

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

) CASE NO. 2013-CP-07-2728

IN RE:
MARILYN W. BUNN IRREVOCABLE
TRUST under agreement dated April 9,
2001

DOUGLAS S. DELANEY and THOMAS
H. BELL,

Plaintiffs,

ORDER

v.

RAY WARCO and CAROLYN MYERS,

Defendants,

AND

DENISE SUDDER, AS GUARDIAN
FOR MARILYN W. BUNN,
MARGARET MARY BUNN
LOCHMANDY, KELLY KATHLEEN
BUNN, REGAN ANN LOCHMANDY,
ABIGAIL ELIZABETH LOCHMANDY,
and the UNBORN ISSUE OF MARILYN
W. BUNN,

Defendants.

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SC Court of Appeals

THIS MATTER was submitted to the Court by the filing of a Notice of Motion and Motion for Partial Summary Judgment and supporting documents, pursuant to Rule 56, SCRPC (the "Motion"), by Defendants Denise Suddes, as guardian for Marilyn W. Bunn; Margaret Mary Bunn Lochmandy; Kelly Kathleen Bunn; Regan Ann Lochmandy; Abigail Elizabeth Lochmandy; and the Unborn Issue of Marilyn W. Bunn (collectively referred to as the "Bunn

Defendants”), wherein the Bunn Defendants sought an order granting partial summary judgment on Defendants’ Primary Relief Requested for the modification of the Marilyn W. Bunn Irrevocable Trust (the “Trust”) as set forth in the Answer and Cross-claims of the Bunn Defendants to Petitioners Raymond Warco and Carolyn R. Myers’ Petition and Cross-claims Against Respondents Douglas S. Delaney and Thomas H. Bell (the “Answer and Cross-claims”) on the basis that there are no genuine issues of material fact regarding the Bunn Defendants’ cause of action to modify the Trust.

After sufficient notice to the parties of the time, date, and place of the hearing, the Court heard the Bunn Defendants’ motion on April 29, 2014. Appearing for the Plaintiffs was Sean M. Bolchoz, Esquire; and Kelly M. Jolley, Esquire and Michael C. Cerrati, Esquire, appeared on behalf of Defendants Raymond Warco and Carolyn R. Myers. Appearing for the Bunn Defendants was Robert E. Sumner, IV, Esquire.

At the hearing, the Court heard and considered the Bunn Defendants’ Notice of Motion and Motion for Partial Summary Judgment, the supporting memorandum of law submitted by the Bunn Defendants, and the arguments of counsel. Based on the foregoing, the pleadings in this matter, and for the reasons set forth on the record at the hearing, together with other good cause having been shown therefore, I find, conclude, and hereby order as follows:

FINDINGS OF FACT¹

1. On or about April 9, 2001, Marilyn W. Bunn (“Bunn” or the “Settlor”) and Delaney, Bell, Warco and Myers (the “Co-Trustees”) executed the Trust, which is a non-charitable irrevocable trust.

¹ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. See Rule 52, SCRPC.

2. The Bunn Defendants consist of (a) Denise Suddes guardian for Bunn ("Guardian") and (b) the beneficiaries of the Trust, Margaret Mary Bunn Lochmandy, Kelly Kathleen Bunn, Regan Ann Lochmandy, Abigail Elizabeth Lochmandy, and the Unborn Issue of Marilyn W. Bunn (collectively as the "Beneficiaries").

3. By Order of the Probate Court of Gwinnett County, Georgia, issued on September 3, 2013 ("Order"), Denise Suddes was appointed Guardian and expressly authorized to modify the Trust on behalf of Bunn. See Order, Sept. 3, 2013, In re Estate of Marilyn Bunn, Estate No. 13-C-00291. The Order states, in relevant part:

The guardian is therefore granted express authority to initiate or respond to litigation, as necessary, to modify the [Marilyn W. Bunn Irrevocable Trust dated u/a/d 4/09/01], remove and replace the current trustees of the Trusts, and pursue damages arising out of the conduct of one or more of the trustees of the Trusts.

4. Ms. Suddes, as Guardian, consented to the requested modification on behalf of the Settlor.

5. The Beneficiaries have consented to the requested modification.

6. The Bunn Defendants desire that the provisions of the Trust be modified to incorporate new provisions for the removal of trustees and appointment of successor trustees under Article XI as set forth in the Modification of Trust Agreement, which is attached to the Answer and Cross-claims as Exhibit C.

CONCLUSIONS OF LAW

7. The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. See George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002).

8. The South Carolina Trust Code authorizes the requested modification of the Trust with the consent of the settlor and the beneficiaries.

9. South Carolina Code Annotated section 62-7-411(a) (hereinafter, "Section 411(a)") provides:

(a) A noncharitable irrevocable trust may be modified or terminated with court approval upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised . . . by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

S.C. Code Ann. § 62-7-411(a).

10. The Settlor of the Trust, through her Guardian, and all of the Beneficiaries consented to the requested modification.

11. Where the Settlor and Beneficiaries of the Trust have consented, the Court need not make findings regarding the material purpose of the Trust.

12. It is not necessary that the Co-Trustees consent to the requested modification. "Under this section, a trust may be modified or terminated over a trustee's objection." S.C. Code Ann. § 411, cmt.

13. Under Section 411(a), no further consents or requirements are needed for the requested modification of the Trust. Thus, there is no genuine issue of material fact, and judgment as a matter of law is proper.

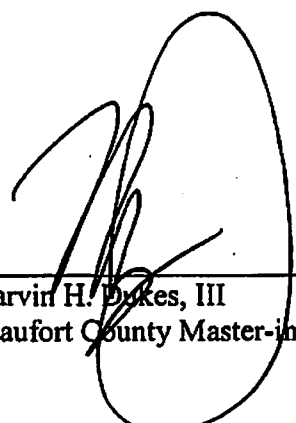
NOW, THEREFORE, the Court finds as follows:

The Bunn Defendants' Motion for Partial Summary Judgment on Defendants' Primary Relief Requested for the modification of the Marilyn W. Bunn Irrevocable Trust as set forth in the Answer and Cross-claims of the Bunn Defendants to Petitioners Raymond Warco and

Carolyn R. Myers' Petition and Cross-claims Against Respondents Douglas S. Delaney and Thomas H. Bell is hereby granted.

AND IT IS SO ORDERED.

This, the 15 day of June, 2014.



Marvin H. Dukes, III
Beaufort County Master-in-Equity

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF BEAUFORT

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

2014 OCT -3 AM 10:55 AM CASE NO. 2013 CP-07-2728

Douglas S. Delaney and Thomas H. Bell

Ray Marco and Carolyn Myers,

Denise Suddes, as Guardian for Marilyn W. Bunn, Margaret Mary Bunn Lochmandy, Kelly Kathleen Bunn, Regan Ann Lochmandy, and the unborn issued of Marilyn W. Bunn

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Robert E. Sumner, IV, Esquire	Attorney for : <input type="checkbox"/> Plaintiff	<input checked="" type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: The Court denies Plaintiffs' Motion to Reconsider, Alter and/or Amend Judgment

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

