

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

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Appeal From Beaufort County
Carmen Tevis Mullen, Circuit Court Judge

APR 25 2014

S.C. SUPREME COURT

Appellate Case No. 2011-197686

In the Matter of the Estate of Charles Galen
Rider, a/k/a C.G. Rider

Carolyn S. Rider,.....Petitioner,

v.

Estate of Charles Galen Rider, Thomas M.
Grady, Personal Representative,.....Respondent,

and

Deborah Rider McClure, Ginger C. Rider,
Christian McClure, and Austin McClure,..... Respondents.

RETURN TO MOTION/MEMORANDUM FOR COSTS

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Counsel for Personal Representative
Thomas M. Grady

The Respondents, Deborah Rider McClure and Ginger C. Rider, daughters of Charles Rider; and Christian M. and Austin M., grandsons of Charles Rider (hereinafter referred to as "Respondents McClure"), in response to the Motion/Memorandum for Costs, respectfully request the Court deny any taxation of fees and costs against them on the following two bases:

- I. Because the Respondents McClure Did Not Appeal or Cross-Appeal the Judgments, and the Personal Representative Did Not Defend the Estate in the Appeals of the Declaratory Judgment, it Would Be Unjust for the Court to Tax the Appellant's Costs Against the Respondents McClure.

The Respondents McClure are remainder beneficiaries of the Estate of Charles Galen Rider. App., Vol. I, pp. 99-104. After the trial on the declaratory judgment action before the Probate Court, the judge entered an order finding that three of the four subject transactions were the property of Carolyn Rider, and the fourth transaction was the property of the estate. The Personal Representative reimbursed the Respondents McClure for their legal fees relative to the case before the Probate Court.

Carolyn Rider appealed the decision of the Probate Court that the fourth transfer was the property of the estate. The Respondents McClure neither appealed nor cross-appealed the decision of the Probate Court. The Personal Representative did not defend the judgment for the estate on appeal.

According to Section 62-3-709 of the South Carolina Code, the personal representative has a duty to "take all steps reasonably necessary for the management, protection, and preservation of, the estate in his possession. He may maintain an action to recover possession of property or to determine the title thereto." S.C. Code Ann. § 62-3-709. Because the Personal Representative did not defend the estate, the Respondents McClure, as remainder beneficiaries of the estate, defended the judgment on appeal. In so

doing, the Respondents McClure personally incurred attorneys' fees and costs on the appeal to the Circuit Court. The Personal Representative did not reimburse the Respondents McClure for their legal fees on the appeal to the Circuit Court. The Circuit Court affirmed the ruling of the Probate Court.

Carolyn Rider appealed the decision of the Circuit Court to the Court of Appeals. The Respondents McClure neither appealed nor cross-appealed the decision. Despite their request to the Personal Representative that he defend the estate on the appeal, the Personal Representative did not defend the estate in the appeal to the Court of Appeals. Because he did not defend the estate on the appeal, the Respondents McClure, as remainder beneficiaries, defended the ruling of the lower courts. In so doing, the Respondents McClure personally incurred attorneys' fees and costs on the appeal to the Court of Appeals. The Personal Representative did not reimburse the Respondents McClure for their legal fees on the appeal to the Court of Appeals. The Court of Appeals affirmed the lower court rulings.

Carolyn Rider petitioned this Court for certiorari to the Court of Appeals. The Respondents McClure did not petition the Court. The Personal Representative did not defend the estate in the petition for certiorari or appeal; the Respondents McClure defended the opinion of the Court of Appeals. In so doing, the Respondents McClure personally incurred attorneys' fees and costs in defending the ruling on appeal to the Supreme Court. The Personal Representative did not reimburse the Respondents McClure for their legal fees on the appeal to the Supreme Court.

Because the Respondents McClure did not appeal nor cross-appeal the judgments and opinion, and the Personal Representative did not defend the estate in the appeals of

the declaratory judgment – leaving the Respondents McClure to defend the judgment and opinion at their personal cost – it would unjust for the Court to tax the appellant’s costs against the Respondents McClure.

II. There is a Question as to Whether Wells Fargo and/or Wachovia Paid Carolyn Rider’s Attorneys’ Fees and Costs

There is a question as to whether Wachovia and/or its predecessor, Wells Fargo, paid a part or all of Carolyn Rider’s attorneys’ fees and/or costs in pursuing the appeals of this case.¹ If the bank(s) did, in fact, pay for Carolyn Rider’s attorneys’ fees and/or costs, it would be unjust for Respondents McClure to pay either: (1) any fees or costs already paid by the bank(s), or (2) a portion of any remaining, unpaid attorneys’ fees and costs. It would be further unjust if taxing costs to the Respondents McClure would constitute a recoupment by the bank(s) of any part of their losses given the fact that the declaratory judgment action was filed due to delays committed by the bank(s).

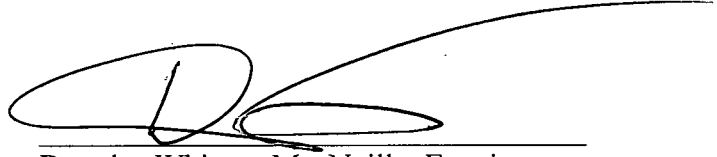
CONCLUSION

For the foregoing reasons, Deborah Rider McClure, Ginger C. Rider, Christian McClure, and Austin McClure respectfully request this Court deny the taxation of any fees or costs against them in the appeals.

¹ Since the resignation of Tom Grady as the Trustee of The Charles Rider Marital Trust on or about February 26, 2010, Wachovia/Wells Fargo has served as the Successor Trustee of The Charles Rider Marital Trust, which was established by Charles Galen Rider for the benefit of his wife, Carolyn Rider, the Appellant herein. App., Vol. I, p. 110.

April 25, 2014

Respectfully submitted,



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Christian McClure, and Austin McClure

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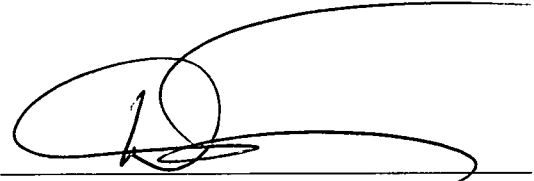
CERTIFICATE OF SERVICE

I certify that on the 24th day of April 2014, I served the Return to Motion/Memorandum for Costs on Carolyn S. Rider, Appellant, and Thomas M. Grady, Personal Representative for the Estate of Charles Rider, by depositing copies in the U.S. Mail, postage prepaid, to counsel as follows:

Laurel R.S. Blair, Esq.
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Kelly McPherson Jolley, Esq.
Stephen Edward Carter, Esq.
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A handwritten signature in black ink, consisting of several loops and a horizontal line at the end, positioned above a horizontal line.

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APR 25 2014

S.C. SUPREME COURT

April 24, 2014

The Honorable Daniel E. Shearouse
Clerk, S.C. Supreme Court
1231 Gervais Street
Columbia, SC 29211

Via UPS Overnight

RE: In the Matter of Estate of Charles Galen Rider
Carolyn S. Rider (Appellant/Petitioner) v. Thomas M. Grady, Personal
Representative, et al.
Our Clients: Deborah Rider McClure, et al.
Trial Court Tracking No.: 2007-CP-07-3057
Court of Appeals No.: 2008111126
Supreme Court Tracking No.: 2011-197686

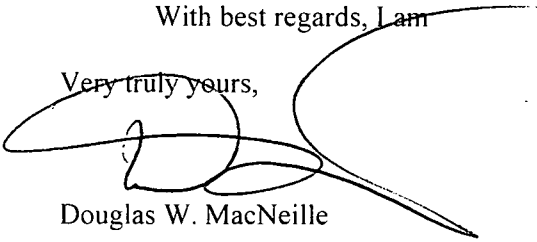
Dear Mr. Shearouse

I enclose herewith for filing the original and six (6) copies of the Return to Motion/Memorandum for Ctsts of Deborah Rider McClure, Ginger C. Rider, Christian McClure and Austin McClure.

Legal counsel for all the other parties to this action are being served with copies of the Brief on today's date.

With best regards, I am

Very truly yours,


Douglas W. MacNeille

cc: Counsel of Record:
Laurel R.S. Blair, Counsel for Petitioner, Terry A. Finger, Co-Counsel for Petitioner, Kelly McPherson Jolley, Counsel for Estate of Charles G. Rider and Personal Representative, Daphne A. Burns, Co-Counsel for Deborah Rider McClure, et al.