

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Marvin H. Dukes, III, Special Circuit Court Judge

Case No. 2013-CP-07-00610

RECEIVED
FEB 17 2015
SC Court of Appeals
175074

First South BankRespondent,

v.

John E. Rosenberg and Phillip J. Brust..... Defendants,

Of Whom Phillip J. Brust is.....Appellant.

MOTION TO SUBSTITUTE PARTY

Now comes the Appellant, by and through counsel, pursuant to Rule 265(b) of the South Carolina Appellate Court Rules, and hereby moves the Court to substitute the Estate of Phillip J. Brust as the named Appellant herein in place of Appellant Phillip J. Brust (“Brust”) and to amend the case caption to reflect the substitution. Respondent First South Bank consents to the proposed substitution. In support of the Motion, the Estate would show the Court as follows:

1. Rule 265(b), of the South Carolina Appellate Court Rules provides that if “a party to an appeal dies ..., the appellate court may, upon motion or its own initiative, order substitution of the proper parties...” Rule 265(b), SCACR.

2. Brust died on September 8, 2014. A copy of Brust's Death Certificate is attached hereto as **Exhibit A**.

3. On October 16, 2014, Brust's widow, Cynthia L. Seely, was appointed as Executrix of the Estate of Phillip J. Brust, by Letters Testamentary filed and sealed by the Clerk of Superior Court for Mecklenburg County, North Carolina. A copy of the Letters Testamentary is attached hereto as **Exhibit B**.

4. On January 8, 2015, Brust timely filed a Notice of Appeal with respect to two separate orders of the trial court in this case.

5. The Parties did not amend the case caption or seek to substitute Brust as a party in the underlying case prior to filing the Notice of Appeal.

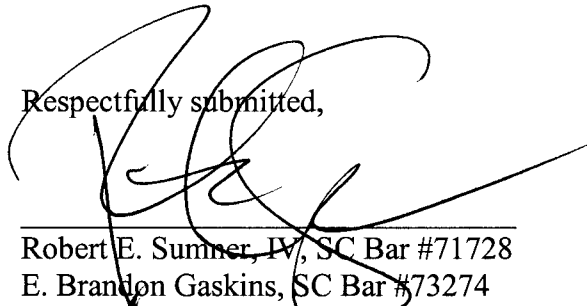
6. The substitution of the Estate for Brust does not change the nature of the appeal.

7. Counsel for Respondent First South Bank consents to the requested substitution and Motion.

8. Thus, it is proper, upon the Estate's Motion, for this Court to substitute the Estate as the real Appellant and amend the case caption accordingly.

WHEREFORE, for the reasons set forth above, the Estate prays that the Court enter an order pursuant to Rule 265(b), SCACR granting the motion to substitute the Estate as Appellant herein in place of Bruce and amend the caption accordingly.

Respectfully submitted,



Robert E. Sumner, IV, SC Bar #71728

E. Brandon Gaskins, SC Bar #73274

Moore & Van Allen, PLLC

78 Wentworth Street

Post Office Box 22828

Charleston, SC 29413-2828

Telephone: (843) 579-7000

Facsimile: (843) 579-7099

robertsumner@mvalaw.com

brandongaskins@mvalaw.com

Attorney for Appellant Phillip J. Brust

February ^{bth} , 2015

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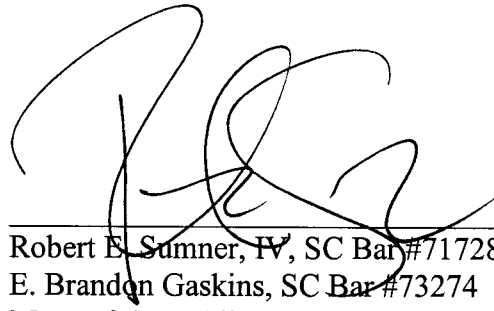
John E. Rosenberg and Phillip J. Brust..... Defendants,

Of Whom Phillip J. Brust is.....Appellant.

PROOF OF SERVICE OF MOTION TO SUBSTITUTE PARTY

This is to certify that I have this day served counsel for the Respondent in the foregoing matter with a copy of the foregoing *Motion to Substitute Party* by depositing same in the United States Mail with adequate postage affixed thereon to ensure delivery, addressed as follows:

Jeffrey L. Silver, Esquire
Tyler, Cassell, Jackson, Peace & Silver, LLC
1331 Elmwood Avenue, Suite 300
P.O. Box 11656
Columbia, SC 29211
(803) 779-4997



Robert E. Sumner, IV, SC Bar #71728

E. Brandon Gaskins, SC Bar #73274

Moore & Van Allen, PLLC

78 Wentworth Street

Post Office Box 22828

Charleston, SC 29413-2828

Telephone: (843) 579-7000

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Attorney for Appellant Phillip J. Brust

February ^{12th}, 2015
Charleston, South Carolina

EXHIBIT A

STATE OF NORTH CAROLINA

CERTIFICATION OF VITAL RECORD

MECKLENBURG COUNTY REGISTER OF DEATHS - HEALTH DEPARTMENT CHARLOTTE, NORTH CAROLINA CERTIFICATE OF DEATH

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES N.C. VITAL RECORDS CERTIFICATE OF DEATH

Registration District No. 0165-63, Local No. 2014004842, County of Death Mecklenburg, State File No. ... 1. DECEASED TYPE/PRINT IN PERMANENT BLACK, BLUE, BLACK OR BLUE INK ... 2. SEX (M/F), AGE (76), BIRTHDAY (January 25, 1938), BIRTHPLACE (Montgomery/OH), DATE OF DEATH (September 8, 2014) ... 3. PLACE OF DEATH (HOSPITAL: Olde Knox Commons) ... 4. MARITAL STATUS (Married) ... 5. SURVIVING SPOUSE (Cynthia Leonard) ... 6. DECEASED'S USUAL OCCUPATION (Pilot) ... 7. SOCIAL SECURITY NUMBER ... 8. RESIDENCE (North Carolina) ... 9. CITY OR TOWN (Mecklenburg) ... 10. COUNTY OF DEATH (Mecklenburg) ... 11. STREET AND NUMBER (20348 Christofle Drive) ... 12. ZIP CODE (28031) ... 13. DECEDENT'S EDUCATION (Bachelor's degree) ... 14. DECEDENT'S RACE (White) ... 15. FATHER'S NAME (Philip Brust) ... 16. MOTHER'S NAME (Doro City Unknown) ... 17. RELATIONSHIP TO DECEASED (Wife) ... 18. MAILING ADDRESS (20348 Christofle Drive) ... 19. METHOD OF DISPOSITION (Cremation) ... 20. PLACE OF DISPOSITION (Raymer-Kepler Crematory) ... 21. SIGNATURE OF FUNERAL DIRECTOR (Virginia Fitzhugh) ... 22. NAME AND ADDRESS OF FUNERAL HOME (Raymer-Kepler Funeral Home and Cremation Services) ... 23. PART I: Enter the chain of events (diseases, injuries or complications) that directly caused the death. Probable Aspiration Pneumonia due to Squamous cell carcinoma of the scalp. PART II: Other significant conditions contributing to death but not resulting in the underlying cause given in PART I. 24. MANNER OF DEATH (Natural) ... 25. TIME OF DEATH (2:17 pm) ... 26. DID TOBACCO USE CONTRIBUTE TO DEATH? (No) ... 27. IF FEMALE: (Not pregnant) ... 28. DATE PRONOUNCED (September 10, 2014) ... 29. DATE OF INJURY (September 10, 2014) ... 30. TIME OF INJURY ... 31. PLACE OF INJURY ... 32. IF TRANSPORTATION INJURY SPECIFY ... 33. CERTIFIER (Catherine E. Sanders, FNP-C) ... 34. SIGNATURE AND TITLE OF CERTIFIER ... 35. LICENSE NUMBER (NC # 201778) ... 36. DATE SIGNED (09-10-2014) ... 37. NAME AND ADDRESS OF REGISTRAR (Olde Knox Commons, Hunton Drive) ... 38. DATE REGISTERED BY STATE ... 39. DATE FILED (SEP 11 2014) ... 40. DATE CORRECTED ... 41. DATE AMENDED

THIS IS TO CERTIFY THIS IS A TRUE AND CORRECT REPRODUCTION OF THE OFFICIAL RECORD FILED IN MECKLENBURG COUNTY.

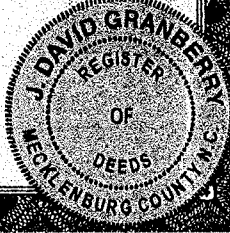
V 660352

WITNESS MY HAND AND OFFICIAL SEAL THIS DAY September 11, 2014

Michelle Lancaster-Sandlin Health Director & Registrar

J. David Granberry Register of Deeds

By: [Signature] Assistant Deputy Register of Deeds



Moore & Van Allen

February 12, 2015

RECEIVED

FEB 17 2015

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Robert E. Sumner, IV
Attorney at Law

T 843 579 7018
F 843 579 8743
robertsumner@mvalaw.com

Moore & Van Allen PLLC

78 Wentworth St.
Charleston, SC 29401-1428

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

RE: First South Bank v. John E. Rosenberg and Phillip J. Brust
Case No. 2013-CP-07-00610
MVA File No. 038043.1

Dear Ms. Kitchings:

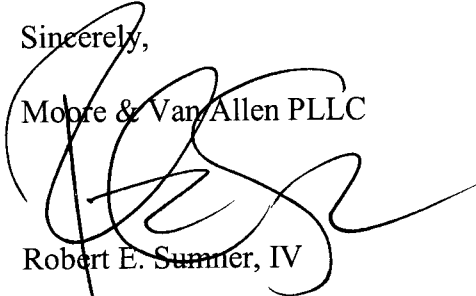
Enclosed for filing please find the original and seven (7) copies of a Motion to Substitute Party and Proof of Service in the above referenced matter. I am enclosing a check in the amount of \$25.00 for the requisite filing fee. Please file the originals and return file stamped copies in the self-addressed envelope provided.

By copy of this letter, I am serving all counsel of record with a copy of the same.

Thank you for your assistance in this matter.

Sincerely,

Moore & Van Allen PLLC


Robert E. Sumner, IV

RES/hm

Enclosures: as stated

cc: Jeffrey L. Silver, Esquire

Moore & Van Allen

Moore & Van Allen PLLC

78 Wentworth Street
Post Office Box 22828
Charleston, SC 29413-2828

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

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