In summary, Patricia E. King has converted 9/9 of the King's Funeral Home business to her own use, in contravention of South Carolina Law on Intestacy, for 12 plus years. (R. p. 163, Line 9- p. 163A, Line 25) The Trial Judge in his Order of Reference of May 30, 2001, (R. pp. 1-2), wisely noted the inequity of Plaintiffs' position in taking 9/9 of the King's Funeral Home business profit, by clearly ordering an accounting to protect all nine of the siblings. (R. pp. 1-2)

The Trial Court's Order, on page four, comments on Defendants' position that the King's Funeral Home Business passed by intestacy to the children of W.R. King and Ellen King. (R. p. 11). Oddly, that theory was first espoused by Plaintiffs, as set forth hereinabove.

III. Were the findings of fact of the Trial Court improvidently made?

As to the Trial Court's Finding of Fact, on page five through nine, of the Order (As to Accounting Counterclaim), (R. pp. 12-16) and resulting Conclusions of Law, which were improvidently made, because of the two previous Circuit Court Orders issued in this matter (R. p. 16), and those Findings of Fact and Conclusions of Law should be voided, as well as the entire Order. (R. pp. 8-20)

IV. Did the Trial Court err in conducting a "trial" on the issue of whether or not an accounting should have been conducted, in light of the two existing Orders of Circuit Court Judges previously issued in this matter?

As discussed in detail hereinabove, and because the issue of accounting was settled at the time the Trial Court took jurisdiction, as a Special Referee under the Order of Reference (R. pp. 1-2) and because Defendants have consistently argued the Law of the Case and estoppel, there was no basis for requiring Defendants to participate in a formal hearing on the accounting issue and that hearing was and should be declared void, *nunc pro tunc*.

CONCLUSION

Based on the foregoing, the Order (As to Accounting Counterclaim) of the Trial Court should be reversed, the Findings of Facts therein should be voided and the "trial" conducted by the Trial Court should be declared a nullity. This case should be remanded to the Trial Court with instructions to proceed with an accounting, consistent with the May 2001, Order of Judge Alford and the August 2010, Order of Judge Goldsmith.

~~AUSTIN & ROGERS, P.A.~~

By: _____

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September 12, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Civil Action No. 98-CP-12-325

Patricia E. King and Robbie King Jones, as representatives
of W.R. King and Ellen King.....Plaintiffs,

Of whom Patricia E. King, as representative of
W.R. King and Ellen King, is Respondent,

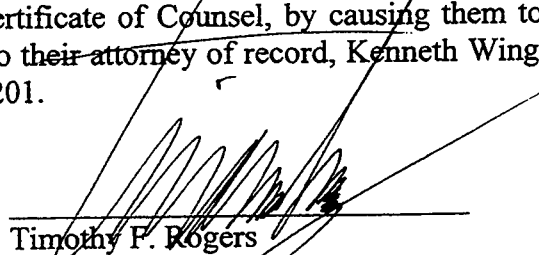
v.

Margie B. King and Robbie Ione King, individually,
and as Co-Representatives of the Estate of Christopher
G. King (deceased) and Nelson M. King, Chester Telephone
Company, ... Defendants,

Of whom, Margie B. King and Robbie Ione King,
individually, and as Co-Representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are Appellants.

PROOF OF SERVICE

I certify that I have served Respondent Patricia E. King, *et al.* with three copies of the Final Brief of Appellants and a one copy of the Certificate of Counsel, by causing them to be hand delivered, on September 12, 2011, addressed to their attorney of record, Kenneth Wingate, at his office at 1515 Lady Street, Columbia, S.C. 29201.



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September 12, 2011

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Civil Action No. 98-CP-12-325

Patricia E. King and Robbie King Jones, as Representatives
of W.R. King and Ellen King.....Plaintiffs,
Of whom, Patricia E. King, as Representative of
W.R. King and Ellen King, is.....Respondent

v.

Margie B. King and Robbie Ione King, individually,
and as Co-Representatives of the Estate of Christopher
G. King (deceased) and Nelson M. King, Chester Telephone
Company, ...Defendants,
Of whom, Margie B. King and Robbie Ione King,
individually, and as Co-Representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are.....Appellants.

APPELLANTS' FINAL REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
REPLY ARGUMENTS.....	4
I. The Trial Court erred in refusing to proceed with an accounting in this case, in contravention of the "Law of the Case Doctrine", and in light of the two existing Orders of Circuit Court Judges, previously issued in this matter.....	4
II. The Trial Court erred by ignoring the import of Respondents' earlier statements in that Respondents were estopped from asserting a position different from the position they asserted earlier in this same litigation.....	7
III. The findings of fact of the Trial Court were improvidently made.....	8
CONCLUSION.....	8

TABLE OF AUTHORITIES

Cases

Sloan v. Friends of Hunley, Inc., Opinion No. 26986, (June 13, 2011).....**5**

REPLY ARGUMENTS

Appellants respond hereinafter to the argument provided by Respondents.

- I. **The Trial Court erred in refusing to proceed with an accounting in this case, in contravention of the "Law of the Case Doctrine", and in light of the two existing Orders of Circuit Court Judges, previously issued in this matter.**

Appellants' Incomplete Discussion on the Waiver of the Condition in the Order of Reference.

Respondents incorrectly argued to this Court in their Initial Brief, that Appellants' position was that the Order of Reference unconditionally required an accounting (Respondents Initial Brief at P. 6 and at P. 8). Factually, Respondents' argument is incorrect because Appellants stated on page 12, of their Initial Brief, "Specifically, the Court required an accounting in this matter, if there was no finding of an" ... *inter vivos* transfer by W.R. and/or Ellen King to the late Christopher C. King..." (R. pp. 1-2).

Therefore, contrary to Respondents' argument, Appellants did point out to this Court, the one condition precedent to the accounting. Appellants further explained that the condition precedent was waived in open Court, with counsel of all parties present (R. p. 111A, Line 7- p. 112, Line 15). The Trial Judge acknowledged the waiver in a discussion with Respondents counsel in open Court (R. p. 112, Lines 3-12). The Trial Judge also acknowledged in open Court that the *inter vivos* transfer issue was decided (R. p. 112, Lines 3-12, p. 119, Line 24- p. 120, Line 6). Because of that clear waiver on the record, the Trial Court could never have made such a finding and the accounting was required."... then there shall be an accounting," as stated above, directed by the Special Referee (R. pp. 1-2).

Respondents Incorrectly Argued the Law of the Case Doctrine.

On page 7, of Respondents' Initial Brief, and thereafter, Respondents give lip service to the Law of the Case Doctrine, and then incorrectly argue that a Circuit Court Judge may go beyond the four corners of another Circuit Court Judge's Order and overrule the prior Circuit Court Judge's decision that there "...shall be an accounting..."(R. pp. 1-2, pp. 3-4).

The prior Circuit Court Judge's Order, **does not state** that after an investigation by a later Circuit Court Judge or after further inquiry by a later Circuit Court Judge or if justified by the parties, there shall be an accounting, it simply reads that there "...shall be an accounting...", if no *inter vivos* transfer was found (R. 1-2).

Respondents are bound by the Law of the Case Doctrine, and there can be no investigation or inquiry or requirement that Appellants justify an accounting, when an accounting was ordered by a prior Circuit Court Judge (R. pp. 1-2, pp. 3-4. The prior Circuit Court's decision on the requirement for accounting, is the Law of the Case (R. pp. 3-4), and must be honored, Sloan v. Friends of Hunley, Inc., Opinion No. 26986, (June 13, 2011).

Respondents Concede that the Order of Reference does not Appear to be Ambiguous.

Respondents improperly argue that the Order of Reference should only be complied with after an investigation by a later Circuit Court Judge, or an inquiry by a later Circuit Court Judge or if justified by the parties (Respondents' Initial Brief at page 9-10), despite the fact that Respondents concede that the Order of Reference does not appear to be ambiguous (Respondents' Initial Brief at page 7 – page 8).

Respondents Improperly Argue the need for a Hearing to Justify an Accounting.

In Respondents' Initial Brief at page 10, after acknowledging the Law of the Case Doctrine, Respondents' argue that an evidentiary hearing shall be held to show entitlement for the requested relief. No such evidentiary hearing is necessary, where, as in the instant case, there is a clear Circuit Court Judge's Order, ordering an accounting. In fact, a hearing is not allowable, given the unambiguous Circuit Court Order. Respondents' further argument concerning the claimed facts of this case is inapposite. Respondents attempt to rely on evidentiary support from a hearing that should never have been conducted, in order to justify ignoring the Circuit Court Judge's requirement that an accounting be held (R. pp. 1-2).

Respondents Ignore Important Language from the Order of Reference.

Respondents make no mention of the Circuit Court Judge's requirement that the accounting shall include, "This accounting must include all nine siblings and all related issues." (Emphasis Supplied), (R. pp. 1-2). Respondents make no mention of this requirement from the Circuit Court Judge's Order of Reference, because it clearly shows that the Judge was attempting to account for profits from the Original¹ Funeral Home Business to the benefit of all nine siblings, and not simply one sibling, Respondent Patricia E. King.

¹ Although the argument of Respondents in their Initial Brief, on page 7, through page 13, obfuscates the issues herein, by a dissertation on which funeral home business should have an accounting, the May 2001, Order of Reference is crystal clear and states on its face, that the accounting ordered by the Order of Reference is an accounting as to the, Original Funeral Home Business (R. pp. 1-2). The verbatim quote from the May 2001, Order of Reference is, "...Special Referee to direct the accounting in this matter as to the Original Funeral Home Business..." (R. pp. 1-2), (Emphasis Supplied).

Respondent Patricia E. King has taken all of the profits of the Original Funeral Home Business and converted the same for her own use, without accounting to her eight siblings, (R. p. 163, Line 9- p. 163A, Line 25), as required by the Circuit Court Judge in his Order (R. pp. 1-2).

Given the clear language of the Circuit Court Judge, that the accounting was to be held and was to benefit all nine siblings, Respondents' argument is nonsensical.

Respondents Improperly Argue that the Circuit Court Judge was to Examine the Ownership of the Original Funeral Home Business, Prior to Directing an Accounting.

There is no support in the record of this case, for Respondents' argument.

Respondents Describe an "Alleged Waiver" of the *Inter Vivos* Transfer.

Respondents described the clear waiver of record in this case, (R. p. 112, Lines 3-12), as an "alleged Waiver", in Respondents' Initial Brief, page 11. Respondents ignore the clear waiver of record, by arguing, "...counsel for Appellants claim to have waived the *inter vivos* transfer argument" on page 12, of Respondents' Brief. The following discussion shows that a waiver was not "claimed" or "alleged", **but the Waiver was actually of record** (R. p. 112, Lines 3-12, p. 119, Lines 24- p. 120, Line 6). By way of background, the Court required an accounting in this matter, if there was no finding of an ...*inter vivos* transfer by W.R. and/or Ellen King to the late Christopher C. King..." (R. pp. 1-2).

The Appellants herein waived their argument as to an *inter vivos* transfer, in open Court with Counsel for all Parties present (R. p. 111A, Line 7- p. 112, Line 15). The Trial Judge acknowledged the waiver in a discussion with Respondents' counsel in open Court (R. p. 112, Lines 3-12). The Trial Judge also acknowledged in open Court that the *inter vivos* transfer issue was decided (R. p. 112, Lines 3-12, p. 119 Line 24- p. 120, Line 6). Because of that waiver, the Trial Court could not have made a finding of an *inter vivos* transfer, and it follows that the accounting was required. "... then there shall be an accounting, as stated above, directed by the Special Referee (R. pp. 1-2, p. 119, Line 24- p. 120, Line 6). The accounting was clearly justified after the Appellants' waiver satisfied the condition precedent in the Order of Reference.

Respondents' Argument on Documents in Evidence from the Hearing is Inapposite.

Respondents continually rely on evidence from a hearing that was improperly held by the Circuit Court Judge, in contravention of the Doctrine of the Law of the Case. Such reliance is misplaced and inappropriate.

II. The Trial Court erred by ignoring the import of Respondents' earlier statements in that Respondents' were estopped from asserting a position different from the position they asserted earlier in this same litigation.

Respondents' Argument on Estoppel.

Respondents misapprehended Appellants' argument on Estoppel. Appellants' argue that judicial estoppel should apply to inconsistent statements of fact, which is Appellants' argument exactly, (Respondents' Initial Brief at page 14).

Earlier in this litigation, Respondent Patricia E. King, admitted that the Original Funeral Home Business passed in equal shares to the nine siblings of W.R. King and Ellen King (R. p. 33). That admission is squarely on point with the Circuit Court Judge's Order of Reference, issued in 2001 (R. pp. 1-2). Specifically, the Respondents are bound by the admission of its Representative, Patricia E. King (Respondent herein), who alleged and admitted in the November 12, 1998, Complaint, CA # 98-CP-12-325, in Paragraph 7 that;

"W.R. King died intestate in 1975, and Ellen King died intestate in 1987. Under the applicable intestacy laws of the State of South Carolina, the ownership of King's Funeral Home ultimately passed in equal shares to the [nine] surviving children of W. R. King and Ellen King, including [Patricia E. King and Robbie King Jones] and the late Christopher C. King." (R. p. 33).

Patricia E. King has admittedly been converting all of the shares of the nine surviving children of W. R. and Ellen King's interests in the Original Funeral Home Business from the time she seized control of the Original Funeral Home Business in February, 1999 until the date of these presents (R. p. 163, Line 9- p. 163A, Line 25).

Patricia E. King's statement indicated that she conclusively knew that there were nine shares to the interests in the King's Original Funeral Home Business, and admitted that she was only entitled to 1/9 of the interests in the King's Original Funeral Home Business, as alleged hereinabove (R. p. 33, p. 163, Line 9- p. 163A, Line 25).

In summary, Patricia E. King has converted 9/9 of the King's Original Funeral Home business to her own use, in contravention of South Carolina Law on Intestacy, for twelve plus years (R. p. 163, Line 9- p. 163A, Line 25). The Trial Judge in his Order of Reference of May 30, 2001, (R. pp. 1-2), wisely noted the inequity of Respondents' position in taking 9/9 of the King's Original Funeral Home business profit, by clearly ordering an accounting to protect all nine of the siblings (R. pp. 1-2).

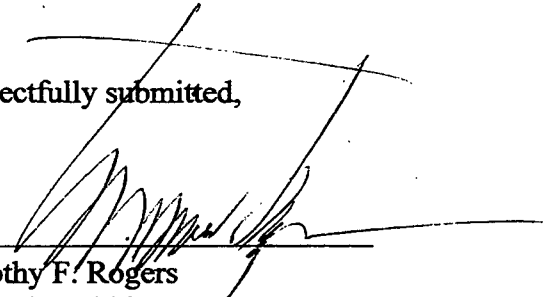
III. The findings of fact of the Trial Court were improvidently made.

Respondents' argument on the Findings of Fact is irrelevant because, the Law of the Case Doctrine and the prior Orders of two² Circuit Court Judges controlled and the evidentiary hearing conducted in this matter should not have been held (R. pp. 1-2, pp. 3-4).

CONCLUSION

Based on the foregoing, the Orders of the Lower Court should be reversed and the Lower Court should be instructed to conduct an accounting in this matter, consistent with the Order of Reference, issued in 2001 (R. pp. 1-2), and reaffirmed by a second Circuit Court Judge, Judge Brooks P. Goldsmith in July, 2010 (R. pp. 3-4).

Respectfully submitted,



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September 14, 2011

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² The original Order of Reference, of May 2001 (R. pp. 1-2), was reaffirmed as being the, "Law of the Case", by a second Order from the Honorable Brooks P. Goldsmith, in August 2010 (R. pp. 3-4), issued in this matter. The "Law of the Case" language was contested, in that Respondents attempted to remove that language from Judge Goldsmith's Order of August 2010, but he reinserted the language concerning the, "Law of the Case", in his final Order (R. pp. 3-4).

5

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Civil Action No. 98-CP-12-325

Patricia E. King and Robbie King Jones, as representatives
of W.R. King and Ellen King.....Plaintiffs,

Of whom, Patricia E. King, as representative of
W.R. King and Ellen King, is.....Respondent,

v.

Margie B. King and Robbie Ione King, individually,
and as Co-Representatives of the Estate of Christopher
G. King (deceased) and Nelson M. King, Chester Telephone
Company, ...Defendants,

Of whom, Margie B. King and Robbie Ione King,
individually, and as Co-Representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are.....Appellants.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	1
Facts	3
Arguments	
I. BECAUSE THE SPECIAL REFEREE COMPLIED WITH THE ORDER OF REFERENCE AND APPLICABLE LAW, THE TRIAL COURT PROPERLY HELD AN EVIDENTIARY HEARING TO DETERMINE THAT APPELLANTS ARE NOT ENTITLED TO THEIR REQUESTED RELIEF.....	6
II. BECAUSE ESTOPPEL DOES NOT APPLY, THE SPECIAL REFEREE PROPERLY REJECTED APPELLANTS' ARGUMENTS.....	13
III. THE ORDER AND FINDINGS OF THE SPECIAL REFEREE ARE VALID AND SHOULD BE AFFIRMED BY THIS COURT.....	18
Conclusion.....	19

TABLE OF AUTHORITIES

CASES

<i>Brading v. Cty of Georgetown</i> , 327 S.C. 107, 490 S.E.2d 4 (1997)	17
<i>Brayboy v. Ewing</i> , 311 S.C. 272, 428 S.E.2d 731 (Ct. App. 1993).....	17
<i>Byrd v. King</i> , 245 S.C. 247, 255, 140 S.E.2d 158, 161 (1965)	10
<i>Charleston Cty DSS v. Father, Stepmother, and Mother</i> , 317 S.C. 283, 454 S.E.2d 307 (1995)	7
<i>Cothran v. Brown</i> , 357 S.C. 210, 592 S.E.2d 629 (2004)	15
<i>Dinkins v. Robbins</i> , 203 S.C. 199, 26 S.E. 2d 689 (1943)	7
<i>Eddins v. Eddins</i> , 304 S.C. 133, 135, 403 S.E.2d 164, 166 (Ct. App. 1991)	8
<i>Hawkins v. Bruno Yacht Sales, Inc.</i> , 353 S.C. 31, 577 S.E.2d 202 (2003)	15
<i>Hayne Fed. Credit Union v. Bailey</i> , 327 S.C. 242, 489 S.E.2d 472 (1997)	15
<i>Ingram v. Kasey's Associates</i> , 340 S.C. 98, 531 S.E.2d 287 (2000)	19
<i>In re Okpalaeké</i> , 374 S.C. 186, 648 S.E.2d 593 (2007)	2
<i>LaRosa v. Johnston</i> , 328 S.C. 293, 493 S.E.2d 100 (Ct. App. 1997)	17
<i>Lindsay v. Lindsay</i> , 328 S.C. 329, 491 S.E.2d 583 (Ct. App. 1997)	7, 8
<i>Maher v. Tietex Corp.</i> , 331 S.C. 371, 381, 500 S.E.2d 204, 209 (Ct. App. 1998)	17
<i>Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n</i> , 335 S.C. 118, 515 S.E.2d 544 (Ct. App. 1999)	18
<i>Tiger, Inc. v. Fisher Agro, Inc.</i> , 301 S.C. 229, 391 S.E.2d 538 (1989)	18
<i>Tisdale v. Amer. Life Ins. Co.</i> , 216 S.C. 10, 56 S.E.2d 580 (1950)	7

<i>Townes Assoc. v. City of Greenville</i> , 266 S.C. 81, 221 S.E.2d 773 (1976)	18
<i>Weil v. Weil</i> , 299 S.C. 84, 382 S.E.2d 471 (1989)	8
<i>Wright v. Trask</i> , 329 S.C. 170, 495 S.E.2d 222 (Ct. App. 1997)	18

OTHER AUTHORITIES

46 Am.Jur.2d <i>Judgments</i> § 73 (1969)	8
<i>Blacks Law Dictionary</i> , 9 (3d Pocket Ed. 2006)	9, 10

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR BY HOLDING AN EVIDENTIARY HEARING TO DETERMINE WHETHER APPELLANTS ARE ENTITLED TO THEIR REQUESTED RELIEF?
2. DID THE TRIAL COURT ERR BY REJECTING APPELLANTS' ESTOPPEL ARGUMENTS?
3. DID THE TRIAL COURT ERR IN ITS FINDINGS OF FACT AND ORDER DENYING APPELLANTS' REQUESTED RELIEF?

STATEMENT OF THE CASE

Respondent Patricia King filed a complaint in the above-referenced case on or about November 12, 1998. The Complaint alleged causes of action against Appellants for breach of contract, recourse against accommodation party, accounting and distribution of profits, appointment of receiver, injunction, fraudulent conveyance, breach of trust, conversion, failure to pay rent, and ejectment. (R. pp. 32-50) Much of the Respondent's Complaint centered on the ownership and control of King's Funeral Home in Chester, South Carolina.

Appellants filed an Answer and Counterclaim on or about December 11, 1998. The Answer raised five defenses and asserted counterclaims against Respondent for intentional interference with contractual relations, conversion, action for partition of real property, a claim based on constructive trust, and promissory estoppel.

Subsequently, several issues in this case were referred to Special Referee James Harrison by Order of Reference signed by the Honorable Lee S. Alford on May 18, 2001 and filed on May 30, 2001. (R. pp. 1-2) The Order referred the following issues to Special

Referee Harrison:

1. to direct an accounting “if the Special Referee finds that there was not a *inter vivos* transfer of this funeral home business by W.R. and/or Ellen King during their lifetime;”
2. to determine whether the business of King’s Funeral Home was transferred as an *inter vivos* gift during the lifetime of W.R. and/or Ellen King;
3. to hear and make a recommendation on count six of Respondent’s Complaint;
4. to hear and make a recommendation on count eight of Respondent’s Complaint;
5. to hear and make a recommendation on count nine of Respondent’s Complaint;
6. to hear and make a recommendation on count ten of Respondent’s Complaint; and
7. to hear and make a recommendation on any equitable or non-jury matters contained in the Complaint, Answer, and/or Counterclaim.

(R. pp. 1-2)

During this time, and until he abandoned her case, Respondent was represented by an attorney Cletus Okpalaeké, who was later disbarred. *See In re Okpalaeké*, 374 S.C. 186, 648 S.E.2d 593 (2007). Subsequent to the 2001 Order of Reference, on August 6, 2004, an order of dismissal signed by Judge Kenneth Goode dismissed Respondent’s complaint and preserved Appellants’ counterclaims. Due primarily to the acts and omissions of Mr. Okpalaeké, Respondent’s action was dismissed with prejudice for failure to prosecute. Appellants’ counterclaims, however, were preserved for litigation. By Order filed March 28, 2007, this Court affirmed Judge Goode’s 2004 Order of dismissal.

After this Court’s ruling and until January 2010, the parties obtained new counsel and attempted to settle. When settlement attempts proved unsuccessful, Respondent retained the undersigned to defend against the Appellants’ counterclaims. Respondents filed an Amended

Counterclaim in June 2011, which included a cause of action for an accounting “as to the, ‘Original Funeral Home Business.’” (R. pp. 84-85)

Appellants subsequently filed a Motion for Equitable Relief which included a request for the Special Referee to direct an accounting “as to the, ‘Original Funeral Home Business’” pursuant to the 2001 Order of Reference. (R. pp. 96-97) On August 5, 2010, the Special Referee heard and orally denied, without prejudice, Appellants’ Motion. (R. p. 57, line 20 –p. 58, line 16) The Special Referee instructed the Appellants that, before he would direct an accounting as to the original funeral home business, Appellants were required to prove they are entitled to such an account. (R. p. 69, line 2 –p. 70, line 12) Therefore, the Special Referee held an evidentiary hearing on August 16, 2010.

At the August 16, 2010 evidentiary hearing, counsel for Appellants called three witnesses: Appellant Robbie Patricia Ione King, John R. Christopher King, and tax attorney David Siddons. Respondents called three witnesses: Moses Caldwell, tax preparer George Ledbetter, and Respondent Patricia King. After carefully reviewing the testimony of the witnesses and the documents admitted into evidence, the Special Referee denied Appellants’ counterclaim for an accounting. (R. pp. 8-20)

In their Initial Brief, Appellants contend that the Special Referee “misapprehended or overlooked Appellants’ argument as to the ‘Law of the Case.’” (Appellants’ Brief p. 11) Appellants further assert that the Special Referee “misapprehended or overlooked Defendants’ arguments on the applicability of estoppel.” (Appellants’ Brief p. 11)

FACTS

W. R. King, deceased, was the patriarch of the King family. He and his wife, Ellen N.

King, deceased, owned and operated King's Funeral Home from the 1940's until the death of W. R. King in 1975. W. R. and Ellen King's funeral home was located at 127 Cemetery Street in Chester, was never incorporated, and was operated as a sole proprietorship. During the time that W. R. King and Ellen King owned and ran the funeral home, a number of their children worked as employees of the business, including both Patricia King and Christopher C. King.

W. R. King and Ellen King had nine children. Among those children were Respondent Patricia E. King as well as Christopher C. King, deceased, the husband and father of Appellants.

In 1975, W. R. King died intestate. Prior to 1980 and during the life of Ellen King, Christopher King ran a business named "King's Funeral Home" at 127 Cemetery Street as a sole proprietor (hereinafter "Christopher's KFH"). (R. p. 17, ¶ 2 –p. 18, ¶ 2; p. 133, lines 22-24; pp. 136-137) He continued to run that business until his decline in health and eventual death in 1997, at which point his wife and children began running the funeral home. (R. p. 15, ¶ 10 –p. 16, ¶ 10; p. 134, line 10 –p. 135, line 7)

In 1980, Patricia King built a new funeral home building at 135 Cemetery Street on three (3) parcels of real property which she owned. (R. p. 13, ¶ 3) Christopher King, as tenant, and Patricia King, as landlord, entered into a lease agreement under the terms of which a sole proprietorship named "King's Funeral Home" leased from Patricia the real property and building located at 135 Cemetery Street. (R. p. 13, ¶ 4)

In 1987, Ellen King died intestate. The inventory of her assets filed in the probate court show that she owned no interest in the real property located at 135 Cemetery Street or

any personal property or other interest in King's Funeral Home. (R. p. 13, ¶ 2)

On August 20, 1997, Patricia, in her capacity as landlord, sent a notice of eviction to "CHRISTOPHER C. KING, AND ALL OTHER OCCUPANTS OF THE PREMISES LOCATED AT 135 CEMETERY STREET, CHESTER, SOUTH CAROLINA." (R. p. 186)

At the time, the occupant of the building was Christopher King's sole proprietorship, King's Funeral Home, the tenant. (R. p. 134, line 10 –p. 134A, line 5) This business did not vacate the premises and remained in the building until December 8, 1998—nearly sixteen months after the notice of eviction. (R. p. 15, ¶ 8; p. 152, lines 16-17)

In September 1997, Chris died of cancer. After Christopher King's death, Christopher's KFH located at 135 Cemetery Street was run by his widow, Appellant Margie King, and his surviving children, Appellant Robbie Patricia Ione King, Appellant Nelson M. King, and John R. Christopher King. The family of Christopher King continued to operate this business, located at 135 Cemetery Street, until December 1998. On December 8, 1998, the family of Christopher vacated the premises. On the same day, someone simultaneously removed from the building most of the operating assets of Christopher's KFH, including vehicles, caskets, embalming table and supplies, pews and other items. (R. p. 15, ¶ 8; p. 152, line 16 – Appendix p. 152A, line 5) On that day, John King opened a new business known as "Christopher King's Funeral Home," located at 703 Old York Road in Chester, South Carolina. (R. p. 16, ¶ 11) He kept the telephone number of Christopher's KFH which was owned and operated by Christopher King, (803)377-1144. (R. p. 16, ¶ 11; p. 138, lines 2-10) Appellants kept the BB&T bank account for Christopher's KFH which was owned and operated by Christopher King and removed Respondent's name from the account. (R. p. 15, ¶

8) The family of Christopher King still operates this funeral home.

After the family of Christopher King vacated Patricia King's property located at 135 Cemetery Street, Respondent Patricia King began operating in her building and on her property a sole proprietorship named "King's Funeral Home" (hereinafter "Patricia's KFH).

(R. p. 16, ¶ 12) None of the assets owned by the previous occupant—the funeral home business run by Christopher King and his family—were available to Respondent. (R. p. 15, ¶

8) To date, Respondent Patricia King operates her funeral home in the building and on the property located at 135 Cemetery Street in Chester, South Carolina.

ARGUMENTS

I. BECAUSE THE SPECIAL REFEREE COMPLIED WITH THE ORDER OF REFERENCE AND THE APPLICABLE LAWS, THE TRIAL COURT PROPERLY HELD AN EVIDENTIARY HEARING TO DETERMINE THAT APPELLANTS ARE NOT ENTITLED TO THEIR REQUESTED RELIEF.

Appellants contend that the Special Referee overruled another judge of the same court by not directing an accounting. They further contend that, pursuant to the law of the case doctrine, the Special Referee must direct an accounting of a funeral home business, presumably Patricia's KFH.

The Special Referee neither ignored nor overruled the 2001 Order of Reference signed by Judge Lee S. Alford as Appellants contend. However, the Special Referee showed deference to the Order and carried out his responsibilities arising from that Order.

At the merits hearing on August 16, 2010, Appellants presented no evidence that that they are entitled to an accounting. Instead, Appellants' entire case relies on their misconstruction of a conditional clause in the 2001 Order of Reference and on an allegation

taken in isolation from a pleading filed in 1998—Respondent’s dismissed Complaint.

Appellants contend that the Order of Reference unconditionally required the Special Referee to direct an accounting. The Order of Reference, however, required an accounting under the following condition:

“*If* there was a [*sic*] inter vivos transfer by W.R. and/or Ellen King to the late Christopher C. King, *then no accounting will be necessary*. *If* the Special Referee finds that there was not a [*sic*] inter vivos transfer of this funeral home business by W.R. and/or Ellen King during their lifetime, then there shall be an accounting, as stated above, directed by the Special Referee.”

(R. pp. 1-2) (emphasis added)

The Law of the Case Doctrine does not unconditionally require the Special Referee to direct an accounting. A proper construction of the Order of Reference shows that the Special Referee gave full deference to the Order by first determining the ownership status of the Original Funeral Home Business. South Carolina law requires the Special Referee to weigh the evidence when determining whether Appellants are entitled to an accounting. Appellants’ alleged “waiver” of the *inter vivos* transfer does not force the Special Referee to direct an accounting.

A. The Law of the Case Doctrine Does Not Unconditionally Require the Special Referee to Direct an Accounting.

The Law of the Case Doctrine does not require the Special Referee to unconditionally direct an accounting. In South Carolina, “one judge of the same court cannot overrule another.” *Charleston County DSS v. Father, Stepmother, and Mother*, 317 S.C. 283, 288, 454 S.E.2d 307, 309 (1995); (citing *Tisdale v. Amer. Life Ins. Co.*, 216 S.C. 10, 56 S.E.2d 580 (1950); *Dinkins v. Robbins*, 203 S.C. 199, 26 S.E. 2d 689 (1943)). An “unchallenged ruling,

right or wrong; is the law of the case and requires affirmance.” *Lindsay v. Lindsay*, 328 S.C. 329, 491 S.E.2d 583 (Ct.App.1997).

To determine what the law of this case is under the Order of Reference, one must construe its terms in a reasonable manner. On its face, the 2001 Order of Reference does not appear to be ambiguous. However, Appellants contend that the Order of Reference unconditionally requires the Special Referee to direct an accounting.

This Court has held that “in construing an ambiguous order or decree, the determinative factor is to ascertain the intent of the judge who wrote the order.” *Eddins v. Eddins*, 304 S.C. 133, 135, 403 S.E.2d 164, 166 (Ct.App. 1991); (citing *Weil v. Weil*, 299 S.C. 84, 91-92, 382 S.E.2d 471, 475 (1989)). This Court further held in *Eddins* that “[t]he general rules for construing judgment are succinctly set forth in 46 Am.Jur.2d *Judgments* § 73 (1969), we quote”:

As a general rule, judgments are to be construed like other written instruments. **The determinative factor is the intention of the court, as gathered, not from an isolated part thereof, but from all parts of the judgment itself.** Hence, in construing a judgment, it should be examined and considered in its entirety. Such construction should be given to a judgment as will give force and effect to every word of it, if possible, and **make it as a whole consistent and reasonable.** In applying this rule, **effect must be given to that which is unavoidably and necessarily implied in a judgment, as well as to that which is expressed in the most appropriate language.** Sometimes, it is declared that the interpretation or construction of a judgment must be characterized by justice and fairness.

Eddins at 135-36, 403 S.E.2d at 166; (quoting 46 Am.Jur.2d *Judgments* § 73 (1969) (emphasis added).

Based on the status of the case in 2001, the intent of Judge Goode in his Order of

Reference is clear: the Special Referee must first determine the ownership status of the "Original Funeral Home Business." If the Special Referee were to determine that Christopher King was not the sole owner of the business during his life, then the Special Referee must direct an accounting of the business. As mentioned *supra*, it is the Respondent, Patricia King, who made the request for the accounting that is addressed by the Order of Reference. As mentioned *supra*, the Appellants raised Christopher King's sole ownership of the original funeral home business as a defense to the allegations contained in the Complaint. Therefore, it is unavoidably and necessarily implied in the 2001 Order of Reference that the accounting requested in 1998 by Respondent should only be conducted if the Special Referee first determines that Christopher King was not the sole owner of the original funeral home business. However, since Respondent's Complaint has been dismissed with prejudice, the Order of Reference cannot require the Special Referee to direct the accounting that Respondent requested.

In their brief before this Court, Appellants contend that the Special Referee "should have acted in recognition of the clearer guidance of the Order of Reference and proceeded with an accounting, without inquiry into the issue of whether or not, [*sic*] an accounting should have been held." However, the Order of Reference required that the Special Referee first make a determination of the ownership of the business in question.

B. South Carolina Law Requires the Special Referee to Weigh the Evidence When Determining Whether Appellants Are Entitled to an Accounting.

The law of this State also requires that the Special Referee must first make a determination of entitlement prior to directing an accounting.

Accounting for profits is defined as "[a]n action for equitable relief against a person

in a fiduciary relationship to recover profits taken in a breach of the relationship.” *Blacks Law Dictionary*, 9 (3d Pocket Ed. 2006). “An action for an accounting is... equitable in nature.” *Byrd v. King*, 245 S.C. 247, 255, 140 S.E.2d 158, 161 (1965). The party requesting an accounting has the burden to prove entitlement to such an account by the preponderance of the evidence. *Id.*

Consistent with the terms of the Order of Reference and with the laws of South Carolina, the Special Referee reasonably held an evidentiary hearing where he required the Appellants to show entitlement to their requested relief. Testimony and evidence presented at the hearing convinced the Special Referee that Christopher King was the sole owner of the original funeral business and that his ownership arose during the life of Ellen King. (R. p. 14, ¶ 5) In other words, the condition precedent to the accounting did not occur. With this finding, the accounting conditionally required by the Order of Reference need not be directed by the Special Referee.

By alleging that this Order of Reference entitles them to an accounting, Appellants attempt to transform a conditional statement into an absolute decree. To direct an accounting without first determining the ownership of “the original funeral home business” would be to violate the Order of Reference, the law of this case, and the laws of South Carolina.

The dismissed cause of action for an accounting in the 1998 Complaint of Respondent Patricia King does not establish that the opposing Appellants are entitled to an accounting; let alone to an accounting of a business started by Respondent after December 14, 1998. The accounting cause of action in Respondent’s dismissed Complaint intended to establish that the Respondent, not the Appellants, was entitled to an accounting of a business

run by the Appellants and their deceased husband and father prior to his death in 1997 and their eviction in 1998.

Even when Respondents' Complaint was still viable prior to its 2004 dismissal, under the Order of Reference, the parties would still have had to establish that they were entitled to an accounting. The Order of Reference required the Special Referee to examine the ownership of the original funeral home business prior to directing an accounting of that business. If the Special Referee were to direct an accounting based on the Order of Reference, it should be related to the profits of the funeral home business as run by Christopher C. King and his wife and children from the time he began running the business until the date of their eviction in 1998. However, since the Complaint has been dismissed, the accounting of the funeral home business run by Christopher C. King is no longer an issue in this case and cannot be resurrected by Appellants' counterclaims asserted nine years subsequent to the Order of Reference.

The evidence at the hearing established that Respondent Patricia King owns and operates a business distinct from "the original funeral home business" referred to in the Order of Reference. The 2001 Order of Reference does address Appellants' 2010 request for an accounting. Rather, the Order of Reference instructs the Special Referee to make findings on the equitable issues in the Complaint and Answer and Counterclaim. (R. pp. 1-2)

That is exactly what Special Referee Harrison has done. Appellants filed an Amended Counterclaim in June 2010 requesting an accounting. Shortly thereafter, the Special Referee held an evidentiary hearing to determine whether Appellants were entitled to such relief. Appellants failed to convince the Special Referee of their alleged entitlement. Consequently,

the Special Referee issued an Order denying their counterclaim for an accounting.

Therefore, the March 7, 2011 Order of Special Referee Harrison should be affirmed.

C. Appellants' Alleged "Waiver" of the *Inter Vivos* Transfer Does not Force the Special Referee to Unconditionally Direct an Accounting.

Appellants take the cumbersome position that the Law of the Case doctrine required the Special Referee to direct an accounting without inquiring into the necessity of an accounting. In their Initial Brief, Counsel for Appellants state that they have waived "their argument as to an *inter vivos* transfer." (Appellants' Brief, p. 12) Though counsel for Appellants claim to have waived the *inter vivos* transfer argument, Appellants' 1998 Answer and Counterclaim alleges the following:

These Defendants also deny the allegations in the Complaint which allege that the Funeral Home passed in equal shares to the surviving children of W.R. King and Ellen King. These Defendants allege that W.R. King and Ellen King made an *inter vivos* gift of the Funeral Home to Christopher C. King.

(R. p. 66, ¶ 9) The same pleading further alleges:

The parents of Christopher C. King, W.R. King and Ellen King, gifted all ownership interests and rights in King's Funeral Home to Christopher C. King. This gift was made during the lifetime of W.R. King and Ellen King, W.R. King and Ellen King intended to make the gift and in fact delivered the gift to Christopher C. King and Christopher C. King accepted the gift.

These Defendants would allege that at the time of the death of W.R. King and at the time of the death of Ellen King, **King's Funeral Home was owned and operated by Christopher C. King and that the ownership and all interests in King's Funeral Home did not pass by intestacy to the children of W.R. King and Ellen King.**

(R. p. 63, ¶ 34 –p. 64, ¶ 35)

Consistent with these allegations, at the August 16, 2011 hearing, Appellant Robbie Patricia Ione King testified that her deceased father, Christopher King, was the owner of King's Funeral Home. (R. p. 133, lines 22-24) She further testified that he was the "sole proprietor" of King's Funeral Home. (R. p. 136, line 21 –p. 137, line 1) She testified that he ran this business for approximately 40 years. Appellants also called John R. Christopher King, the son of the late Christopher King, to the witness stand. Mr. King testified that he and his family "were always under the impression that the business was [his] father's." (R. p. 139, lines 6-11)

The documents in evidence further establish that Christopher King was the sole proprietor of a funeral home business named "King's Funeral Home." Listed as an asset in Schedule E of the Inventory and Appraisal of the Probate Court documents filed on behalf of the estate of Christopher King is "King's Funeral Home 135 Cemetery St. (Business) Sole Proprieto [*sic*]." (R. p. 173) No such listing can be found in the Inventory and Appraisal of the estate of patriarch W. R. King. (R. p. 13, ¶ 2) Therefore, the original funeral business did not pass in nine equal shares as Appellants now claim and originally denied. No such listing can be found in the Inventory and Appraisal of the estate of Ellen King. (R. p. 14, ¶ 6) Christopher King also signed a note as the Proprietor of King's Funeral Home. (R. p. 185) Even the stationery of King's Funeral Home listed Christopher King as the sole proprietor. (R. p. 150, line 23 –p. 151, line 1)

Counsel for Appellants contends that, with the waiver of the *inter vivos* transfer argument, the accounting mentioned in the 2001 Order of Reference transforms from conditional to mandatory. However, the facts in evidence establish that Christopher King was

the sole proprietor of a business named King's Funeral Home and that his ownership arose during the life of Ellen King. (R. p. 14, ¶ 5) Counsel for Appellants' contention that they waived their *inter vivos* transfer argument further evinces the need for the Special Referee to determine beyond a preponderance of the evidence whether Appellants are entitled to an accounting.

Therefore, the Special Referee's Order should be upheld.

II. BECAUSE ESTOPPEL DOES NOT APPLY, THE SPECIAL REFEREE PROPERLY REJECTED APPELLANTS' ARGUMENTS.

Appellants contend that Respondent Patricia E. King is estopped from asserting her sole ownership of Patricia's KFH as a defense to Appellants' counterclaim. Appellants claim that because Respondent Patricia King's dismissed Complaint requested an accounting of Christopher's KFH, she is somehow estopped from denying Appellants the same relief regarding an entirely separate and distinct business which she started in 1999. In her 1998 Complaint, Respondent asserted that she had a one-ninth interest in the funeral home business that her brother operated during his lifetime—Christopher's KFH. (R. p. 33, ¶ 7)

As a result of Respondent's legal theory regarding the ownership of Christopher's KFH, Respondent asserted a cause of action for an accounting. (R. p. 37, ¶ 26 –p. 38, ¶ 29) As a *defense* to Appellants' Amended Counterclaims, including Appellants' pursuit of an accounting of Respondent's business, Patricia's KFH, Respondent has maintained that this business is entirely hers and that Appellants have no ownership interest in Patricia's KFH. The Special Referee, after the evidentiary hearing on August 16, 2010, found the facts to be consistent with Respondent's defense and denied Appellants' cause of action for an

accounting.

Appellants' brief fails to indicate which form of estoppel they claim is applicable. Appellants' brief fails to cite case law to support their estoppel arguments. Regardless, the facts of this case do not support judicial estoppel or equitable estoppel.

A. Judicial Estoppel Does Not Apply.

The South Carolina Supreme Court has consistently held that judicial estoppel applies only to inconsistent statements of fact, and not to assertions of legal theories. *See Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997); *Hawkins v. Bruno Yacht Sales, Inc.*, 353 S.C. 31, 42, 577 S.E.2d 202, 208 (2003); and *Cothran v. Brown*, 357 S.C. 210, 216, 592 S.E.2d 629, 632 (2004). Respondent's 1998 request for an accounting is not an assertion of fact, but a petition for a specific type of relief from the court. Further, the allegation that she had a one-ninth interest in Christopher's KFH was part of that legal theory. Since Appellants' brief raises issues exclusively with previously-pled legal theory, judicial estoppel is inapplicable.

In addition to the reasons stated above, judicial estoppel is inapplicable for failure to satisfy all five of the elements required by the South Carolina Supreme Court:

(1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

Cothran at 215-16, 592 S.E.2d at 632.

The fifth element requires the Appellant to show total inconsistency between two statements of the Respondent. However, Respondent's 1998 Complaint and Respondent's defense to Appellants' counterclaims are not inconsistent. Respondent's Complaint made allegations that she was a one-ninth owner of one business—Christopher's KFH. Respondent's defense to Appellants' counterclaim is that she is the sole owner of a separate and distinct business—Patricia's KFH. Even if Respondents' defense qualifies as a statement for the purposes of judicial estoppel, it is in no way inconsistent with Respondent's prior statement in her Complaint. Since the two positions are about two entirely separate and distinct businesses, any estoppel theory that Appellants may have cannot apply. Therefore, Appellants cannot meet the requirements of the fifth and first elements of judicial estoppel.

The third element requires Appellants to prove that Respondent Patricia King was *successful* in her assertion that she was entitled to an accounting based on her purported one-ninth share of Christopher's KFH and that she received *some benefit*. Respondent's Complaint, however, was dismissed with prejudice on August 6, 2004 by the Honorable Kenneth G. Goode for failure to prosecute. Appellant, therefore, cannot meet the third element of judicial estoppel.

The fourth element requires Appellants to prove that Respondent intentionally misled the court in her alleged inconsistencies. Appellants brief is void of such allegations. Further, since there is no inconsistency between her 1998 legal theory and her 2010 defense, there is no misleading of any Court.

Because Appellants fail to show all five of the elements of judicial estoppel, the doctrine is inapplicable.

B. Equitable Estoppel Does Not Apply.

Equitable estoppel is also inapplicable to this alleged inconsistency. The South Carolina Supreme Court requires the following showing for equitable estoppel:

The elements of estoppel as to the party estopped are (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts. As to the party claiming estoppel, the elements are (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; and (2) reliance upon the conduct of the party estopped. *Brayboy v. Ewing*, 311 S.C. 272, 273, 428 S.E.2d 731, 732 (Ct.App.1993). *See also* *Brading v. County of Georgetown*, 327 S.C. 107, 490 S.E.2d 4 (1997) and *LaRosa v. Johnston*, 328 S.C. 293, 493 S.E.2d 100 (Ct.App.1997) (both cases also noting the additional requirement of prejudicial change of position).

Maier v. Tietex Corp., 331 S.C. 371, 381, 500 S.E.2d 204, 209 (Ct.App.1998). Appellants, therefore, must show two sets of elements: one set of elements regarding the Respondent, the party estopped; and one set of elements regarding Appellants, the party claiming the estoppel.

Here, Appellants contention is the opposite of the first element of the estopped party: "conduct by the party estopped which amounts to a false representation or concealment of material facts." Counsel for Appellants now contend Appellants are entitled to a one-ninth share of King's Funeral Home. After thirteen years of litigation, Appellants now seem to agree with the allegations of Respondent's 1998 Complaint. Thus, Appellants claim no false representation or concealment of a material fact. Neither do Appellants make arguments that meet the second and third elements regarding the estopped party.

As for the elements required for the party claiming the estoppel, e.g. Appellants, their brief contains nothing related to the two elements. Appellants have not alleged anything

remotely related to their lacking the knowledge and the means of knowledge of the truth as to the ownership of the funeral home business. In fact, shortly after Respondent's 1998 Complaint was filed, the Appellants denied the subject claims made related to the original funeral home business being divided into nine shares. (R. p. 66, ¶ 9) Further, Appellants have pled nothing related to the second element—reliance upon the conduct of the Respondent. Again, rather than relying on the claims made in Respondent's Complaint, Appellants denied all those claims and asserted their own defenses and counterclaims in opposition to Respondent's claims.

Ironically, under Appellants' own theory of estoppel, Appellants should be denied from claiming that they have a one-ninth share of the original funeral home business and a right to an accounting thereof since they have consistently pled and testified that Christopher King was the sole owner of the business. Appellants' 1998 Answer & Counterclaim contains the following:

These Defendants also deny the allegations in the Complaint which allege that the Funeral Home passed in equal shares to the surviving children of W.R. King and Ellen King. These Defendants allege that W.R. King and Ellen King made an *inter vivos* gift of the Funeral Home to Christopher C. King.

(R. p. 66, ¶ 9) The same pleading further alleges:

The parents of Christopher C. King, W.R. King and Ellen King, gifted all ownership interests and rights in King's Funeral Home to Christopher C. King. This gift was made during the lifetime of W.R. King and Ellen King, W.R. King and Ellen King intended to make the gift and in fact delivered the gift to Christopher C. King and Christopher C. King accepted the gift.

These Defendants would allege that at the time of the death of W.R. King and at the time of the death of Ellen King,

King's Funeral Home was owned and operated by Christopher C. King and that the ownership and all interests in King's Funeral Home did not pass by intestacy to the children of W.R. King and Ellen King.

(R. p. 63, ¶ 34 –p. 64, ¶ 35) In response to Respondent's original request for an accounting, the Appellant's asserted the following in the form of a defense:

Plaintiffs have failed to state a cause of action for accounting and distribution of profits in that there is no *de facto* partnership **nor do the Plaintiffs have an ownership interest in King's Funeral Home because of the *inter vivos* gift.**

(R. p. 69, ¶ 40)

Equitable estoppel is entirely inappropriate in the manner that Appellants attempt to apply the doctrine. Further, Appellants same theory of estoppel would prevent them from now requesting an accounting. Therefore, equitable estoppel is inapplicable.

III. THE ORDER AND FINDINGS OF THE SPECIAL REFEREE ARE VALID AND SHOULD BE AFFIRMED BY THIS COURT.

Appellants' Counterclaims seek equitable relief against Respondent. (R. p. 84-93)

The South Carolina Supreme Court instructs as follows:

In equity actions an appellate court can review the record and make findings based on its view of the preponderance of the evidence." *Townes Assoc. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976); *Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n*, 335 S.C. 118, 515 S.E.2d 544 (Ct.App.1999). However, this Court 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. *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 391 S.E.2d 538 (1989); *Wright v. Trask*, 329 S.C. 170, 495 S.E.2d 222 (Ct.App.1997).

Ingram v. Kasey's Associates, 340 S.C. 98, 105, 531 S.E.2d 287, 290-91 (2000).

Appellants filed an Amended Counterclaim in June 2010 requesting an accounting. (R. p. 84-85) Consistent with the Order of Reference and the laws of South Carolina, the Special Referee held a hearing on August 16, 2010 to determine whether Appellants are entitled to their requested relief. Appellants failed to convince the Special Referee that they were entitled to the requested relief. After seeing and hearing witnesses, carefully weighing their credibility and the evidence presented, the Special Referee issued an Order denying Appellants' counterclaim for an accounting. Appellants have provided no reason for this Court to disturb the findings of the Special Referee.

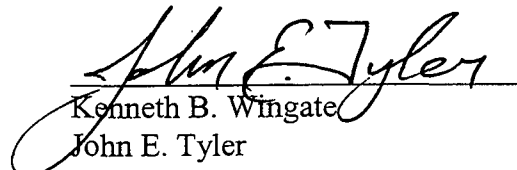
Therefore, the March 7, 2011 Order of Special Referee Harrison should be affirmed by this Court.

CONCLUSION

For the reasons stated, this Court should affirm the Order and findings of the Special Referee and award costs, fees, and reasonable attorney's fees to Respondent Patricia King.

SWEENEY, WINGATE & BARROW, P.A.

September 12, 2011


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Case No. 98-CP-12-325

Patricia E. King and Robbie King Jones, as representatives
of W.R. King and Ellen King.....Plaintiffs,

Of whom, Patricia E. King, as representative of
W.R. King and Ellen King.....Respondent,

v.

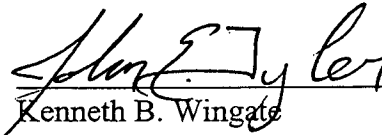
Margie B. King and Robbie Ione King, individually,
and as Co-Representatives of the Estate of Christopher
G. King (deceased) and Nelson M. King, Chester Telephone
Company.....Defendants,

Of whom, Margie B. King and Robbie Ione King,
Individually, and as Co-Representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are.....Appellants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

September 12, 2011

A handwritten signature in black ink, appearing to read "John E. Tyler", is written over a horizontal line.

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6

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Civil Action No. 98-CP-12-325
(Appellate Case No.: 2011-189186)

RECEIVED

JUN 27 2012

SC Court of Appeals

Patricia E. King and Robbie King Jones, as Representatives
of W.R. King and Ellen King.....Plaintiffs,

Of Whom, Patricia E. King, as Representative of
W.R. King and Ellen King, is.....Respondent,

v.

Margie B. King and Robbie Ione King, individually,
and as Co-Representatives of the Estate of Christopher
G. King (deceased) and Nelson M. King, Chester Telephone
Company, ...Defendants,

Of Whom, Margie B. King and Robbie Ione King,
individually, and as Co-Representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are.....Appellants.

APPELLANTS' PETITION FOR REHEARING

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Table of Contents

TABLE OF AUTHORITIES.....	4
INTRODUCTION.....	5
STATEMENT OF ISSUES ON REHEARING.....	5
I. THIS COURT OVERLOOKED Appellants' Argument on the Law of the Case Doctrine.....	6
II. THIS COURT MISAPPREHENDED, Appellants' Argument that the Doctrine of Judicial Estoppel applies.....	9
III. THIS COURT MISAPPREHENDED, Appellants' Argument that the Lower Court's Findings were improvidently made	10
IV. THIS COURT OVERLOOKED, Appellants' Argument that the Trial Court erred in conducting a trial on the issue of whether or not an accounting should have been conducted.....	10
ARGUMENT.....	6
I. THIS COURT OVERLOOKED Appellants' Argument on the Law of the Case Doctrine.....	6
II. THIS COURT MISAPPREHENDED, Appellants' Argument that the Doctrine of Judicial Estoppel applies.....	9
III. THIS COURT MISAPPREHENDED, Appellants' Argument that the Lower Court's Findings were improvidently made	10
IV. THIS COURT OVERLOOKED, Appellants' Argument that the Trial Court erred in conducting a trial on the issue of whether or not an accounting should have been conducted.....	10
CONCLUSION.....	11

TABLE OF AUTHORITIES

CASES

<u>Sloan v. Friends of the Hunley, Inc.</u> , 369 S.C. 20, 630 SE 2d 474 (2006).....	6
<u>Judy v. Martin</u> , 674 SE 2d 151 (2009).....	6
<u>Ex Parte Petition of White</u> , 299 S.C. 407, 413, 385 SE 2d 211, 215 (Ct. App. 1989).....	6

PETITION FOR REHEARING

INTRODUCTION

Counsel for Appellants respectfully requests a rehearing of this Court's decision, filed on June 20, 2012.

STATEMENT OF ISSUE ON REHEARING

- I. THIS COURT OVERLOOKED Appellants' Argument on the Law of the Case Doctrine.....6
- II. THIS COURT MISAPPREHENDED, Appellants' Argument that the Doctrine of Judicial Estoppel applies.....5
- III. THIS COURT MISAPPREHENDED, Appellants' Argument that the Lower Court's Findings were improvidently made 5
- IV. THIS COURT OVERLOOKED, Appellants' Argument that the Trial Court erred in conducting a trial on the issue of whether or not an accounting should have been conducted.....5

ARGUMENT

I. THIS COURT OVERLOOKED Appellants' Argument on the Law of the Case Doctrine.

This Court's Order of June 20, 2012, Overlooked Appellants' Law of the Case Argument.

A review of this Court's decision shows that this Court failed to address Appellants' argument that the Law of the Case Doctrine was controlling, Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 630 SE 2d 474 (2006), Judy v. Martin, 674 SE 2d 151 (2009), (*Appellants' Final Brief pp. 11-13*) and (*Appellants' Final Reply Brief pp. 4-6*).

The Clear Language in the 2001 Order of Reference Requiring an Accounting is Plain and Unambiguous.

This Court's Order of June 20, 2012, agrees with Appellants' previous argument, that a plain and unambiguous Order may not be construed or interpreted. This Court's Order reads, "(providing if the language employed within a contract or judgment is plain and unambiguous, there is no room for construction or interpretation and the effect thereof must be declared in light of the literal meaning of the language used)." Ex Parte Petition of White, 299 S.C. 407, 413, 385 SE 2d 211, 215 (Ct. App. 1989).

Neither Appellants nor Respondents Argue that the 2001 Order of Reference is Ambiguous.

Appellants argue and Respondents concede (*Respondent's Final Brief, p. 8*) that the 2001 Order of Reference does not appear to be ambiguous, on its face, (*Record p. 1*).

Therefore, when, as in the case, *sub judice*, the language in a Judgment is plain and unambiguous, this Court may not construe or interpret the Order, as was done in this Court's Order of June 20, 2012.

The Following Finding of This Court, in the June 20, 2012 Order is Incorrect.

This Court's Order of June 20, 2012 finds that, "...we find the issue of whether Appellants were entitled to an accounting was a new and separate matter than the issue addressed in the order of reference **of whether Patricia King was entitled to an accounting.**" (emphasis supplied).

Factually, **the 2001 Order of Reference did not address whether Respondent, Patricia King was entitled to an accounting, and the 2001 Order of Reference was not issued upon the Motion of Respondent, Patricia King.** A review of the 2001 Order of Reference reveals that, on page one, that the issue of the accounting was raised by the Court, *Sua sponte*, (*Record p. 1*). Further, the 2001 Order of Reference (*Record p. 1*), indicated explicitly on its face, that the accounting was not for the benefit of Respondent Patricia King, but instead the 2001 Order of Reference states, "This accounting must include all nine siblings and all related issues." (*Record p. 2*), **"...[a]ll nine siblings..."**, **includes the Appellants and Respondents herein,** (*Record p. 2*). Therefore, the 2001 Order of Reference (*Record p. 1*), did not, as this Court's June 20, 2012 Order found, address the issue of whether Respondent Patricia King was entitled to an accounting (*Record pg. 1*), and this Court's Finding, in the Order of June 20, 2012, misapprehends the contents of the 2001 Order of Reference (*Record p. 1*).

The Following Finding of This Court, in the June 20, 2012 Order is Incorrect.

"...we find the order of reference is not reasonably susceptible to Appellants' interpretation **as requiring the special referee to direct an accounting of King's Funeral Home.**"

However, and explicitly from the 2001 Order of Reference, the 2001 Order of Reference does require an accounting of the King's Funeral Home Business,

"...Honorable James C. Harrison, Jr., shall be appointed Special Referee to direct the accounting in this matter as to the original funeral home business..." (*Record pp. 1-2*).

This Court's Decision of June 20, 2012, Improperly Excuses Respondents' Failure to Appeal, both the 2001 Order of Reference (*Record p. 1*) and the August 2010 Order, clarifying the 2001 Order of Reference (*Record pp. 3-4*).

In May of 2001, the Honorable Lee S. Alford, Circuit Court Judge for Chester County, issued an Order of Reference which, *inter alia*, required an accounting in this matter, (*Record p. 1*). Judge Alford's Order, was never appealed by Respondents.

The original Order of Reference, of May 2001 (*Record pp. 1-2*), was reaffirmed as being the, "Law of the Case", by a second Order from the Honorable Brooks P. Goldsmith, in August 2010, (*Record pp. 3-4*), issued in this matter. The Law of the Case Doctrine language was contested, in that Respondents attempted to remove that language from Judge Goldsmith's Order of August 2010, but Judge Goldsmith reinserted the language concerning the, Law of the Case Doctrine, in his final Order. Judge Goldsmith's Order was never appealed by Respondents (*Record pp. 3-4*).

If either Order (May 2001 or August 2010) was ambiguous (and Respondents have conceded that the May 2001 Order of Reference does not appear to be ambiguous on its face, (*Respondent's Final Brief, p. 8*), and Respondents have never claimed that the August 2010 reaffirming Order was ambiguous) then Respondents were required to Appeal the same, which was not done by Respondents, and under the Law of the Case Doctrine, Respondents are bound by both Orders (*Record pp. 1-2*) and (*Record pp. 3-4*).

**II. THIS COURT MISAPPREHENDED, Appellants' Argument that
the Doctrine of Judicial Estoppel Applies.**

The Following Finding of This Court, in the June 20, 2012 Order is Incorrect.

This Court's June 20, 2012, Order, states that, "...[w]e find the doctrine of judicial estoppel inapplicable because [Respondent] Patricia King did not take inconsistent positions in the same or related proceedings."

Factually, the Record herein shows that in this same litigation, in the "November 12, 1998, Complaint, CA # 98-CP-12-325, in Paragraph 7 that;

"W.R. King died intestate in 1975, and Ellen King died intestate in 1987. Under the applicable intestacy laws of the State of South Carolina, the ownership of King's Funeral Home ultimately passed in equal shares to the [nine] surviving children of W. R. King and Ellen King, including [Patricia E. King and Robbie King Jones] and the late Christopher C. King." (*Record p. 33*).

In this same and related litigation, the Record also shows that, "On February 5, 1998¹, November 12, 1998² and April 6, 2001³, the [Respondents] herein, filed three different pleadings with a South Carolina Court, requesting an accounting for the King's Funeral Home business and thereby averring to the Court that such was proper, while [Respondents] herein were not in possession of the King's Funeral Home business.

¹ February 5, 1998 - Complaint (Non Jury) 1998-346-19 Patricia E. King and Robbie King Jones v. Margie B. King and Robbie Patricia lone King, Individually, and as Co-Personal Representatives of Estate of Christopher C. King, Deceased, and Nelson M. King, (*Record p. 51*).

² November 12, 1998 - Complaint Patricia E. King and Robbie King Jones, as Representatives of W.R. King and Ellen King v. Margie B. King and Robbie Patricia lone King, Individually, and as Co-Personal Representatives of Estate of Christopher C. King, Deceased and Nelson M. King and Chester Telephone Company and Branch Banking and Trust (BB&T), (*Record p. 32*).

³ April 6, 2001 - First Amended Complaint 1998-CP-12-00325 Patricia E. King and Robbie King Jones, individually and Patricia E. King as Representative of Estate of W.R. and Ellen King *et al.* (*Record p. 75*).

**III. THIS COURT MISAPPREHENDED, Appellants' Argument
the Lower Court's Findings were improvidently made.**

The Following Finding of This Court, in the June 20, 2012 Order is Incorrect.

“As to Appellants’ argument that the record does not support the factual findings of the special referee, we find...”

Actually, the Appellants argued on page fifteen of their Final Brief and page eight of their Final Reply Brief, **“The findings of fact of the Trial Court were improvidently made.”**

Appellants argument that, “The findings of fact of the Trial Court were improvidently made.”, was based upon Appellants’ argument that the Law of the Case Doctrine precluded the Findings of the Trial Court.

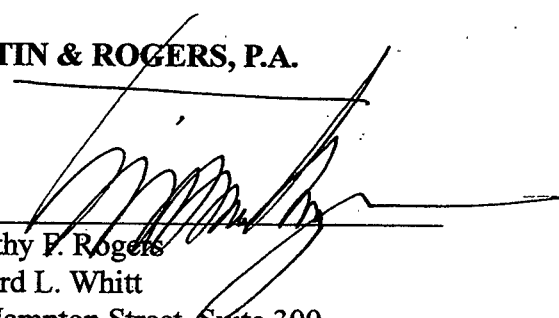
**IV. THIS COURT OVERLOOKED, Appellants' Argument that the
Trial Court erred in conducting a trial on the issue of whether or
not an accounting should have been conducted.**

In light of the two existing Orders of the Circuit Court Judges previously issued in this matter, (*Record pp. 1-2, and Record pp. 3-4*), the Trial Court erred in conducting a trial on the issue of whether or not an accounting should have been conducted.

CONCLUSION

Based on the foregoing, this Court should reverse the lower Court's Order under Appeal, and remand this matter to the lower Court to conduct an accounting.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Civil Action No. 98-CP-12-325
(Appellate Case No.: 2011-189186)

RECEIVED

JUN 27 2012

SC Court of Appeals

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Of whom, Patricia E. King, as representative of
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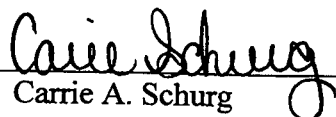
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individually, and as Co-Representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are.....Appellants.

PROOF OF SERVICE

I, Carrie A. Schurg, an employee of Austin & Rogers, P.A., certify that I have caused
to be served, a copy of the Appellants' Petition for Rehearing and this Proof of Service, to
be sent via U.S. Mail, on June 27, 2012, as addressed below.

Kenneth B. Wingate, Esquire
Sweeny, Wingate and Borrow, P.A.
1515 Lady Street
Columbia, S.C. 29211


Carrie A. Schurg

7

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

James C. Harrison, Jr., Special Referee for Chester County

Case No. 98-CP-12-325

Patricia E. King and Robbie King Jones, as representatives
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Individually, and as Co-Representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are.....Appellants.

RESPONDENT'S RETURN TO APPELLANTS' PETITION FOR REHEARING

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TABLE OF CONTENTS

Procedural History	1
Arguments	
I. THE COURT APPROPRIATELY ADDRESSED APPELLANTS’ ARGUMENTS ON THE LAW OF THE CASE DOCTRINE.....	1
II. THE COURT APPROPRIATELY ADDRESSED APPELLANTS’ ARGUMENTS ON THE DOCTRINE OF JUDICIAL ESTOPPEL ...	2
III. THE COURT APPROPRIATELY ADDRESSED APPELLANTS’ ARGUMENTS ON THE FINDINGS OF THE LOWER COURT.....	3
IV. THE COURT APPROPRIATELY ADDRESSED APPELLANTS’ ARGUMENTS ON THE PROPRIETY OF THE EVIDENTIARY HEARING.....	4
Conclusion.....	4

PROCEDURAL HISTORY

Appellants appealed a 2011 Order issued by Special Referee James C. Harrison, Jr. After briefing and oral arguments, this Court issued its Opinion affirming the special referee's Order. *See King v. King*, Unpublished Opinion No. 2012-UP-365 (Ct. App. June 20, 2012). Appellants subsequently filed a Petition for Rehearing. The Court of Appeals requested Respondent Patricia King to file this Return.

ARGUMENTS

"In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their argument." *Kennedy v. S. Carolina Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322 (2001) (*citing* Rule 221(a), SCACR). In its recent Order, the Court addressed all of the arguments raised by Appellants.

I. THE COURT APPROPRIATELY ADDRESSED APPELLANTS' ARGUMENTS ON THE LAW OF THE CASE DOCTRINE.

Appellants contend that this Court overlooked their arguments related to the law of the case doctrine. Appellants and Respondent briefed and presented their oral arguments before the Court on the applicability of the law of the case doctrine. Upon reviewing the briefs and hearing the arguments, the Court directly addressed the law of the case doctrine in its June 20, 2012 Opinion. In this recent Opinion, the Court found the following:

[T]he issue of whether Appellants were entitled to an accounting was a new and separate matter than the issue addressed in the order of reference of whether Patricia King was entitled to an accounting. Furthermore, we find the order of reference is not reasonably susceptible to Appellants' interpretation as requiring the special referee to direct an accounting of King's Funeral Home. (*Citations Omitted*).

Id.

The Court found that the law of the case doctrine as applied to the orders in this case does not require an accounting of Respondent Patricia King's funeral home business. Appellants' 2011 request for an accounting of Respondent's funeral home business is a "new and separate matter than the issue addressed in the order of reference...." *Id.* Appellants argue in their Petition for Rehearing that the Court is not permitted to construe the terms of the 2001 Order of Reference because the language is "plain and unambiguous." However, Appellants still construe the terms of the Order of Reference to mean something entirely different than the interpretations of this Court, the Special Referee, and Respondent.

Therefore, the Court did not overlook Appellants' arguments. The Court simply disagreed with Appellants' misconstruction of the Order of Reference and misapplied use of the law of the case doctrine.

II. THE COURT APPROPRIATELY ADDRESSED APPELLANTS' ARGUMENTS ON THE DOCTRINE OF JUDICIAL ESTOPPEL.

Appellants contend that this Court misapprehended their arguments related to the doctrine of judicial estoppel. Appellants and Respondent briefed and presented their oral arguments before the Court on the applicability of the doctrine of judicial estoppel. Upon reviewing the briefs and hearing the arguments, the Court directly addressed the inapplicability of judicial estoppel in its Opinion. In the Opinion, the Court held that "the doctrine of judicial estoppel [is] inapplicable because Patricia King did not take inconsistent positions in the same or related proceedings." *Id.* Further, the Court found that "the funeral home business operated by Patricia King is a *new and separate business entity* from the funeral home business operated by Chris King...." *Id.* (*Emphasis added*).

The special referee found, and the Court affirmed, that Chris King was a sole proprietor of a business called King's Funeral Home, which ended at his death. The Court further affirmed that Respondent Patricia King subsequently established a sole proprietorship named King's Funeral Home, of which she was the sole owner. The special referee examined deeds, contracts, leases, bank records, and heard testimony from various witnesses to determine that Respondent's business belongs solely to her. Appellants have established no claim of ownership or fiduciary relationship which would entitle them to an accounting.

Appellants contend that, because of a 1998 pleading where Respondent once sought an accounting of the old funeral home business operated by Chris King, Respondent is somehow estopped from opposing Appellants' 2011 request for an accounting of the *new and separate* funeral home business which Respondent owns. Therefore, the Court did not misapprehend Appellants' arguments. The Court simply disagreed with Appellants' misapplication of the doctrine of judicial estoppel to the facts of this case.

III. THE COURT APPROPRIATELY ADDRESSED APPELLANTS' ARGUMENTS ON THE FINDINGS OF THE LOWER COURT.

Appellants contend that this Court misapprehended their arguments related to the appropriateness of the findings of the special referee. Appellants' Brief, oral arguments, and recent Petition for Rehearing assert that the law of the case doctrine "precluded the findings of the Trial Court." (See Appellants' Petition for Rehearing, p. 10).

As argued *supra*, the Court simply disagreed with Appellants' misconstruction of the Order of Reference and misapplied use of the law of the case doctrine.

IV. THE COURT APPROPRIATELY ADDRESSED APPELLANTS' ARGUMENTS ON THE PROPRIETY OF THE EVIDENTIARY HEARING.

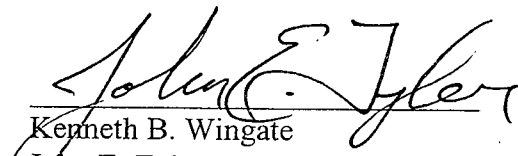
While Appellants' offer no supporting law to their contention that the special referee should not have conducted a trial on the issue of whether an accounting should be conducted, their argument seems to rely, again, on the law of the case doctrine. Once again, as argued *supra*, the Court simply disagreed with Appellants' misconstruction of the Order of Reference and misapplied use of the law of the case doctrine.

CONCLUSION

For the reasons stated, this Court should deny Appellants' Petition for Rehearing and award costs, fees, and reasonable attorney's fees to Respondent Patricia King.

SWEENEY, WINGATE & BARROW, P.A.

August 1, 2012


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8

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Patricia E. King and Robbie King Jones, as
representatives of W.R. King and Ellen King, Plaintiffs,
Of Whom Patricia E. King, as representative of W.R.
King and Ellen King is, Respondent,
v.

Margie B. King and Robbie Patricia Ione King,
individually and as co-representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King,
Chester Telephone Company, Defendants,
Of Whom Margie B. King and Robbie Ione King,
individually, and as co-representatives of the Estate of
Christopher G. King (deceased) and Nelson M. King, are
Appellants.

Appellate Case No. 2011-189186

Appeal From Chester County
James C. Harrison, Jr., Special Referee

Unpublished Opinion No. 2012-UP-365
Heard May 7, 2012 – Filed June 20, 2012

AFFIRMED

Timothy F. Rogers and Richard L. Whitt, both of Austin
& Rogers, PA, of Columbia, for Appellants.

Kenneth B. Wingate and John E. Tyler, both of Sweeny,
Wingate & Barrow, PA, of Columbia, for Respondent.

PER CURIAM: Appellants appeal from an order of the special referee denying their counterclaim against Respondent for an accounting of the profits of King's Funeral Home. On appeal, Appellants argue (1) the circuit court's order of reference required the special referee to direct an accounting of King's Funeral Home; (2) the special referee should have estopped Patricia King from asserting an accounting was not proper; and (3) the record does not support the factual findings of the special referee. We affirm.

1. As to Appellants' argument that the circuit court's order of reference required the special referee to direct an accounting of King's Funeral Home, we find the issue of whether Appellants were entitled to an accounting was a new and separate matter than the issue addressed in the order of reference of whether Patricia King was entitled to an accounting. Furthermore, we find the order of reference is not reasonably susceptible to Appellants' interpretation as requiring the special referee to direct an accounting of King's Funeral Home. *See Hailey v. Hailey*, 357 S.C. 18, 25, 590 S.E.2d 495, 498 (Ct. App. 2003) ("As a general rule, judgments are to be construed like other written instruments." (internal quotation marks omitted)); *Petition of White*, 299 S.C. 406, 412, 385 S.E.2d 211, 215 (Ct. App. 1989) ("The determinative factor is the intent of the parties or the court, as gathered, not from an isolated part of the contract or judgment but from all its parts."); *id.* (providing if the language employed within a contract or judgment is plain and unambiguous, there is no room for construction or interpretation and the effect thereof must be declared in light of the literal meaning of the language used).

2. As to Appellants' argument that the special referee should have estopped Patricia King from asserting an accounting was not proper, we find the doctrine of judicial estoppel inapplicable because Patricia King did not take inconsistent positions in the same or related proceedings. *See City of N. Myrtle Beach v. E. Cherry Grove Realty Co.*, Op. No. 27113 (S.C. Sup. Ct. filed April 11, 2012) (Shearouse Adv. Sh. No. 13 at 44, 52) ("Judicial estoppel is an equitable concept that prevents a litigant from asserting [a] position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding."

(internal quotation marks omitted)); *id.* (providing the purpose of judicial estoppel is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary); *Wright v. Hiester Constr. Co.*, 389 S.C. 504, 519, 698 S.E.2d 822, 830 (Ct. App. 2010) ("Judicial estoppel comes into play when the court is forced to take a position based on a factual assertion." (internal quotation marks omitted)); *Auto-Owners Ins. Co. v. Rhodes*, 385 S.C. 83, 99 n.6, 682 S.E.2d 857, 866 n.6 (Ct. App. 2009) ("The elements of judicial estoppel include: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent." (citing *Cothran v. Brown*, 357 S.C. 210, 215-16, 592 S.E.2d 629, 632 (2004))).

3. As to Appellants' argument that the record does not support the factual findings of the special referee, we find Appellants are not entitled to an accounting because the preponderance of evidence supports the special referee's findings that the funeral home business operated by Patricia King is a new and separate business entity from the funeral home business operated by Chris King, and no fiduciary relationship exists between Appellants and Patricia King. *See Consignment Sales, LLC v. Tucker Oil Co.*, 391 S.C. 266, 272, 705 S.E.2d 73, 76-77 (Ct. App. 2010) (noting an action for an accounting is an equitable action; therefore, an appellate court may review the record and make findings in accordance with its own view of the preponderance of the evidence (citing *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 427, 673 S.E.2d 448, 453 (2009))); *Rogers v. Salisbury Brick Corp.*, 299 S.C. 141, 144, 382 S.E.2d 915, 917 (1989) ("[A]n accounting is designed to prevent unjust enrichment by disclosing and requiring the relinquishment of profits received as the result of a breach of a confidential or fiduciary duty." (citation omitted)); *see also Black's Law Dictionary* (9th ed. 2009) (defining "sole proprietorship" as "[a] business in which one person owns all the assets, owes all the liabilities, and operates in his or her personal capacity").

AFFIRMED.

PIEPER, KONDUROS, and GEATHERS, JJ., concur.

9

The South Carolina Court of Appeals

Patricia E. King and Robbie King Jones, as
representatives of W.R. King and Ellen King, Plaintiffs,

Of Whom Patricia E. King, as Representative of W.R.
King and Ellen King is the Respondent,

v.

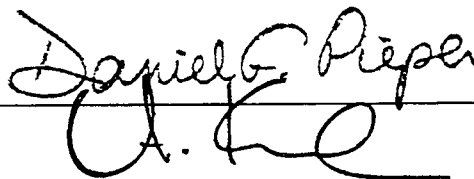
Margie B. King and Robbie Patricia Ione King,
individually and as co-personal representatives of the
Estate of Christopher G. King (deceased) and Nelson M.
King, Chester Telephone Company, Defendants,

Of Whom Margie B. King and Robbie Patricia Ione
King, individually and as co-personal representatives of
the Estate of Christopher G. King (deceased) and Nelson
M. King are the Appellants.

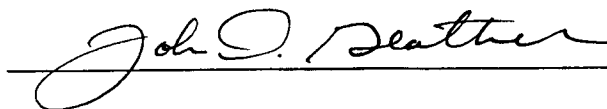
Appellate Case No. 2011-189186

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.

J.

Columbia, South Carolina

cc:

Timothy F. Rogers
Kenneth B. Wingate
John Earle Tyler
Richard Lee Whitt

FILED

22 August 2012

10

Austin & Rogers, P.A.

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July 1, 2011

Via Hand-Delivery

The Honorable Tanya Gee
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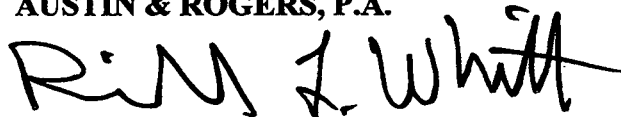
- Re: • Patricia E. King, *et al.* v. Margie B. King, *et al.*
• Case Tracking Number: 2011189186
• **Supplemental Citation Pursuant to Rule 208(E)(7), South Carolina Rules of Appellate Practice**

Ms. Gee:

Subsequent to the service and filing of Appellant's Initial Brief on May 13, 2011, the South Carolina Supreme Court, on June 13, 2011, issued a pertinent and significant decision relevant to Appellant's argument on, "Law of the Case". The citation is Sloan v. Friends of Hunley, Inc., Opinion No. 26986, (June 13, 2011). Other counsel of record is served with this correspondence.

With best regards, We are,

Respectfully,
AUSTIN & ROGERS, P.A.



Timothy F. Rogers
Richard L. Whitt

cc: Kenneth B. Wingate, Esq.