

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case Tracking No. 2013-2319

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MAY 13 2014

APPEAL FROM LAURENS COUNTY
Civil Action No. 2012-CP-30-258
The Honorable Frank R. Addy, Circuit Court Judge

SC Court of Appeals

In the Matter of the Estate of Marion M. Kay

Edward D. Sullivan, as Personal Representative
of the Estate of Marion M. Kay..... Appellant/Respondent,

vs.

Martha Brown and Mary Moses Respondents/Appellants.

**APPELLANT-RESPONDENT'S RETURN
TO MOTION TO STRIKE**

TO: THE HONORABLE JUSTICES OF THE SOUTH CAROLINA COURT OF APPEALS:

Pursuant to Rule 240(e), SCACR, Appellant/Respondent Edward D. Sullivan, as Personal Representative of the Estate of Marion M. Kay, respectfully files this return to motion to strike Appendix A from Appellant-Respondent's Brief. Respondents/Appellants' erroneously state in their Motion to Strike that, "This document was not presented to any court below and is not part of the appellate record".

Appendix A, a copy of which is attached hereto as Exhibit A, was presented to the Probate Court Judge (Hocker) with Personal Representative's

Rule 59 Motion to Re-Open Record, Accept Additional Evidence and/or Alter or Amend Judgment filed June 8, 2011 (See, Exhibit B, clocked copy, attached hereto for ease of reference) and has been included in Appellant-Respondent's Designation of Matter to Be Included in the Record on Appeal (Item 9) filed in this Court on April 7, 2014.

Appendix A is merely a calculation prepared by Appellant-Respondent based on testimony contained in the record without objection. The content of Appendix A could have been just as easily properly incorporated into the body of the Brief and is part of the Record on Appeal.

That the content of Appendix A appears as a separate attachment does not transmute it into "a document not presented to the court below" in violation of Rule 210 SCACR. It was attached as an Appendix to the Brief for ease of reference. In any event, as noted above, "Appendix A" was in fact attached as part of the Personal Representative's Rule 59 Motion to Re-Open Record, Accept Additional Evidence and/or Alter or Amend Judgment filed June 8, 2011 and accordingly was presented to the lower court and is properly part of the Record on Appeal.

Accordingly, the attachment of Appendix A is in compliance with Rules 208 SCACR and 210 SCACR and the Motion to Strike (Appendix A) should be denied.

[Signature Page to Follow]

RESPECTFULLY SUBMITTED,

LAW OFFICE OF DARYL G. HAWKINS, LLC

By: 

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May 13, 2014

Attorneys for Appellant/Respondent

Calculation of Result Obtained by Personal Representative
in Selling the Estates' 1/2 interest in 330 Acres

Sales Price per Acre	\$	1,629	
Comparable sales price	(1,112)	per Wilson testimony, Transcript p. 191, line 1-15 :
	\$	517	
	÷	2	to account for 1/2 undivided interest
		258	
	X	330 Acres	
	\$	85,300	Gross amount above comparables before consideration of Market Discount due to undivided interest per Wilson testimony

Sales Price	\$	292,500	
	(85,300)	Calculation above
	\$	207,200	Market Value
		30%	Market Discount per Major testimony, Transcript p. 204, Line 15
	\$	62,160	30% Market Discount

Sales Price	\$	292,500	
	(85,300)	Calculation above
	\$	207,200	Market Value
		35%	Market Discount per Major testimony, Transcript p. 204, Line 15
	\$	72,520	35% Market Discount

Discounted Market Value with 30% Discount	Discounted Market Value with 35% Discount
\$ 207,200 Market Value (62,160) 30% Market Discount \$145,040 Discounted Market Value	\$207,200 Market Value (72,520) 35% Market Discount \$134,680 Discounted Market Value

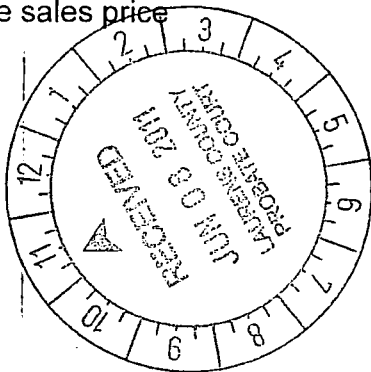
Excess of Sales Price above Discounted Market Value (30% Discount)	Excess of Sales Price above Discounted Market Value (35% Discount)
\$292,500 Sales Price (145,040) 30% Discounted Market Value \$ 147,460	\$292,500 Sales Price (134,680) 35% Discounted Market Value \$ 157,820

The price obtained by the PR exceeded the market by approximately \$147,460 - \$157,820 despite the downturn in real estate sales and the worst economic recession since 1933.

APPENDIX A

Calculation of Result Obtained by Personal Representative
in Selling the Estates' 1/2 interest in 330 Acres

Sales Price per Acre	\$ 1,629
Comparable sales price	(1,112) per Wilson testimony, Transcript p. 191, line 1-15
	\$ 517
	÷ 2 to account for 1/2 undivided interest
	258
	X 330 Acres
	\$ 85,300 Gross amount above comparables before consideration of Market Discount due to undivided interest per Wilson testimony



Sales Price	\$ 292,500
	(85,300) Calculation above
	\$ 207,200 Market Value
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	\$ 62,160 30% Market Discount

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	(85,300) Calculation above
	\$ 207,200 Market Value
	35% Market Discount per Major testimony, Transcript p. 204, Line 15
	\$ 72,520 35% Market Discount

Discounted Market Value with 30% Discount	Discounted Market Value with 35% Discount
\$ 207,200 Market Value	\$207,200 Market Value
(62,160) 30% Market Discount	(72,520) 35% Market Discount
\$145,040 Discounted Market Value	\$134,680 Discounted Market Value

Excess of Sales Price above Discounted Market Value (30% Discount)	Excess of Sales Price above Discounted Market Value (35% Discount)
\$292,500 Sales Price	\$292,500 Sales Price
(145,040) 30% Discounted Market Value	(134,680) 35% Discounted Market Value
\$ 147,460	\$ 157,820

The price obtained by the PR exceeded the market by approximately \$147,460 - \$157,820 despite the downturn in real estate sales and the worst economic recession since 1933.

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In the Court of Appeals

Case Tracking No. 2013-2319

APPEAL FROM LAURENS COUNTY
COURT OF COMMON PLEAS

Civil Action No. 2012-CP-30-258
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vs.

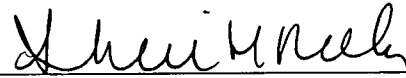
Martha Brown and Mary Moses Respondents-Appellants.

PROOF OF SERVICE

I certify that I served Appellant-Respondent's Return to Motion to Strike via U.S.
Mail upon:

John R. Ferguson, Esquire
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LAW OFFICE OF DARYL G. HAWKINS, LLC



Sheri H. Neely, Legal Assistant

May 13, 2014