

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM HORRYCOUNTY

COURT OF COMMON PLEAS

RALPH P. STROMAN, SPECIAL REFEREE

RECEIVED

FEB 09 2015

SC Court of Appeals

APPELLATE CASE NO. 2014-002593

Dewey Lee Small,.....Respondent,

v.

Maxine Johnson a.k.a. Maxine McQueen a.k.a. Maxcine Johnson, Ernestine Small Bass, Rose Small a.k.a. Rosemary Mary McQueen, Kassandra D. Odom a.k.a. Kassandra D. Shea, Michelle D. Odom a.k.a. Michelle D. DeLa Cort, Queenie Small a.k.a. Queenie B. Arnold a.k.a. Qunnie Arnold, Lewis Filton Small, Jr., a.k.a. Pete Small, William Franklin Small, a.k.a. Danny Small, Patsy Ann Small a.k.a. Patsy Small Crock a.k a. Patsy Ann Small Pierick Crock a.k.a. Patsy Pierick, Donald Lee Small, Janava Small, a.k.a. Janava Small Lonneux a.k.a. Candy Small, Daisy Dean Small, a.k.a. Dean Small, Sandra Small, a.k.a. Sandra Howard, Jacqueline L. White, Jimmy Prince, Jr., Veretta Norman, Venata Small Olivera, Marcus Johnson, Jr., Dewey Jerome Johnson, John Doe, and Jane Doe, Representatives of any unknown Heirs,

In Re: The Estate of Lewis Small, Defendants,

of whom Patsy Ann Crock and Fulton Louis Small, are.....Appellants.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal

## PROBATE COURT

1. Last Will and Testament of Lewis Small dated May 21, 1979, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
2. Petition to Prove Will in Common Form of Law and For Letters dated January 24, 1984, and filed of record January 24, 1984, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
3. Letters Testamentary dated January 24, 1984, and filed of record January 24, 1984, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
4. Estate Notice/Affidavit of Publication dated February 15, 1984 and filed of record February 17, 1984, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
5. Petition dated March 6, 1984, and filed of record March 6, 1984, and Probate Court Order regarding lease of tobacco acreage dated March 6, 1984, and filed March 6, 1984, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
6. Return and Accounting for the period of January, 1984 through December 1984, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
7. Warrant of Appraisal dated April 30, 1985, and filed of record May 10, 1984, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
8. Petition for Final Discharge dated May 20, 1985, and filed of record May 28, 1985, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
9. Notice of Discharge dated July 8, 1985, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
10. Notice of Discharge dated September 5, 1989, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
11. Letters Dismissory dated September 6, 1989, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
12. Application for Subsequent Administration dated September 13, 2012, and filed of record September 14, 2012, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
13. Order for Subsequent Administration dated October 2, 2012, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.

14. Fiduciary Letters dated October 2, 2012, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
15. Motion for Service by Publication dated October 2, 2012, filed October 3, 2012, under the Estate of Lewis Small indexed under File Number 84-ES-752.
16. Affidavit of A. Lisa Cleary of Coastal Paralegal Services, LLC, filed October 3, 2012, under the Estate of Lewis Small indexed under File Number 84-ES-752.
17. Supplemental to the Original Petition for Sale of Real Estate dated September 26, 2012 and filed October 3, 2012, under the Estate of Lewis Small indexed under File Number 84-ES-752
18. Summons and Petition for Sale of Real Estate dated October 2, 2012 and filed October 3, 2012, under the Estate of Lewis Small indexed under File Number 84-ES-752.
19. Marcus Johnson, Jr., Answer to Petitioner's Complaint dated October 25, 2012, and filed October 25, 2012, under the Estate of Lewis Small indexed under File Number 84-ES-752.
20. Donald Small Answer to Petitioner's Complaint dated October 25, 2012, and filed October 25, 2012, under the Estate of Lewis Small indexed under File Number 84-ES-752.
21. Queenie B. Arnold Answer to Petitioner's Complaint dated October 25, 2012, and filed October 25, 2012, under the Estate of Lewis Small indexed under File Number 84-ES-752.
22. Jacqueline L. White Response to the Petition for the Sale of Lewis Small Real Estate dated October 21, 2012, and filed November 5, 2012, under the Estate of Lewis Small indexed under File Number 84-ES-752.
23. Veretta Norman Answer in Response to the Petition for Sale of the Lewis Small Real Estate dated October 21, 2012, and filed November 6, 2012, under the Estate of Lewis Small indexed under File Number 84-ES-752.
24. Ernestine Bass Answer to Petitioner's Complaint dated November 2, 2012, and filed November 7, 2012, under the Estate of Lewis Small indexed under File Number 84-ES-752.
25. Maxine McQueen Answer to Petitioner's Complaint dated November 4, 2012, and filed November 8, 2012, under the Estate of Lewis Small indexed under File Number 84-ES-752.

26. Rose Mary Small Answer to Petitioner's Complaint dated November 4, 2012, and filed November 8, 2012, under the Estate of Lewis Small indexed under File Number 84-ES-752.
27. Venata Oliverro Answer to Petitioner's Complaint, dated November 3, 2012, and filed November 8, 2012, under the Estate of Lewis Small indexed under File Number 84-ES-752.
28. Stipulation of Dismissal without Prejudice in Case Number 1984-ES-26-00075, dated July 1, 2013, and filed July 3, 2013, under the Estate of Lewis Small indexed under File Number 84-ES-752.
29. Plaintiff's Motion to Dismiss Action Pursuant to Rule 12(b)(8), SCRCP, with exhibits, dated August 13, 2013, and filed August 14, 2013, under the Estate of Lewis Small indexed under File Number 84-ES-752.
30. Order of Dismissal without Prejudice executed by the Honorable Deirdre W. Edmonds dated September, 2013, and filed September 5, 2013, under the Estate of Lewis Small indexed under File Number 84-ES-752.

#### **COURT OF COMMON PLEAS**

31. Civil Action Coversheet dated December 17, 2012, and filed December 19, 2012, Summons and Complaint (Quiet Title Action and Partition Action for Sale of Real Property) dated December 17, 2012, and filed December 19, 2012, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832, inclusive of exhibits.
32. Marcus Johnson, Jr., Answer to Plaintiff's Complaint dated January 16, 2013, and filed January 16, 2013, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832
33. Jacqueline L. White Answer to Plaintiff's Complaint dated January 28, 2013, and filed March 8, 2013, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832.
34. Jacqueline L. White Answer to Plaintiff's Complaint dated January 28, 2013, and filed February 26, 2013, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832.
35. Veretta Norman Answer to Plaintiff's Complaint dated January 28, 2013, and filed March 15, 2013, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832.

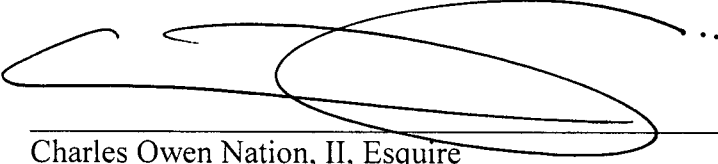
36. Queenie B. Arnold Answer to Plaintiff's Complaint dated January 30, 2013, and filed March 15, 2013, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832.
37. Veretta Norman Answer to Plaintiff's Complaint dated January 28, 2013, and filed February 1, 2013, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832.
38. Donald Lee Small Answer to Plaintiff's Complaint dated January 28, 2013, and filed February 6, 2013, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832.
39. Queenie B. Arnold Answer to Plaintiff's Complaint dated January 30, 2013, and filed September 6, 2013, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832
40. Maxine McQueen Answer to Plaintiff's Complaint dated 2013 and filed September 6, 2013, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832
41. Rosemary Small Answer to Plaintiff's Complaint dated 2013, and filed September 6, 2013, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832.
42. Venata Olivero Answer to Plaintiff's Complaint dated February 7, 2013, and filed September 6, 2013, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832.
43. Order of Reference filed in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832.
44. Transcript of Hearing for hearing held on May 19, 2014, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832.
45. Plaintiff's Exhibit 1, Certificate of Appointment dated October 2, 2012, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
46. Plaintiff's Exhibit No. 2, Application for Subsequent Administration filed September 14, 2012, filed under the Estate of Lewis Small indexed under File Number 84-ES-75
47. Plaintiff's Exhibit No. 3, Exhibit "B" reflecting reasons and need to sell real property, filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
48. Plaintiff's Exhibit No. 4, Summary of Salient Features by Appraiser Sarah Devers, dated April 9, 2013, and reflecting an Opinion of Value \$1,500,000.00.

49. Plaintiff's Exhibit No. 5, Names and address of the Heirs of Mattie Small.
50. Plaintiff's Exhibit No. 6, Names of the Heirs of Lewis B Small with percentage of interest.
51. Plaintiff's Exhibit No. 7, Heirs of 60 acre tract per Will.
52. Plaintiff's Exhibit No. 8, List of Heirs.
53. Plaintiff's Exhibit No. 9, Civil Action Coversheet, Summons and Complaint (Quiet Title Action and Partition Action for Sale of Real Property) dated December 17, 2012, and filed December 19, 2012, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832, inclusive of exhibits.
54. Plaintiff's Exhibit No. 10, Petition for Sale of Real Estate filed under the Estate of Lewis Small indexed under File Number 84-ES-752.
55. Plaintiff's Exhibit No. 11, Listing of Small Heirs.
56. Plaintiff's Exhibit No. 12, Last Will and Testament of Lewis Small filed under the Estate of Lewis Small indexed under File Number 84-ES-752
57. Plaintiff's Exhibit No. 13, Deed from Ida H. Marlow, et al., to Louis L. Small, dated January 30, 1948, and filed in the Office of the Register of Deeds for Horry County in Book 53 at Page 218.
58. Plaintiff's Exhibit 14, Expenses for Lewis Small Estate.
59. Plaintiff's Exhibit No. 15, comparable sales.
60. Defendant's Exhibit No. 1, Jayroe Appraisal Company letter of market value for a 61.5 acre vacant tract of land located on McDowell Shortcut Road, near Murrells Inlet, in Horry County, SC, dated April 4, 2014.
61. FINAL ORDER (Ending Action) executed by the Honorable Ralph P. Stroman, Special Referee, and filed on June 19, 2014, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832.
62. Motion for Reconsideration filed in response to FINAL ORDER (Ending Action) executed by the Honorable Ralph P. Stroman, Special Referee, and filed on June 19, 2014, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832.
63. Transcript of Hearing for hearing held on September 29, 2014, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832.

64. Affidavit of Attorney's Fees filed in Civil Action Number 2012-CP-26-9832 for N. N. David Durant, Esquire, dated August 26, 2014, and filed August 27, 2014, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832.
65. AMENDMENT TO THE FINAL ORDER OF THE COURT executed by the Honorable Ralph P. Stroman, Special Referee, and filed on November 18, 2014, in the Office of the Clerk of Court for Horry County and indexed under Case Number 2012-CP-26-9832.

**Dated** at Georgetown, South Carolina, this 3<sup>rd</sup> day of February, 2015.

**Nation Law Firm, P.C.:**  
Post Office Drawer 1657  
Georgetown, SC 29442-1657  
Telephone No. 843.545.8877  
Facsimile No. 843.545.8677

By:  (L.S.)  
Charles Owen Nation, II, Esquire  
Attorney for Appellants

**THE STATE OF SOUTH CAROLINA**  
**IN THE COURT OF APPEALS**

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**APPEAL FROM HORRYCOUNTY**  
**COURT OF COMMON PLEAS**

**RALPH P. STROMAN, SPECIAL REFEREE**

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APPELLATE CASE NO. 2014-002593

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Dewey Lee Small,.....Respondent,

v.

Maxine Johnson a.k.a. Maxine McQueen a.k.a. Maxcine Johnson,  
Ernestine Small Bass, Rose Small a.k.a. Rosemary Mary McQueen,  
Kassandra D. Odom a.k.a. Kassandra D. Shea, Michelle D. Odom  
a.k.a. Michelle D. DeLa Cort, Queenie Small a.k.a. Queenie B.  
Arnold a.k.a. Qunnie Arnold, Lewis Filton Small, Jr., a.k.a. Pete  
Small, William Franklin Small, a.k.a. Danny Small, Patsy Ann  
Small a.k.a. Patsy Small Crock a.k.a. Patsy Ann Small Pierick  
Crock a.k.a. Patsy Pierick, Donald Lee Small, Janava Small,  
a.k.a. Janava Small Lonneux a.k.a. Candy Small, Daisy Dean  
Small, a.k.a. Dean Small, Sandra Small, a.k.a. Sandra Howard,  
Jacqueline L. White, Jimmy Prince, Jr., Veretta Norman, Venata  
Small Olivera, Marcus Johnson, Jr., Dewey Jerome Johnson,  
John Doe, and Jane Doe, Representatives of any unknown Heirs,

In Re: The Estate of Lewis Small, Defendants,

of whom Patsy Ann Crock and Fulton Louis Small, are.....Appellants.

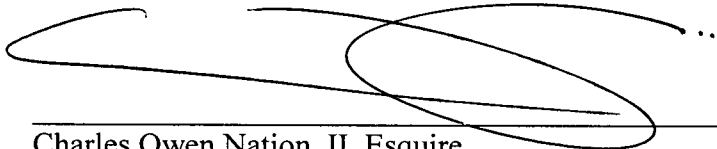
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**FEB 09 2015**  
**SC Court of Appeals**

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**PROOF OF SERVICE**  
\_\_\_\_\_

I, the undersigned employee of the attorney for the Appellants, certify I have served a copy of the **Initial Brief of Appellant** and **Designation of Matter to be Included in Record on Appeal** dated February 3, 2015, by regular mail on February 3, 2015, on Respondent, Dewey Lee Small, by depositing a copy of these documents in the United States Mail, postage prepaid, **addressed to** N. David Durant, Esquire, Law Offices of N. David Durant and Associates, Post Office Box 14722, Surfside Beach, SC 29587, attorney of record for Dewey Lee Small, **and to** the Honorable Jenny Abbott Kitchings, Clerk, South Carolina Court of Appeals, P.O. Box 11629, Columbia, SC 29211, on January 27, 2015.

**Dated** at Georgetown, South Carolina, this 3<sup>rd</sup> day of February, 2015.

**Nation Law Firm, P.C.:**

By:  \_\_\_\_\_ (L.S.)

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Attorney for Appellants

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eric@nationlawfirm.com

February 3, 2015

Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re. Dewey Lee Small vs. Lewis Filton Small, Jr., et al.  
Civil Action Number 2012-CP-26-9832  
APPELLATE CASE NO. 2014-002593

Dear Ms Kitchings:

I am enclosing one (1) original and one (1) copy of the **Initial Brief of Appellant, Designation of Matter to be Included in Record on Appeal, and Proof of Service**. By copy of this correspondence and its enclosures I am informing opposing counsel of this transmittal. Please return a time stamped copy of these enclosures in the pre-addressed stamped envelope also enclosed for your convenience. Thank you very much for your time and attention to these matters. Assuring you at all times of my best personal care and attention, and with best regards, I am

Sincerely,



Charles Owen Nation, II

CON,II:clc  
Enclosures

pc: N. David Durant, Esquire, Attorney for Respondent

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FEB 09 2015

**SC Court of Appeals**