

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

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S.C. Supreme Court

Opinion No. 4842 (S.C. Ct. App. filed June 15, 2011)

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 James McClure and Austin Patrick
McClure.....Respondents.

**APPENDIX TO PETITION FOR A WRIT OF CERTIORARI
VOLUME II**

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF ESTATE OF
CHARLES GALEN RIDER,
a/k/a C.G. RIDER

THOMAS M. GRADY, PERSONAL
REPRESENTATIVE,

Petitioner,

vs.

CAROLYN S. RIDER, et al.,

Respondents.

-AND-

EX PARTE: DEBORAH RIDER
McCLURE, et al.

Respondent/Petitioner.

) IN THE COURT OF COMMON PLEAS

) FOURTEENTH JUDICIAL DISTRICT
) Case No. 07-CP-07-3057

) APPEAL FROM PROBATE COURT
) REF. CASE NO.: 2005ES0700709

) **MEMORANDUM OF RESPONDENTS**
) **McCLURE RE: DISMISSAL OF APPEAL**
) **AND/OR ORDER AFFIRMING**
) **ORDER OF JUDGMENT**

COME NOW the Respondents Deborah R. McClure, Ginger C. Rider, Christian James and Austin Patrick McClure ("Respondent McClure") and for their Memorandum re. Dismissal if Appeal and/or Order Affirming Order of Judgment would show the following:

I. PROCEDURAL STATUS

This matter involves a Petition for Declaratory Judgment filed by the Estate of Charles Galen Rider (a/k/a C.G. Rider), Decedent and it Personal Representative, Thomas M. Grady (collectively "Petitioner") seeking relief the following in the nature of a Probate Court Order:

"...[T]hat certain securities transferred pursuant the Decedent's letter of instruction to Wachovia dated June 15[sic]¹, 2005 was a completed transfer to the Decedent's

¹ The actual date of the letter in question is June 17, 2005.

wife as of June 15[sic], 2005 and therefore the securities in question are not includable in the Decedent's estate for probate or estate tax purposes; *or in the alternative*, holding that certain securities transferred after the decedent's death on July 8, 2005 pursuant to Decedent's letter of instruction to Wachovia dated June 15[sic], 2005 were incomplete transfers to Decedent's wife, therefore the securities transferred after July 8, 2005 are includable in the Decedent's estate for probate or estate tax purposes."

The case was brought to an evidentiary hearing (trial) before Probate Court Associate Judge Kenneth E. Fulp, Jr., who issued and filed an Order of Judgment with the Probate Court on October 12, 2007 ("*Exhibit "A"* hereto). The Order of Judgment also was received by counsel for the Appellant Carolyn S. Rider on October 12, 2007 (see Notice of Appeal). Thereafter, counsel for Appellant timely filed a Notice of Appeal on or about October 22, 2007; Appellant's Grounds for Appeal were filed at a later date as set forth in Section II below.

II. TIMELINESS OF APPEAL

Appellant Carolyn S. Rider's Notice of Appeal (Notice of Intent to Appeal) dated October 19, 2007 was filed with the Circuit Court and Probate Court and served on the parties on or October 22, 2007 as required by S.C. Code Ann. Sec. 62-1-308(a). (*Exhibit "B"* attached).

Thereafter, Appellant filed her Grounds for Appeal with the Circuit Court on November 16, 2007; however, the Court records reflect a Probate Court filing date of December 20, 2007. (*Exhibit "C"* attached). The Probate Court, on December 13, 2007, had notified counsel for all parties that, "...it does not appear that an appeal has been properly to the Circuit Court, and this Court's Order of October 12, 2007, appears to stand undisturbed."

It is the Probate Court's position, based upon the records on file with the Clerk of the Probate Court, that Appellant has failed to perfect her appeal by failing to timely file Grounds for Appeal with the Probate Court within forty (45) days from the October 12, 2007 Order of Judgment as required by S.C. Code Ann. Sec. 62-1-308(a). The Probate Court position concerning the finality of the Order of Judgment is as set forth in Judge Fulp's correspondence of December 13, 2007, December 20, 2007 and January 16, 2008 (*Exhibit "D"* attached).² Respondents McClure, by letter from William A. Ruth, Esq. following Judge Fulp's request, confirmed their objection to the

² In addition to S.C. Code Ann. Sec. 62-1-308(a), the Probate Court cites South Carolina case precedent as support for its position, including: *Gallagher v. Evert*, 353 S.C. 59, 577 S.E.2d 217 (Ct. App. 2002), *rehearing denied* 356 S.C.342, 588 S.E.2d 624 (Ct. App. 2003); and *Wittig v. Wittig*, 325 S.C. 363, 479 S.E.2d 297 (Ct. App. 1996).

timeliness of the appeal and their position that the Order of Judgment dated October 12, 2007 should stand (*Exhibit "E"* attached).

On February 1, 2008, Judge Fulp filed and served a Certificate of Return to the Circuit Court with the proviso that, after reaffirming the Probate Court's previous position concerning the timeliness of appeal and the continuing validity of the Order of Judgment in his letter to counsel dated January 30, 2008 (*Exhibit "F"* attached). The Circuit Court's determination on the perfecting of this appeal is set for hearing before the Honorable Carmen Tevis Mullen on October 1, 2008 at 10:00 a.m.

III. POINTS AND AUTHORITIES – STANDARD OF REVIEW AND MERITS OF THE APPEAL

In the event that the Circuit Court determines that the within Appeal *was* timely perfected and that the Appeal *should* proceed in accordance with the terms and provisions of S.C. Code Ann. Sec. 62-1-308, it is submitted that the Order of Judgment dated October 12, 2007 is amply supported by the facts and the law of this case and, under the applicable standard of review, must be affirmed.

a. Classification of Action

The within action for declaratory judgment is legal, not equitable, in nature. Unless the cause of action and the relief sought in a declaratory judgment action are distinctly equitable, the action will be considered at law. *Noisette v. Ismail*, 299 S.C. 243, 384 S.E.2d 310 (Ct. App. 1989), rev'd on other grounds, 304 S.C. 56, 403 S.E.2d 122 (1991). An action that is essentially one at law is not converted into an equitable action because it is brought pursuant to the Declaratory Judgment Act. *Jacobs v. Service Merchandise Co., Inc.*, 197 S.C. 123, 375 S.E.2d 1 (Ct. App. 1988). Declaratory judgment actions must be liberally construed to settle legal and remove insecurity from legal relationships without awaiting a violation of the relationships. *Harrington and Love v. Blackston*, __ S.C. __, 429 S.E. 2d 826 (Ct. App. 1993).

b. Standard of Review

An appeal from probate court is governed by the provisions of the Probate Code, which requires appeals from the probate court be made to the circuit court in accordance with S.C. Code Ann. Sec. 62-1-308. In the absence of a statute prescribing a different standard of review, the circuit court in reviewing a final order of the probate court must apply the same standard of review that

either the Court of Appeals or the Supreme Court would apply to the case. *Eagles v. South Carolina National Bank*, __ S.C. __, 392 S.E.2d 187 (Ct. App. 1990); *In re Howard*, 315 S.C. 356, 434 S.E. 2d 254, 257 (1993). The same rule applies to appeals of all orders, judgments and decrees under the Declaratory Judgment Act. S.C. Code Ann. Sec. 15-53-120.

The standard of review concerning this appeal taken from the Probate Court's Order of Judgment dated October 12, 2007 is that the Order of Judgment shall be affirmed if there is any evidence that reasonably supports its decision. 16 S.C. Juris. Appeal and Error Sec. 122; *Noisette*, *supra*. Absent a clear abuse of discretion, the court's decision to grant declaratory judgment will not be disturbed. *Ott v. Tindal*, 297 S.C. 395, 377 S.E.2d 303 (1989).

The Order of Judgment of the Honorable Associate Probate Judge Kenneth E. Fulp, Jr. is amply supported by the facts and the law of this case and there is no abuse of discretion whatsoever. Therefore, the decision of the Probate Court must be affirmed.

c. Facts and Evidence

Stipulation of Facts: The Record on Appeal as certified by the Probate Court includes the testimony adduced and the exhibits entered at trial, including the Stipulation of Facts signed by counsel for each party and filed with the Probate Court on July 10, 2007 (*Exhibit "G"* attached), which is herein referred to as the "Stipulation". Judge Fulp's Findings of Fact are set forth with accuracy and detail on pages 2-5 of the Order of Judgment and a detailed analysis applying these facts under South Carolina law follows on pages 9-11 of the Order of Judgment (See *Exhibit "A"*).

Facts Adduced at Trial:

1. The \$2,012,115.00 transfer was gratuitous and not in repayment of a debt or as consideration for a purchase. Facts did not establish the means by which Page 1 and Page 2 of the letter of authorization (the "LOA") (Stipulation Exhibit B) were delivered to Mr. Rider or returned to the bank. The LOA did not contain the dollar amount.
2. Completion of the transfers took 125 days; similar transfers normally take anywhere from one day to a few weeks. (DiLella/Rhoney testimony)
3. Page 1 of the LOA (Stipulation Exhibit B) apparently bears the signature of Charles Rider, while Page 2 enumerating the gift and listing the securities bears no signature or other initial of Mr. Rider. Pages 1 and 2 were prepared by different individuals in different departments of Wachovia (DiLella testimony). The intention of Charles G. Rider was not fully established. He did not read the new will and trust agreement that he signed on June 22, 2005 (five (5) days after the LOA - Grady testimony).

4. The "Relationship Manager" Leila Evans at Wachovia Trust Department was notified of Mr. Rider's death no later than 4:30 pm on July 8, 2005, the date of his passing. Mrs. Evans notified Lynn DiLella, a Wealth Management officer, no later than July 10, 2005. (DiLella and McClure testimony)
5. Wachovia witnesses admitted virtually no knowledge of the UCC as applied to their activities, no relationship with either the SEC or South Carolina Securities Division and its outside audit comes under the authority of the office of the Controller of the Currency, a division of the U.S. Treasury Department. (DiLella and Rhoney testimony)
6. The Personal Representatives specifically testified that he did *not* ratify the transfers.

d. Legal Authorities

The Probate Court Order of Judgment includes a detailed consideration and discussion of the application of the Uniform Commercial Code – Investment Securities (S.C. Code Ann. Sec. 36-8-102, *et seq.*) and its application to this case. Respondent's Post-Trial Brief, as referenced in the Order of Judgment, presented the probate Court with the following points and authorities in support of Respondent McClure's position at trial:

1. Argument that Uniform Commercial Code is Inapplicable to This Agency Agreement.

Judge Fulp's Order of Judgment correctly recognizes that the laws of principal and agency have application to the facts of this case

SC Code § 36-8-501 ("Uniform Commercial Code – Investment Securities") Official Comment:

There are many arrangements between institutions and other persons concerning securities or other financial assets which do not fall within the definition of "securities account" because the institutions have not undertaken to treat the other persons as entitled to exercise the ordinary rights of an entitlement holder specified in Part 5 rules. For example, the term securities account does not cover the relationship between a bank and its depositors or the relationship between a trustee and the beneficiary of an ordinary trust, because those are not relationships in which the holder of a financial asset has undertaken to treat the other as entitled to exercise the rights that comprise the financial asset in the fashion contemplated by the Part 5 rules.

In short, the primary factor in deciding whether an arrangement is a

securities account is whether application of the Part 5 rules is consistent with the expectations of the parties (emphasis added) to the relationship. Relationships not governed by Part 5 may be governed by other parts of Article 8 if the relationship gives rise to a new security, or may be governed by other law entirely.

a. The agency relationship between Mr. Rider and Wachovia is represented by the Investment Agency Agreement dated September 27, 1993 between Mr. Rider as Principal and First Union National Bank as Agent. First Union and Wachovia, subsequently merged, and no further documents were proffered which would suggest an alteration in the character of the relationship.

b. While testimony would suggest numerous regular meetings and conversations between the Principal and representatives of the Agent, no evidence was offered which would suggest that Agent representatives at anytime discussed a change in the relationship of Agent and Principal, and especially no review with the Principal of provisions of the UCC. In fact, the Agent's employees indicated that they had no working knowledge of Chapter 8 of the UCC (SC Code § 36-8-101 through 511) nor could they define operative terminology therefrom. Similarly, the letter of authority makes no reference to the UCC.

c. The relationship of the parties continued for 12 years without amending or supplementary documentation that would modify the nature of the agency. The original operative document addressed the panoply of duties for which the Agent would be responsible and specifically addressed the means by which the agency could be terminated, including the death of the Principal or at such later date upon which a responsible officer of the Agent received notification of his death. (See Stipulation Exhibit A)

d. Under the agency, Wachovia was not simply a custodian of Mr. Rider's assets but had been given discretion to manage the account to buy and sell investments – a form of fiduciary relationship.

e. The testimony of Ms. DiLella and Ms. McClure established incontrovertibly that Lila Evans, the Relationship Officer was notified within a couple of hours of the Principal's passing. Under the clear terms of the Investment Agency Agreement, the agency was immediately terminated.

f. It is well established that a gift is incomplete until delivery of the gifted property. Mr. Rider as Principal could have cancelled the letter of authority at anytime up until that asset delivery. It is also clear from the Wachovia account records and e-mails that the transfer of \$935,032.64 on July 11, 2005 (Stipulation 7) and \$304,082.46 on October 20, 2005 (Stipulation 8) occurred after the Principal's death and days-to-months after the Agent's representatives were notified of his passing. Amounts transferred prior to death may be advancements as a matter of law.

g. Respondent Carolyn Rider's argument that the UCC would operate to perfect the July 11, 2005 and October 20, 2005 transfers flies in the face of the opposite result if the Agent were instead an individual having nothing to do with the securities industry. Such an individual could take no comfort in the UCC argument since, under anyone's definition, such an agent would not meet even the broadest applicable definition of "securities intermediary".

South Carolina Code § 36-8-102 - Definitions from South Carolina Reporter's Comment to 2000 Revision:

....
"Entitlement holder." This term is new and conceptually significant in the context of the indirect holding system described as in Part 5 of Article 8. It describes, in effect, a customer of a securities intermediary, such as a broker or clearing corporation as having rights against the intermediary relating to certain financial assets held in a securities account.

While an entitlement holder is a type of beneficial owner, the term does not, of itself, contemplate a fiduciary relationship between the entitlement holder and either the holder's securities intermediary or the ultimate legal owner."

South Carolina Reporter's Introductory Comment to the 2000 Revision III C.14

In analyzing these classification questions, courts should take care to avoid mechanical jurisprudence based solely upon exegesis of the wording of definitions in Article 8. The result of classification questions is that different sets of rules come into play. In order to decide the classification question it is necessary to understand fully the commercial setting and consider which set of rules best fits the transaction. Rather than letting the choice of rules turn on interpretation of the words of the definitions, the interpretation of the words of the definitions should turn on the suitability of the application of the substantive rules.

h. The South Carolina Reporter's Comment to SC Code Ann. § 36-8-107(b) provides: "Subsection (b) does not change prior law, although the reference to the common law of agency, implicit in prior law, is codified here."

i. It is not enough to establish the LOA as an entitlement order in form. Had he survived, Mr. Rider could have canceled such an order up until the delivery of the assets. It represented a gift, a gratuitous transfer without consideration, and was incomplete at his

death. After Mr. Rider's death, his agent lacked the power or legal authority to complete this transfer.

2. Assuming *Arguendo* an Application of the UCC, Transfers Subsequent to the Date of Death Would Fail.

a. S.C. Code Ann. § 36-8-107(b)(2) provides that an "endorsement, instruction or entitlement order is effective if: it is made by a person who has power under the law of the agency to transfer the security or financial asset. SC Code Ann. § 36-8-107(e) can thus not be considered in a vacuum to validate an entitlement order after the death of the entitlement holder on 7/8/05. This portion of the statute would conflict with the plain language of the Agency Agreement which states that the Agreement terminates on the death of Mr. Rider (whether or not decedent was defined as an entitlement holder).

b. It also conflicts with UCC banking law which revokes a bank's authority to follow pre-death orders of a deceased customer within a reasonable time after the bank is on notice of death (S.C. Code Ann. § 36-4-405).

c. Very few cases interpreting UCC § 8-107 and none interpreting its subsection (e) in circumstances where death is the "later change of circumstances" have been found. In a Maryland case, (*Powers v. American Express Financial Advisors*, 238 F.3d 414, 43 UCC Rep. Service 2d 425, (2000) Unpublished Disposition) an unmarried couple co-owned a securities account with American Express which, by the terms of the agreement opening the account, required one signature for transfers up to \$50,000.00 and both signatures for transfers in excess of that amount. When the couple broke up, one of them ordered the securities intermediary to transfer the entire amount, and, when the transfer was complete he absconded with the money. The other partner, then successfully sued American Express for the amount transferred. The Fourth Circuit upheld the District Court's construction of Maryland's UCC § 8-107 in the context of the contract between them and American Express. It determined that the entitlement order (and the resulting funds transfer) was ineffective because it lacked a required signature. The court recognized that both parties were entitlement holders, having been identified in the records of the securities intermediary (American Express) as having a security entitlement against the intermediary. The court decided, however, that § 8-507(a)(2) cannot be read in a vacuum because the applicable section of the couple's investment application with American Express required the signatures of both investors for any redemption request above \$50,000.00. Under UCC § 1-103 it is stated that, "the principals of law and equity...shall supplement [the UCC]." Because the second party did not authorize or otherwise ratify the transfer to the first party's separate account, the District Court concluded that the transfer was ineffective.

d. The specific language of the Investment Agency Agreement, entered into by Mr. Rider and Wachovia's corporate predecessor, specifically determines that Wachovia has

no authority to make any transfer after it knows of Mr. Rider's death. The authority to define the rights and duties comprising the relationship is recognized in a commentary to the 2000 UCC Amendments:

... a security entitlement is itself a form of property interest not merely an in personam claim against the intermediary. The concept of a security entitlement does, however, include a package of in personam rights against the intermediary. Other Part 5 rules identify the core of this package of rights, **subject to specification by agreement** (emphasis added) and regulatory law. See Sections 8-505 through 8-509. ...

Article 8 is in no sense a comprehensive codification of the law governing securities or transactions in securities. Although Article 8 deals with some aspects of the rights of securities holders against issuers, most of that relationship is governed not by Article 8, but by corporation, securities, and contract law. (emphasis added). Although Article 8 deals with some aspects of the rights and duties of parties who transfer securities, it is not a codification of the law of contracts for the purchase or sale of securities.

e. If law and equity supplement the UCC, then one must note that contracts are interpreted according to the intent expressed therein and that agency law terminates an agency relationship upon the death of the principal. The intent is clearly stated in the LOA (Stipulation Exhibit B).

"This agreement may be terminated by either party by giving thirty (30) days notice in writing to the other party or by my death, provided that termination by reason of my death shall be effective only upon the receipt of actual knowledge thereof by one of your responsible officials and shall not affect the validity of any prior actions."

As the Investment Agency Agreement was drafted by the bank which would have an interest in validating acts it might take during the pendency of notification of death, it is reasonable to assume "that prior actions" refers to actions of Wachovia. Such an interpretation is consistent with the purpose of terminating the Agreement at death; it is consistent with Agency law in general; and it is consistent with SC Code § 36-4-405, which limits banks' ability to honor checks, etc. after the death of the customer.

f. An Indiana Court of Appeals decision, *Watson v. Sears*, 766 N.E. 2d 784, 47 UCC Rep. Serv. 2d 722 (2002) involving a forged signature, cited *Powers*, supra, and used an analysis we would urge the court to apply here:

"....Section 8-107(b) establishes when an order is effective.[B]oth

the reference in Section 8-107 to principles of agency [FN10] and Official Comment 4 to Section 8-507 [FN11] lead to no other conclusion than that, when the intermediary has agreed that the "appropriate person" to make an order is both owners of a joint account, both owners must make the order. No facts whatever are advanced that would show that D'Ambrosia had any sort of authority to affix Powers' forged signature to the document accompanying the order or that she ever ratified it.

FN10. See I.C. § 26-1-8.1-107(b)(2) ("An endorsement, instruction, or entitlement order is effective if: ... (2) it is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person[.]")...

Simply put, if the appropriate person does not make the order to transfer assets, then the order is ineffective. Cf. I.C. § 26-1-8.1-107(b)(1) ("An endorsement, instruction, or entitlement order is effective if: (1) it is made by the appropriate person[.]")."

In the instant case, at the time of the post-death, *post-actual notice transfers*, the "appropriate person" could only have been the estate's personal representative pursuant to S.C. Code Ann. 36-8-107(a)(4), which reads:

"If the person designated in subdivision 1, 2, or 3 of this subsection is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent [is the "appropriate person" to make an effective entitlement order.]"

And, further, S.C. Code Ann. § 36-8-507(b) provides:

"If a securities intermediary [Wachovia] transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it [the estate], and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages."

g. A recent North Carolina case, *Reagan v. Wheat First Securities, Inc.*, 531 S.E. 2d 874, Blue Sky Law Rep. P. 74, 208 (2000), applied the Virginia common law of agency to a securities agreement and to the arbitration clause in it, in a suit brought by an estate

administrator against a securities intermediary who made transfers after the death of the securities account holder:

"[U]pon the death of the principal, the agent's powers cease unless the agent's authority is coupled with an interest. *See Triplett v. Woodward's Adm'r.*, 98 Va. 187, 35 S.E. 455 (1900) (holding that the powers of an agent of a testator cease on the death of the latter and he must surrender to the personal representatives all evidences of debts due the estate); *Sturgill v. Virginia Citizens Bank*, 223 Va. 394, 291 S.E.2d 207 (1982) (holding that because the death of a principal terminates an agent's authority, unless that authority is coupled with an interest, the bank depositor's girlfriend who the depositor had given the authority to draw checks on the depositor's individual account had no authority to write checks on the account after the death of the depositor).

To constitute a power coupled with an interest, a property in the thing which is the subject of the agency or power must be vested in the person to whom the agency, or power is given, so that he may deal with it in his own name; such that, in the event of the principal's death, the authority could be exercised in the name of the agent."

h. By analogy, Respondent McClure argues that S.C. Code Ann. Sec. 36-8-107(e) is intended to apply to ongoing agency relationships between securities intermediaries and entitlement holders and that it is not applicable where the agency has terminated by death.

i. Further, had the Wachovia Trust Department seen themselves as a securities intermediary before his death they could have immediately transferred all of the investments by making a book entry from Mr. Rider's agency account to that of his wife. Respondents McClure argue that the facts of the significant delay suggest that even Wachovia may have questioned its authority to transfer assets after Mr. Rider's death.

IV. CONCLUSION

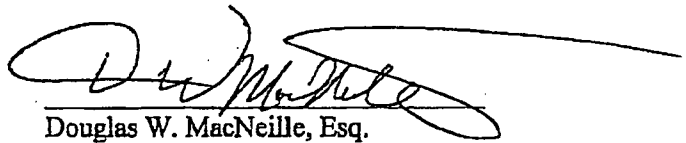
In conclusion, Respondent McClure submits that: (a) the Probate Court's determination that this appeal was not timely perfected by Appellant under S.C. Code Ann. Sec. 62-1-308(a) has merit and the appeal should be dismissed; and/or (b) upon any hearing and consideration of the appeal, the Circuit Court must find that there is substantial probative evidence that reasonably supports the Probate Court decision and that, absent a clear abuse of discretion, the Probate Court's decision to

grant declaratory judgment will not be disturbed and the Order of Judgment dated October 12, 2007 must be affirmed.

(signature on following page)

Respectfully submitted,

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Hilton Head Island, SC
September 30, 2008

Exhibit "A"

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT COUNTY)

IN THE PROBATE COURT
CASE NO. 2005ES0700709

FILED
2007 OCT 12 PM 4:16
PROBATE COURT
BEAUFORT COUNTY, SC

IN THE MATTER OF ESTATE OF)
CHARLES GALEN RIDER,)
A/K/A C. G. RIDER)

THOMAS M. GRADY, PERSONAL
REPRESENTATIVE,

Petitioner,

vs.

CAROLYN S. RIDER, et al.,

Respondents.

-AND-

EX PARTE: DEBORAH RIDER
MCCLURE,

Petitioner.

ORDER OF JUDGMENT

This matter comes before this Court on the Personal Representative's Petition for Declaratory Judgment and Deborah Rider McClure's Petition for Appointment of Special Administrator. The Petition for Declaratory Judgment asks this Court to order:

...[T]hat certain securities transferred pursuant to the Decedent's letter of instruction to Wachovia dated June 15 [sic], 2005 was a completed transfer to the Decedent's wife as of June 15 [sic], 2005 and therefore the securities in question are not includible in the Decedent's estate for probate or estate tax purposes; or in the alternative, holding that certain securities transferred after the decedent's death on July 8, 2005 pursuant to the Decedent's letter of instruction to Wachovia dated June 15 [sic], 2005 were incomplete transfers to the Decedent's wife, therefore the securities

transferred after July 8, 2005 are includible in the Decedent's estate for probate and estate tax purposes.

The Petition for Appointment of Special Administrator requests appointment of a special administrator "to review all of the facts and law applicable to these circumstances, to make a finding concerning the facts of the transfers, the applicable law of agency and whether or not some of the assets may be held by an Executor de son tort."

The Petitions were consolidated for trial, which was held before this Court on July 10, 2007. Present were: Thomas M. Grady, Personal Representative, and his attorney, Stephen E. Carter, Esquire; Carolyn S. Rider and her attorney, Terry A. Finger, Esquire; and Deborah Rider McClure, Ginger C. Rider, and their attorney, William A. Ruth, Esquire, also counsel of record for Christian McClure, and Austin McClure. (Deborah Rider McClure, Ginger C. Rider, Christian McClure, and Austin McClure are collectively referred to herein as the "Rider Descendants.")

Following the trial, the parties were allowed twenty days to file briefs of their arguments of law. Mr. Ruth filed a post-trial brief, and Mr. Finger submitted argument by letter as a supplement to his trial brief.

The ultimate issue for decision is indicated by the request for relief in the Petition for Declaratory Judgment, quoted above. Based on the evidence admitted at trial, and the applicable law, I conclude that securities totaling \$1,707,932.64 in value were effectively transferred to the decedent's wife, Carolyn S. Rider ("Mrs. Rider") before the decedent's death, and that securities totaling \$304,082.46 in value were not.

Findings of Fact

Charles Galen Rider ("Mr. Rider") entered into an Investment Agency Agreement

with First Union National Bank of North Carolina, a predecessor of Wachovia Bank, N.A. ("Wachovia"), on September 27, 1993 ("Agency Agreement").¹ Under the terms of the Agency Agreement, Mr. Rider authorized First Union and, by succession, Wachovia:

...[T]o open and maintain an Agency Account (Discretionary) for me, and to hold therein, as my Agent, all cash, *stocks, bonds, securities* and other property time to time deposited with or collected by you for such account, *subject to the following instructions and such other instructions as may from time to time be furnished in writing by me or my attorney-in-fact.*

(Emphasis added.)

The "instructions" set forth in the Agency Agreement include the following:

1. *You are to provide investment review and management of the Account, taking such action as you, in your discretion, deem best with respect to the investment and reinvestment of the property held therein as though you were the owner of such property. Your authority extends, though is not limited to the sale and purchase of securities, the sale of [sic] exercise of warrants, subscription rights and other rights of a similar nature....*

(Emphasis added.)

On June 17, 2005, Mr. Rider gave written instructions to Wachovia to transfer the sum of \$2,000,000.00 in specific securities and cash "to a new agency account to be opened for my wife, Carolyn Sue Rider" ("Transfer Instruction"). Wachovia transferred the specified securities to Mrs. Rider's Wachovia investment account as follows: securities worth \$733,228.00 on June 21, 2005; securities worth \$39,672.00 on July 8, 2005; securities worth \$935,032.64 on July 11, 2005; and securities worth \$304,082.46 on October 20, 2005. The difference between the aggregate value of the securities when transferred, viz., \$2,012,115.00, and the \$2,000,000.00 sum that Mr. Rider instructed to be transferred, is the appreciation of the specific securities between June 17, 2005 and the dates of the transfers.

¹ A copy of the Agency Agreement is attached as Exhibit "A" to the Stipulation of Facts admitted in

On June 22, 2005, Mr. Rider executed his Last Will and Testament ("Will") and a First Amendment and Restatement of his Revocable Trust Agreement dated February 3, 2003 ("Trust").

Under the Will, after making certain specific and general bequests (including gifts of tangible personal property to Mrs. Rider), Mr. Rider devised his residuary estate to the Trustee of the Trust. The Trust, as amended on June 22, 2005, provides for a \$1,000,000.00 distribution to Mrs. Rider "as soon as practical after my death," and for the establishment of separate trusts for Mr. Rider's "descendants" and for Mrs. Rider.

On July 6, 2005, Mr. Rider executed a Second Amendment to the Trust, which appointed Thomas M. Grady as co-Trustee (with Mr. Rider) and confirmed the situs of the Trust in North Carolina.

A preponderance of the evidence -- including the testimony of Mr. Grady, who, as Mr. Rider's attorney, counseled him in his estate planning and oversaw execution of the Will and the Trust amendments -- shows that Mr. Rider intended the \$2,000,000 transfer of securities to Mrs. Rider to be part of his overall estate plan, but as a separate gift and provision from those made for Mrs. Rider's benefit under the Will and the Trust, as amended on June 22, 2005.

On Friday, July 8, 2005, at approximately 2:45 p.m., Mr. Rider died in a hospital in Charlotte, North Carolina. By approximately 4:30 p.m. that day, Mr. Rider's daughter, Deborah Rider McClure, informed Lela² Evans, Mr. Rider's "Relationship Manager" at Wachovia, by telephone of Mr. Rider's death. The Relationship Manager is the customer's primary contact with Wachovia. By Sunday, July 10, 2005, Ms. Evans

evidence at the trial.

² Phonetic spelling.

informed Lynn DiLella, an officer of Wachovia's "Wealth Management Group" that managed Mr. Rider's investment account, of Mr. Rider's death.

Paragraph 13 of the Agency Agreement provides:

This agreement may be terminated by either party by giving thirty (30) days notice in writing to the other party or by my death, provided that termination by reason of my death shall be effective only upon the receipt of actual knowledge thereof by one of your responsible officials and shall not affect the validity of any prior actions. Your authority hereunder shall not terminate in the event of my disability.

The Agency Agreement was not terminated before Mr. Rider's death, and he never attempted to rescind or modify the Transfer Instruction.

Based on the credible testimony at the trial, from the time Wachovia receives an instruction to transfer securities, effectuation of the transfer ordinarily takes several days for stocks, and from ten days to "a few" weeks for mutual funds. In this case, the Transfer Instruction listed both stocks and mutual funds to be transferred. The stock transfers were effectuated and posted to Mrs. Rider's Wachovia account by June 21, 2005 (\$733,228.00 in value) and July 8, 2005 (\$39,672.00 in value), respectively, and the mutual funds transfers were effectuated and posted to Mrs. Rider's account by July 11, 2005 (\$935,032.64 in value) and October 20, 2005 (\$304,082.46 in value), respectively.

Analysis

Much of the legal argument in this case revolves around whether the "Uniform Commercial Code – Investment Securities," Chapter 8 of Title 36, *Code of Laws of South Carolina, 1976*, as amended ("UCC"), applies to the securities transfer ordered by Mr. Rider on June 17, 2005. Mrs. Rider argues, in essence, that the UCC applies, that the Transfer Instruction was an "entitlement order" under the applicable definitions of UCC

Section 36-8-102, and that the transfer was effectuated by the issuance of the Transfer Instruction to Wachovia on June 17, 2005, unaffected by Mr. Rider's death before completion of all the transfers.

The Rider Descendants argue, *inter alia*, that the UCC does not apply to the Transfer Instruction; that, even if it did, it does not supplant the law of agency that governed the relationship between Mr. Rider and Wachovia under the Agency Agreement; and that, in either event, Wachovia's authority to make the subject transfers ended upon its receiving actual knowledge of Mr. Rider's death.

Under the UCC, "[e]ntitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement." S.C. Code Ann. §36-8-102(a)(8). The UCC definition of "securities intermediary" includes "a bank or broker, that in the ordinary course of business maintains securities accounts for others and is acting in that capacity." S.C. Code Ann. §36-8-102(a)(14). A security is a "financial asset." S.C. Code Ann. Section 36-8-102(a)(9). "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary." S.C. Code Ann. §36-8-102(a)(7). "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset...." S.C. Code Ann. §36-8-102(a)(17).

In its contractual relationship with Mr. Rider and maintenance of an agency account for Mr. Rider under the terms of the Agency Agreement, Wachovia acted as a "securities intermediary" with the meaning of the UCC. The Agency Agreement authorized Wachovia to "maintain an Agency Account (Discretionary) for me, and to

hold therein, as my Agent, all...securities...from time to time deposited with or collected by you for such account." Wachovia's authority under the Agreement extended "to the purchase and sale of securities."

The account fits the UCC definition of "securities account," viz., "an account to which a financial asset [such as a security] is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset." *S.C. Code Ann.* §36-8-501(a). The evidence in this case establishes that, at all times relevant to this action, Wachovia maintained such securities accounts for customers in the ordinary course of its business. Item 14 of the *Official Comment* to §36-8-102 notes that "[a] bank that maintains securities accounts for its customers would be a securities intermediary with respect to those accounts...."

Under the applicable definitions of UCC §36-8-102, the securities subject to the Transfer Instruction are "financial assets," and Mr. Rider, as record owner of the securities when the Transfer Instruction was issued, had "security entitlement" to and was "entitlement holder" of the securities.

The Transfer Instruction fits the UCC definition of "entitlement order."

An entitlement order is effective if made by the entitlement holder, *S.C. Code Ann.* §36-8-107(a) and (b). "Effectiveness of an...entitlement order is determined as of the date the...entitlement order is made, and an...entitlement order does not become ineffective by reason of any later change of circumstances." *S.C. Code Ann.* §36-8-107(e).

Based on that statutory provision, Mrs. Rider argues that the securities directed to

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be transferred by the Transfer Instruction on June 17, 2005, "became the property of Mrs. Rider upon that date regardless of the fact that some portion of those securities was transferred by Wachovia after the Decedent's death" (*see Mrs. Rider's Trial Brief*, p. 3), and that the Transfer Instruction was "not rendered ineffective" by Mr. Rider's death (*see Mr. Finger's letter of July 30, 2005*, p. 2).

That argument illustrates the danger of too "mechanical" an application of selected UCC provisions, particularly one that excludes consideration of the governing contract and the laws of agency and property. As noted in the Rider Descendants' brief, the *South Carolina Reporter's Introductory Comment to the 2000 Revision of UCC Chapter 8* cautions against such an approach:

In analyzing these classification questions, courts should take care to avoid mechanical jurisprudence based solely upon exegesis of the wording of the definitions in Article 8. The result of classification questions is that different sets of rules come into play. In order to decide the classification question it is necessary to understand fully the commercial setting and consider which set of rules best fits the transaction. *Rather than letting the choice of rules turn on interpretation of the words of the definitions, the interpretation of the words of the definitions should turn on the suitability of the application of the substantive rules.*

(*Emphasis added.*)

Mrs. Rider's argument is based on a strained construction of §36-8-107(e), equating the *effectiveness* of an entitlement order with its *effectuation*. The UCC requires that a securities must have "reasonable opportunity to comply with [an] entitlement order," *S.C. Code Ann.* §36-8-507(a), and thus appears to contemplate that an entitlement order, effective upon issuance, must still be *carried out* by the securities intermediary, in order for the transfer to be effectuated.

Even though the Transfer Instruction was effective upon its issuance to Wachovia,

it had to be carried out by Wachovia before any of the subject securities "became the property of Mrs. Rider." Further, Wachovia's authority to carry out the Transfer Instruction was circumscribed by the Agency Agreement governing its relationship with Mr. Rider. Paragraph 13 of the Agreement provides for termination of the agreement by reason of Mr. Rider's death "upon the receipt of actual knowledge thereof by one of your responsible officials," but specifies that such termination "shall not affect the validity of any prior actions."

The UCC does not supplant the laws of property or agency, nor does it vitiate the terms of the Agency Agreement. UCC 36-1-103 provides that:

Unless displaced by the particular provisions of this act, the principles of law and equity, including the law merchant and *the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.*

(Emphasis added.)

Wachovia received actual knowledge of Mr. Rider's death in the late afternoon of Friday, July 8, 2005, upon Deborah Rider McClure's notification of Lela Evans, Relationship Manager. The second transfer of securities (stock worth \$39,672.00) was posted to Mrs. Rider's account on that day, and the third transfer (mutual funds worth \$935,032.64) was so posted on the next business day, Monday, July 11, 2005.

Wachovia's authority to act as Mr. Rider's agent under the Agency Agreement was not terminated until it received actual knowledge of Mr. Rider's death. Termination of its authority upon receiving such knowledge, in the afternoon of July 8, 2005, did not affect the validity of Wachovia's "prior actions" to effectuate the Transfer Instruction.

The credible testimony given at trial, regarding the time normally taken to

complete a securities transfer, persuades me that Wachovia took the actions necessary to effectuate the second and third transfers (those posted to Mrs. Rider's account on July 8 and 11, respectively) before it knew of Mr. Rider's death.³ In the commercial context of the transactions, it would be unreasonable to conclude otherwise.

The UCC promotes "reasonableness" in commercial transactions. *See, e.g.*, UCC §36-1-102(3). Reference to UCC §36-4-405 appears relevant here, although that provision is directly applicable to bank deposits and collections, not securities transfers. Subsection (2) of §36-4-405 provides that "[e]ven with knowledge a bank may for ten days after the date of death pay or certify checks drawn on or prior to that date unless ordered to stop payment by a person claiming an interest in the account."

The evidence in this case does not support a finding that the final transfer (mutual funds worth \$304,082.46), posted to Mrs. Rider's account on October 20, 2005, was effectuated before Wachovia knew of Mr. Rider's death. Four months elapsed between issuance of the Transfer Instruction and the posting of the final transfer to Mr. Rider's account. Even allowing the maximum time ordinarily taken to effect the transfer of mutual funds -- "a few weeks," according to the testimony of Lynn DiLella and Jonathan Rhomey of Wachovia -- the time that elapsed between Wachovia's receiving the transfer instruction and completing the final transfer was patently unreasonable.⁴

The securities transfers directed by the Transfer Instruction were gratuitous, requiring delivery for completion. Wachovia delivered on the first three transfers

³ The first transfer (stocks worth \$733,228.00), posted to Mrs. Rider's account on June 21, 2005, clearly was made before Mr. Rider's death, and the validity of that transfer has not been placed in issue.

⁴ Jonathan Rhomey of Wachovia testified that he did was not involved in the subject transfers before he started working in the Trust Department on or about August 15, 2005. In response to the question by Mr. Ruth, "Did it surprise you that there was a significant passage of time before all of these transfers were accomplished," Mr. Rhomey answered, "Yes." Mr. Ruth then asked, "It would not be the 'norm,' in your

(totaling \$1,707,932.64 in value) before its authority to act was terminated, but not on the transfer posted October 20, 2005 (worth \$304,082.46).

Conclusions of Law

All statutory requirements of notice, venue, and jurisdiction have been satisfied in this matter. In particular, this Court has jurisdiction over all subject matter related to Mr. Rider's estate under S.C. Code §62-1-302, and has authority to grant declaratory relief with respect to matters within its jurisdiction. *S.C. Code Ann.* Section 15-53-20.

The Transfer Instruction was effective until Mr. Rider's death, and the first three transfers thereunder -- posted to Mrs. Rider's account on June 21, July 8, and July 11, 2005, respectively -- were effectively carried out by Wachovia before its authority under the Agency Agreement was terminated.

Wachovia's authority to execute the Transfer Instruction was terminated, under the terms of the Agency Agreement, when it received actual knowledge of Mr. Rider's death. The transfer posted to Mr. Rider's account on October 20, 2005, was not effectuated before termination of Wachovia's authority to make the transfer.

In view of the foregoing findings of fact and conclusions of law, the relief requested by the Petition for Appointment of Special Administrator is unnecessary.

Accordingly, it is ORDERED, ADJUDGED and DECLARED that:

1. The securities transfers posted to Mrs. Rider's Wachovia investment account on June 22, July 8, and July 11, 2005, of stocks and mutual funds totaling \$1,707,932.64 in value, were effectuated before Mr. Rider's death, and those securities are not part of his probate estate.

experience," and Mr. Rhomey answered, "No." I find his testimony credible.

2. The securities transfers posted to Mrs. Rider's Wachovia investment account on October 20, 2005, of mutual funds totaling \$304,082.64 in value, were not effectuated before Mr. Rider's death, and those securities are part of his probate estate.
3. No determination is made, as requested by the Personal Representative, as to whether or not any of the subject securities are includible in Mr. Rider's estate for estate tax purposes, as such a determination would appear to exceed this Court's authority.
4. Deborah Rider McClure's Petition for Appointment of Special Administrator is denied, without prejudice.
5. Should any further relief, based on the within declaratory judgment, be deemed necessary by any party, it should be requested by petition under S.C. Code §15-53-120.



Kenneth E. Fulp, Jr.
Associate Judge
Beaufort County Probate Court

Beaufort, South Carolina

October 12, 2007

Exhibit "B"

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF ESTATE OF
CHARLES GALEN RIDER,
a/k/a C.G. RIDER

THOMAS M. GRADY, PERSONAL
REPRESENTATIVE,

Petitioner,

vs.

CAROLYN S. RIDER, et al.,

Respondents.

-AND-

EX PARTE: DEBORAH RIDER
McCLURE,

Petitioner.

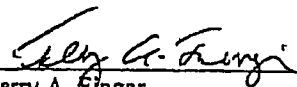
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2007-CP-07-_____

NOTICE OF APPEAL

THE APPELLANT, Carolyn S. Rider, et al., hereby gives notice of appeal from the Order of Judgment of the Beaufort County Probate Court, Case No. 2005-ES-07-0709, dated October 12, 2007. This appeal in the above action is to the Court of Common Pleas for the County of Beaufort.

Notice of the judgment was received on the October 12, 2007.

FINGER, FRASER & ANDREWS, P.A.


Terry A. Finger
Attorney for Appellant, Carolyn S. Rider
P. O. Box 24005
Hilton Head Island, SC 29925-4005
(843) 681-7000

Hilton Head Island, South Carolina
October 19, 2007

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I, Catherine Carstensen, Legal Assistant to Terry A. Finger, Esquire, Attorney for Appellant, Carolyn S. Rider, have this day mailed a true and accurate copy of a Notice of Appeal in the above-captioned matter to:

Stephen E. Carter, Esquire
McNair Law Firm, P.A.
P.O. Drawer 3
Hilton Head Island, SC 29938
Attorney for Personal Representative

William A. Ruth, Esquire
Ruth & MacNeille, P.A.
P.O. Drawer 5706
Hilton Head Island, SC 29938
Attorney for Deborah Rider McClure

via U.S. Postal Service with first class postage prepaid.


Catherine Carstensen

Hilton Head Island, South Carolina
October 19, 2007

F:\Client\N - R\Rider\Estate\Notice of Appeal.wpd

Exhibit "C"

FILED

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

2007 DEC 20

AM 10:45

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO : 2007-CP-07-3057IN THE MATTER OF ESTATE OF DEBORAH RIDER
CHARLES GALEN RIDER, BEAUFORT COUNTY, SC
a/k/a C.G. RIDERTHOMAS M. GRADY, PERSONAL
REPRESENTATIVE,

Petitioner,

vs.

CAROLYN S. RIDER, et al.,

Respondents.

-AND-

EX PARTE: DEBORAH RIDER
McCLURE,

Petitioner.

GROUNDS OF APPEAL

2007 NOV 16 PM 3:25
CLERK OF COURT
BEAUFORT COUNTY, SC

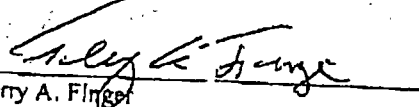
THE APPELLANT, Carolyn S. Rider, previously filed and served a Notice of Appeal from the Order of Judgment of the Beaufort County Probate Court, Case No. 2005-ES-07-0709. The Notice of Appeal was filed in the Circuit Court on October 22, 2007. Pursuant to S.C. Code Ann. § 52-1-308, Appellant now specifies her grounds of appeal

1. Once the Probate Court found Wachovia was a "securities intermediary", the account was a "securities account", the securities subject to the Transfer Instruction were "financial assets", that Mr. Rider had a "security entitlement" to and was an "entitlement holder" of the securities, that the Transfer Instruction was an "entitlement order", and that the "entitlement order" is effective on the day it is made, all as defined by the Uniform Commercial Code, the Lower Court is precluded from finding that Appellant was not entitled to all securities covered and listed in the Transfer Instruction.

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2. The Probate Court erred in applying the law of agency.
3. The Probate Court erred in disregarding the provisions of Paragraph 13 of the Investment Agency Agreement which stated that death does not "affect the validity of any prior actions."
4. The Probate Court factually found that it was Mr. Rider's specific intent to transfer \$2,000,000 to his wife as a "part of his overall estate plan, not as a separate gift and provision from those made for [Appellant's] benefit under the Will and Trust . . ." The Probate Court's Order specifically frustrates and defeats the intent of the Decedent.
5. Appellant specifically reserves her right to amend and/or supplement these grounds prior to or at the argument of this Appeal.

FINGER, FRASER & ANDREWS, P.A.


Terry A. Finger
Attorney for Appellant Carolyn S. Rider
P. O. Box 24005
Hilton Head Island, SC 29925-4005
(843) 681-7000

Hilton Head Island, South Carolina
November 15, 2007

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I, Veronica Hagopian, Legal Assistant to Terry A. Finger, Esquire, Attorney for Appellant, Carolyn S. Rider, have this day mailed a true and accurate copy of Grounds of Appeal in the above-captioned matter to:

Stephen E. Carter, Esquire
McNair Law Firm, P.A.
P.O. Drawer 3
Hilton Head Island, SC 29938
Attorney for Personal Representative

William A. Ruth, Esquire
Ruth & MacNellie, P.A.
P.O. Drawer 5706
Hilton Head Island, SC 29938
Attorney for Deborah Rider McClure

via U.S. Postal Service with first class postage prepaid.

Veronica Hagopian
Veronica Hagopian

Hilton Head Island, South Carolina
November 15, 2007

F:\Client\N - R\Rider\Estate\Grounds of Appeal.wpd

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF ESTATE OF
CHARLES GALEN RIDER,
a/k/a C.G. RIDER

THOMAS M. GRADY, PERSONAL
REPRESENTATIVE,

Petitioner,

vs.

CAROLYN S. RIDER, et al.,

Respondents.

-AND-

EX PARTE: DEBORAH RIDER
McCLURE,

Petitioner.

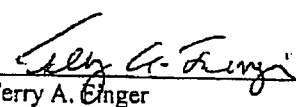
IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2007-CP-07-_____

NOTICE OF APPEAL

THE APPELLANT, Carolyn S. Rider, et al., hereby gives notice of appeal from the Order of Judgment of the Beaufort County Probate Court, Case No. 2005-ES-07-0709, dated October 12, 2007. This appeal in the above action is to the Court of Common Pleas for the County of Beaufort.

Notice of the judgment was received on the October 12, 2007.

FINGER, FRASER & ANDREWS, P.A.


Terry A. Finger
Attorney for Appellant, Carolyn S. Rider
P. O. Box 24005
Hilton Head Island, SC 29925-4005
(843) 681-7000

Hilton Head Island, South Carolina
October 19, 2007

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I, Catherine Carstensen, Legal Assistant to Terry A. Finger, Esquire, Attorney for Appellant, Carolyn S. Rider, have this day mailed a true and accurate copy of a Notice of Appeal in the above-captioned matter to:

Stephen E. Carter, Esquire
McNair Law Firm, P.A.
P.O. Drawer 3
Hilton Head Island, SC 29938
Attorney for Personal Representative

William A. Ruth, Esquire
Ruth & MacNeille, P.A.
P.O. Drawer 5706
Hilton Head Island, SC 29938
Attorney for Deborah Rider McClure

via U.S. Postal Service with first class postage prepaid.


Catherine Carstensen

Hilton Head Island, South Carolina
October 19, 2007

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Exhibit "D"

BEAUFORT COUNTY PROBATE COURT



FRANCIS M. SIMON
JUDGE

KENNETH E. FULP, JR.
ASSOCIATE JUDGE
COURT ADMINISTRATOR

COUNTY COURTHOUSE
102 RIBAUT ROAD
BEAUFORT, SC 29902

December 13, 2007

Terry A. Finger, Esquire
Finger, Fraser & Andrews, P.A.
P. O. Box 24005
Hilton Head Island, South Carolina 29925-4005

Re: Estate of Charles Galen Rider, a/k/a C. G. Rider: *Thomas M. Grady, Personal Representative, v. Carolyn S. Rider, et al.*; and *Ex Parte: Deborah Rider McClure*, Probate Court Case No. 2005ES0700709

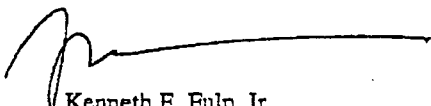
Dear Mr. Finger:

On October 22, 2007, this Court received notice of your client's intention to appeal the Order of Judgment dated October 12, 2007. However, it does not appear that the appeal has been perfected by the filing and service of grounds of appeal within the time prescribed by S.C. Code Section 62-1-308(a).

The statutory requirements for such appeals must be strictly complied with. *See Gallagher v. Evert*, 353 S.C. 59, 577 S.E. 2d 217 (Ct. App. 2002), *rehearing denied* 356 S.C. 342, 588 S.E. 2d 624 (Ct. App. 2003); and *Witzig v. Witzig*, 325 S.C. 363, 479 S.E. 2d 297 (Ct. App. 1996).

Accordingly, it does not appear that an appeal has been taken properly to the Circuit Court, and this Court's Order of October 12, 2007, appears to stand undisturbed.

Very truly yours,


Kenneth E. Fulp, Jr.
Associate Judge

cc: Stephen E. Carter, Esquire ✓
William A. Ruth, Esquire ✓



§ 62-1-308

South Carolina Code of Laws (unannotated)

Title 62 - South Carolina Probate Code

CHAPTER 1. GENERAL PROVISIONS, DEFINITIONS, AND PROBATE JURISDICTION OF COURT

62-1-308 Appeals.

62-1-308. Appeals.

Except as provided in subsection (g), appeals from the probate court must be to the circuit court and are governed by the following rules:

(a) A person interested in a final order, sentence, or decree of a probate court and considering himself injured by it may appeal to the circuit court in the same county. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court. The grounds of appeal must be filed in the office of the probate court and a copy served on all parties within forty-five days after receipt of written notice of the order, sentence, or decree of the probate court.

(b) Within thirty days after the grounds of appeal has been filed in the office of the probate court, as provided in subsection (a), the probate court shall make a return to the appellate court of the testimony, proceedings, and judgment and file it in the appellate court. Upon final disposition of the appeal, all papers included in the return must be forwarded to the probate court.

(c) When an appeal according to law is taken from any sentence or decree of the probate court, all proceedings in pursuance of the order, sentence, or decree appealed from shall cease until the judgment of the circuit court, court of appeals, or Supreme Court is had. If the appellant, in writing, waives his appeal before the entry of the judgment, proceedings may be had in the probate court as if no appeal had been taken.

(d) When the return has been filed in the circuit court as provided in subsection (b), the court shall hear and determine the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence may be presented.

(e) The final decision and judgment in cases appealed, as provided in this code, shall be certified to the probate court by the circuit court, court of appeals, or Supreme Court, as the case may be, and the same proceedings shall be had in the probate court as though the decision had been made in the probate court.

(f) A judge of a probate court must not be admitted to have any voice in judging or determining an appeal from his decision or be permitted to act as attorney or counsel.

(g) If the parties not in default consent either in writing or on the record at a hearing in the probate court, a party to a final order, sentence, or decree of a probate court who considers himself injured by it may appeal directly to the Supreme Court, and the procedure for the appeal must be governed by the South Carolina Appellate Court Rules.

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BEAUFORT COUNTY PROBATE COURT



FRANCIS M. SIMON
JUDGE

KENNETH E. FULP, JR.
ASSOCIATE JUDGE
COURT ADMINISTRATOR

COUNTY COURTHOUSE
102 RIBAUT ROAD
BEAUFORT, SC 29902

December 20, 2007

VIA: FACSIMILE TRANSMISSION AND FIRST-CLASS MAIL

Terry A. Finger, Esquire
Finger, Fraser & Andrews, P.A.
P. O. Box 24005
Hilton Head Island, SC 29925-4005

Re: Estate of Charles Galen Rider, a/k/a C. G. Rider: *Thomas M. Grady, Personal Representative v. Carolyn S. Rider, et al.*; and *Ex Parte: Deborah Rider McClure*,
Probate Court Case No. 2005ES0700709

Dear Mr. Finger:

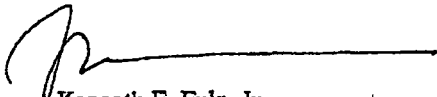
This is in response to your letter of December 19, 2007, enclosing a copy of the Grounds of Appeal apparently filed in the Clerk of Court's office on November 16.

S.C. Code §62-1-308(a) requires that grounds of appeal be filed in the office of the Probate Court (not the Clerk of Court or the Circuit Court) within the 45-day statutory deadline. That does not appear to have been done in this case. According to the authority cited in my letter of December 13, the filing requirements must be strictly complied with. Filing the grounds of appeal with the Probate Court also triggers the requirement, under §62-1-308(b), that this Court make its return to the Circuit Court, so that the latter Court will have before it the record on appeal.

Nevertheless, based on the representations in your letter, and *without notice of objection by any other party within twenty days from the date of this letter*, the Probate Court will make a return to the Circuit Court within the 30-day period provided by §62-1-308(b), which will be measured from this Court's receipt of a copy of the Grounds of Appeal on December 20.

Thank you for your attention to this matter.

Very truly yours,


Kenneth E. Fulp, Jr.
Associate Judge

cc: Stephen E. Carter, Esquire
William A. Ruth, Esquire ✓



BEAUFORT COUNTY PROBATE COURT



FRANCIS M. SIMON
JUDGE

KENNETH E. FULP, JR.
ASSOCIATE JUDGE
COURT ADMINISTRATOR

COUNTY COURTHOUSE
102 RIBAUT ROAD
BEAUFORT, SC 29902

January 16, 2008

VIA: FACSIMILE TRANSMISSION AND FIRST-CLASS MAIL

Stephen E. Carter, Esquire
McNair Law Firm, P.A.
P. O. Drawer 3
Hilton Head Island, SC 29938

William A. Ruth, Esquire
Ruth & MacNeille, P.A.
P. O. Drawer 5706
Hilton Head Island, SC 29938-5706

Terry A. Finger, Esquire
Finger, Fraser & Andrews, P.A.
P. O. Box 24005
Hilton Head Island, SC 29925-4005

Re: Estate of Charles Galen Rider, a/k/a C. G. Rider: *Thomas M. Grady, Personal Representative v. Carolyn S. Rider, et al.*; and *Ex Parte: Deborah Rider McClure*, Probate Court Case No. 2005ES0700709

Gentlemen:

As noted in my previous correspondence, grounds of appeal were not filed with this Court within the 45-day period prescribed by S.C. Code §62-1-308(a), and the statutory filing requirements for appeals must be strictly complied with. *See Gallagher v. Evert*, 353 S.C. 59, 577 S.E.2d 217 (Ct. App. 2002); and *Witzig v. Witzig*, 325 S.C. 363, 479 S.E.2d 297 (Ct. App. 1996).

Nevertheless, by letter of December 20, 2007, I advised you that, without notice of objection by any party within twenty days from that date, the Probate Court would make its return to the Circuit Court within thirty days from the belated filing with this Court of a copy of the Grounds of Appeal on December 20.

By letter of January 4, 2008, Mr. Ruth timely objected to the Probate Court making a return to the Circuit Court under S.C. Code §62-1-308(b) under the circumstances, and asserted that this Court's Order of Judgment of October 12, 2007 should stand. I agree.

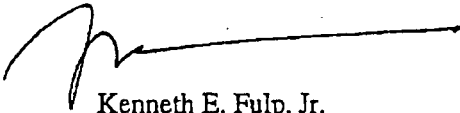


Stephen E. Carter, Esquire
Terry A. Finger, Esquire
William A. Ruth, Esquire
January 16, 2008
Page Two

Accordingly, this Court will not make a return to the Circuit Court under §62-1-308(b) at this time. Unless the Circuit Court rules otherwise, it does not appear that an appeal has been taken properly from my Order of Judgment of October 12, 2007, which stands as the law of this case.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "K. Fulp, Jr.", with a long horizontal line extending to the right.

Kenneth E. Fulp, Jr.
Associate Judge

Exhibit "E"

RUTH & MACNEILLE

PROFESSIONAL ASSOCIATION

ATTORNEYS AND COUNSELORS AT LAW

40 POPE AVENUE

P.O. DRAWER 5706

HILTON HEAD ISLAND, SOUTH CAROLINA

29988-5706

TELEPHONE (843) 785-4281

FAX (843) 686-5404

SUITE 200, 7 SIMMONSVILLE ROAD
P.O. BOX 2808

BLUFFTON, SOUTH CAROLINA
29910

TELEPHONE (843) 815-5353

FAX (843) 815-5354

Hilton Head Island

WILLIAM A. RUTH*
DOUGLAS W. MACNEILLE**
MICHAEL K. KNUDSEN*

*CERTIFIED SPECIALIST-TAXATION LAW
AND ESTATE PLANNING AND PROBATE LAW

‡ALSO ADMITTED IN FLORIDA AND
DISTRICT OF COLUMBIA

**ALSO ADMITTED IN CALIFORNIA

*ALSO ADMITTED IN GEORGIA

January 4, 2008

Kenneth E. Fulp, Jr.
Associate Judge
Beaufort County Probate Court
P.O. Box 1083
Beaufort, SC 29901-1083

RE: Estate of Charles Galen Rider a/k/a C. G. Rider: *Thomas M. Grady,*
Personal Representative v. Carolyn S. Rider et al.; and Ex Parte:
Deborah Rider McClure, Probate Court Case No. 2005ES0700709

Dear Judge Fulp:

I have discussed with my client, in detail, the statutory requirements to perfect an appeal from an order of the Probate Court including the specific requirements of Section 62-1-308 (a) of the South Carolina Probate Code.

I have also reviewed with her the contents of your letters dated December 13, 2007 and December 20, 2007.

She has asked that I register her objection to the Probate Court making a return to the Circuit Court as provided by Section 62-1-308 (b), as it would appear that grounds for the appeal may not have been timely filed in the office of the Probate Court. Thus, the Court's order of October 12, 2007 should stand.

Yours very truly,



William A. Ruth

WAR:ps

cc: Stephen E. Carter, Esquire
Terry A. Finger, Esquire
Deborah R. McClure

* * * COMMUNICATION RESULT REPORT (JAN. 4. 2008 1:35PM) * * *

FAX HEADER: RUTH & MacNEILLE

TRANSMITTED/STORED : JAN. 4. 2008 1:34PM
FILE MODE OPTION

ADDRESS

RESULT

PAGE

175 MEMORY TX

18434705324

OK

2/2

REASON FOR ERROR
E-1) HANG UP OR LINE FAIL
E-3) NO ANSWERE-2) BUSY
E-4) NO FACSIMILE CONNECTION40 Pope Avenue
PO Drawer 5706
Hilton Head Island, SC 29938
P: (843) 785-4251
F: (843) 686-5404**Ruth & MacNeille, P.A.****Fax**TO: Kenneth B. Fulp, Jr.,
Associate Judge

FAX: 843.470.5324

FROM: William A. Ruth, Esq.

DATE: 1/4/08

SUBJECT: Estate of Charles G. Rider a/k/a C. G. Rider

PAGES: 2 (including cover)

Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle ☐

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Exhibit "F"

BEAUFORT COUNTY PROBATE COURT



FRANCIS M. SIMON
JUDGE

KENNETH E. FULP, JR.
ASSOCIATE JUDGE
COURT ADMINISTRATOR

COUNTY COURTHOUSE
102 RIBAUT ROAD
BEAUFORT, SC 29902

January 30, 2008

VIA: FACSIMILE TRANSMISSION AND FIRST-CLASS MAIL

Stephen E. Carter, Esquire
McNair Law Firm, P.A.
P. O. Drawer 3
Hilton Head Island, SC 29938

William A. Ruth, Esquire
Ruth & MacNeille, P.A.
P. O. Drawer 5706
Hilton Head Island, SC 29938-5706

Terry A. Finger, Esquire
Finger, Fraser & Andrews, P.A.
P. O. Box 24005
Hilton Head Island, SC 29925-4005

Re: Estate of Charles Galen Rider, a/k/a C. G. Rider: *Thomas M. Grady, Personal Representative v. Carolyn S. Rider, et al.*; and *Ex Parte: Deborah Rider McClure*, Probate Court Case No. 2005ES0700709

Gentlemen:

I have reviewed and reconsidered the position taken in my letter of January 16, 2008, in which I advised you that this Court would not to make a return to the Circuit Court under S.C. Code §62-1-308(b) at that time. I believe that determination was proper and supported by applicable law, because it appeared that an appeal had not been taken properly under the statute.

Nevertheless, in order to avoid any appearance that this Court is "judging or determining an appeal from [its] decision," within the proscription of §62-1-308(f), and to insure that all parties have the opportunity to be heard on the matter by a proper forum, this Court will make forthwith its return to the Circuit Court under §62-1-308(b). A copy of the Certificate of Return will be mailed to all counsel.

Thank you for your attention to this matter.

Very truly yours,

Kenneth E. Fulp, Jr.
Associate Judge



Exhibit "G"

(11)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
IN THE MATTER OF ESTATE OF)
CHARLES GALEN RIDER,)
a/k/a C.G. RIDER)

IN THE PROBATE COURT
CASE NO.: 2005ES0700709

FILED
2007 JUL 10 AM 10:18
PROBATE COURT
BEAUFORT COUNTY, SC

THOMAS M. GRADY, PERSONAL)
REPRESENTATIVE,)
Petitioner,)

vs.)

STIPULATION OF FACTS

CAROLYN S. RIDER, et al.,)
Respondents.)

-AND-

EX PARTE: DEBORAH RIDER)
McCLURE,)
Petitioner.)

[Petition for Appointment of)
Special Administrator])

The parties stipulate as to the following facts:

1. Charles Galen Rider entered into an Investment Agency Agreement with First Union National Bank of North Carolina, which is a predecessor of Wachovia Bank, N.A. (hereinafter referred to as "Wachovia"). This Investment Agency Agreement is attached hereto as Exhibit "A."
2. On June 17, 2005, Charles Galen Rider gave written instructions to Wachovia to transfer to Mrs. Carolyn S. Rider the sum of Two Million and No/100 (\$2,000,000.00) Dollars in

TAF JLC wsn

specific securities and cash. This written document ~~constitutes an Entitlement Order and~~ is attached hereto as Exhibit "B."

TAF JLC wsn

3. On June 22, 2005, Wachovia, ~~through its former employee, Christopher Dally,~~ transferred Seven Hundred Thirty-Three Thousand Two Hundred Twenty-Eight and No/100 (\$733,228.00) Dollars in specific securities to Mrs. Carolyn S. Rider as evidenced by Exhibit "C."

4. On June 22, 2005, Charles Galen Rider executed his Last Will & Testament along with his First Amendment of Revocable Trust Agreement which, collectively with his Second Amendment of Revocable Trust Agreement was executed on July 6, 2005. The Last Will & Testament, First Amendment of Revocable Trust Agreement, and Second Amendment of Revocable Trust Agreement are attached hereto as Exhibits "D," "E," and "F," respectively.

TAF JLC wsn

5. On July 8, 2005, Wachovia, ~~through Christopher Dally or another representative of Wachovia,~~ transferred Thirty-Nine Thousand Six Hundred Seventy-Two and No/100 (\$39,672.00) Dollars worth of securities to Mrs. Carolyn S. Rider.

TAF JLC wsn

6. On July 8, 2005, Charles Galen Rider died. ~~The transfer in the preceding paragraph preceded the death of Charles Galen Rider who died at 2:45 p.m.~~

7. On July 11, 2005, Wachovia, ~~through Christopher Dally or another representative of Wachovia,~~ transferred Nine Hundred Thirty-Five Thousand Thirty-Two and 64/100 (\$935,032.64) Dollars worth of securities to Mrs. Carolyn S. Rider. ~~The Wachovia employee responsible for this transfer was unaware of the death of Charles Galen Rider.~~

JLC
TAF
wsn

8. On October 20, 2005, Wachovia, ~~through Christopher Dally's successor at Wachovia, Jon Rhoney, or another representative of Wachovia,~~ transferred Three Hundred Four Thousand One Hundred Eighty-Two and 46/100 (\$304,082.46) Dollars worth of securities to Mrs. Carolyn S. Rider.

TAF
JLC
wsn

9. The total amount of all transfers made to Mrs. Carolyn S. Rider was Two Million Twelve Thousand One Hundred Fifteen and No/100 (\$2,012,115.00) Dollars. The difference between this amount and the Two Million and No/100 (\$2,000,000.00) Dollars instructed by Charles Galen Rider to be transferred is the appreciation of the specific securities between the ^{June 17, 2005} ~~date of the~~ ~~Entitlement Order~~ and the dates of the transfers.

10. ~~Charles Galen Rider was competent at all times relevant to these proceedings.~~ TAF

I SO STIPULATE:

FINGER, FRASER & ANDREWS, P.A.

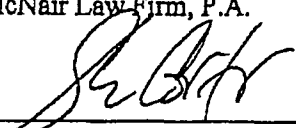
Terry A. Finger
Terry A. Finger
Attorney for Respondent, Carolyn S. Rider
35 Hospital Center Common, Suite 35
P. O. Box 24005
Hilton Head Island, S C 29925-4005
(843) 681-70000

Carolyn S. Rider
Carolyn S. Rider

STIPULATION OF FACTS
IN THE MATTER OF CHARLES GALEN RIDER
IN PROBATE COURT
CASE NO.: 2005ES07700709

I SO STIPULATE:

McNair Law Firm, P.A.

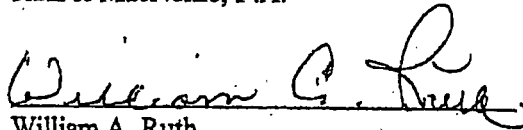


Stephen E. Carter
Attorney for Petitioner
Thomas M. Grady, Personal
Representative

STIPULATION OF FACTS
IN THE MATTER OF CHARLES GALEN RIDER
IN PROBATE COURT
CASE NO.: 2005ES07700709

I SO STIPULATE:

Ruth & MacNeille, P.A.



William A. Ruth

Attorney for Respondent/Petitioner
Deborah Rider McClure

F:\Client\N - R\Rider\Estate\Stipulation of Facts.wpd

**FIRST
UNION**Capital Management
GroupFirst Union National Bank
of North Carolina**INVESTMENT AGENCY AGREEMENT
(DISCRETIONARY ACCOUNT)**First Union National Bank of North Carolina
Capital Management GroupCharlotte

North Carolina

September27 1993

Gentlemen:

You are hereby authorized and requested to open and maintain an Agency Account (Discretionary) for me and hold therein, as my Agent, all cash, stocks, bonds, securities and other property from time to time deposited with or collected by you for such account, subject to the following instructions and such other instructions as may from time to time be furnished in writing by me or my attorney-in-fact.

INSTRUCTIONS:

1. You are to provide investment review and management of the Account, taking such action as you, in your discretion, deem best with respect to the investment and reinvestment of the property held therein as though you were the owner of such property. Your authority extends, though is not limited to the sale and purchase of securities, the sale or exercise of warrants, subscription rights and other rights of similar nature, and participation in corporate reorganizations. It is understood and approved that the property in my account will be invested in accordance with the investment objective selected by me and attached in writing to this letter. I further understand that my investment objective may be changed by me or my attorney-in-fact from time to time in writing, by furnishing same to you as Agent.

2. All stock certificates and other registered securities shall be registered in your nominee or nominees, or your name as Agent.

3. You are authorized to vote any proxies received in connection with securities held in this Account as you deem best, but you may refer to me for decision such proxies as you, in your discretion, deem advisable.

4. You are directed to receive dividends, interests and other income on property held in the Account when due and made available for payment, and after deduction therefrom of all charges against said income, including your compensation, the balance of net income shall be disposed of as follows:

Frequency of Distribution:

☒ Quarterly☒ Hold subject to my order☐ Semi-Annually☐ Other

Method of Distribution:

5. Regarding the North Carolina Intangibles Tax:

☒ I desire for you to prepare, file and pay the N.C. Intangibles Tax for me, charging the tax to my account.

☐ I do not desire for you to prepare, file and pay the N.C. Intangibles Tax on my account as I will assume this responsibility.

Regarding the preparation of an annual tax letter showing, in summary form, for income tax purposes, all income, deductible expense, gains and losses on the purchase and sale of stocks, bonds, securities and other property held in my account:

☒ I desire the annual tax letter at an additional cost in accordance with your published fee schedule.

☐ I do not desire the annual tax letter.

6. An accounting showing income and principal transactions including a listing of assets and an account, shall be furnished to me annually.

7. For your services hereunder you are to receive reasonable compensation for all services rendered by you in the performance of your duties in accordance with your regularly adopted schedule of charges in effect and applicable at the time of the performance of such services. I acknowledge that your current schedule of charge has been given to me, and further acknowledge that the amount of your compensation shall be charged to the income of this account at the end of each accounting year or at regular intervals during each accounting year.

8. In the management of this Account you may employ such agents as you deem advisable, and you may incur such expenses of administration on my behalf as are usual for an agent to incur in connection with similar services, charging such expenses to this account.

9. You shall be liable only for losses caused by gross negligent management or actual wrongdoing, and in the exercise of your discretionary powers you shall not be limited by rules applying to trusts and similar fiduciary relationships. You have no responsibility for the acts of agents (other than regular employees) provided you use reasonable care in selecting them. It is understood and agreed that you shall be under no duty to take any action other than herein specified with respect to any securities or other property at any time deposited hereunder, unless specifically agreed to by you in writing or to appear in or defend any suit with respect thereto, unless requested by the undersigned in writing and indemnified to your satisfaction.

10. You may in your discretion, follow and rely on any instructions given orally by telephone, telegraph, cable or radio that you believe to be genuine. You shall endeavor to obtain written confirmation of such instructions.

11. I understand that any real estate held or managed by you for this Account will be covered under a supplementary agreement. I further understand that any duties concerning the collection of mortgage payments will be specifically outlined in the special instructions section below.

12. Special Instructions

13. This agreement may be terminated by either party by giving thirty (30) days notice in writing to the other party or by my death, provided that termination by reason of my death shall be effective only upon the receipt of actual knowledge thereof by one of your responsible officials, and shall not affect the validity of any prior actions. Your authority hereunder shall not terminate in the event of my disability.

14. Upon termination or upon receipt of an instruction from me or my attorney in fact withdrawing certain assets, the property to which such termination or instruction pertains shall be delivered to me or any authorized representative in a reasonable time, and you shall be entitled to receive compensation with respect to such property on the basis outlined above, prorated to the date on which you make final delivery.

Yours very truly,

Ch. Riden

(Social Security Number or Federal EIN)

RD Address *3717 N. Main Rd
Trenton, NC 28682*

Accepted *STELLA BASKIN* 19 *93*

First Union National Bank of North Carolina

by *Christine Dally*

Title *Vice President*

June 17, 2005

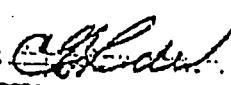
Wachovia Trust
Attn: Christopher L. Dally
401 S. Tryon Street, 2nd Floor
Charlotte, NC 28288

RE: Agency account [REDACTED]

Dear Chris:

Please accept this letter as my authority and direction to transfer the assets listed on the following page to a new agency account to be opened for my wife, Carolyn Sue Rider.

Sincerely,



Charles G. Rider

Assets to transfer to Agency Account for Carolyn Sue Rider:

Fixed Income	Market Value As of 6/14/05
64,652.67 Shares of the Evergreen NC Muni Bond Fund (#780)	\$ 674,327.31 ✓
8,904.72 Shares of the Evergreen International Bond Fund (#460)	\$ 100,000.00 ✓
2,679.53 Shares of the Evergreen Adj. Rate Bond Fund (#056)	\$ 25,000.00 ✓
Total Fixed Income	\$ 799,327.31

Equities

16,030.51 Shares of American Century Small Company Fund	\$ 165,274.51
6,837.07 Shares of Delaware Pooled Tr. Int'l Equity Fund	\$ 131,613.53
9,003.79 Shares of Evergreen Emerging Markets Growth Fund (#763)	\$ 135,326.97 ✓
✓ 700 Shares of Deere & Co.	\$ 46,942.00 ✓
✓ 700 Shares of Lockheed Martin (LMT)	\$ 45,122.00 ✓
✓ 1,200 Shares of Alcoa (AA)	\$ 32,724.00 ✓
✓ 1,200 Shares of Procter & Gamble (PG)	\$ 65,268.00 ✓
✓ 1,000 Shares of Comcast Holdings (CMCSA)	\$ 31,820.00 ✓
✓ 500 Shares of Nike (NKE)	\$ 43,275.00 ✓
✓ 800 Shares of Amgen (AMGN)	\$ 48,136.00 ✓
✓ 1,000 Shares of Wyeth (WYB)	\$ 43,630.00 ✓
✓ 700 Shares of BP Amoco (BP)	\$ 43,911.00 ✓
✓ 600 Shares of Royal Dutch (RD)	\$ 36,178.00 - 7/5
✓ 400 Shares of Dominion Resources (D)	\$ 29,268.00 ✓
✓ 1,500 Shares of Southern Co. (SO)	\$ 28,268.00 ✓
✓ 1,000 Shares of Verizon (VZ)	\$ 51,690.00 ✓
✓ 1,200 Shares of Bank America (BAC)	\$ 55,164.00 ✓
✓ 900 Shares of Merrill Lynch (MER)	\$ 49,716.00 ✓
✓ 1,800 Shares of U.S. Bancorp (USB)	\$ 52,596.00 ✓
✓ 1,300 Shares of First Data	\$ 52,650.00 ✓
Total Equities	\$1,188,673.01

Cash

Total Assets to Transfer

\$ 11,999.68

\$2,000,000.00

EXHIBIT "C"

RUN NOV 28 05
AT 3:16 PM
SYSTEM DATE 11/28/05

WACHOVIA BANK, N.A.
TRANSACTION DISPLAY
FROM 06/21/05 TO 11/28/05

PAGE 1

DATE/CUSIP TRANSACTION

PRINCIPAL CASH

INVESTMENTS

INCOME CASH

INVD INCOME TAX\ FEE INC DBC FND
CHKE

ACCOUNT XXXXXXXXXX RIDER C S AGV

06/21/05

013817101

7=FRR

1. RECEIVED 1,200 SHS ALCOA INC COM
RCVD FROM 1025246849

35,748.00

915

S

MV 33,600.00

031162100

7=FRR

3. RECEIVED 800 SHS AMGEN INC COM
RCVD FROM 1025246849

51,242.16

915

S

MV 48,912.00

055622104

7=FRR

5. RECEIVED 700 SHS BP PLC
SPONSORED ADR RCVD FROM
1025246849

36,219.00

915

S

MV 45,290.00

060505104

7=FRR

7. RECEIVED 1,200 SHS BANK AMER
CORP COM RCVD FROM 1023246849

46,555.00

915

S

MV 56,052.00

20030N101

7=FRR

12. RECEIVED 1,000 SHS COMCAST HDGS
INC CL A RCVD FROM 1025246849

32,318.00

915

S

MV 32,060.00

244199105

7=FRR

16. RECEIVED 700 SHS DEERE & CO COM
RCVD FROM 1025246849

43,568.00

915

S

MV 47,684.00

25746U109

7=FRR

20. RECEIVED 400 SHS DOMINION RES
INC VA NEW COM RCVD FROM
1025246849

24,696.00

915

S

MV 29,572.00

319961104

7=FRR

22. RECEIVED 1,300 SHS FIRST DATA
CORP COM RCVD FROM 1025246849

55,710.00

915

S

MV 52,663.00

539810109

7=FRR

27. RECEIVED 700 SHS LOCKHEED MARTIN
CORP COM RCVD FROM 1025246849

32,830.00

915

S

MV 43,318.00

590188108

7=FRR

29. RECEIVED 900 SHS MERRILL LYNCH
COM RCVD FROM 1025246849

46,367.01

915

S

MV 49,671.00

P.4-5

10:45:11

10:43:42

NOV-28-2005 16:31 FROM: WELLS MANAGEMENT

481

RUN NOV 28 05
AT 3:16 PM
SYSTEM DATE 11/28/05

WACHOVIA BANK, N.A.
TRANSACTION DISPLAY
FROM 06/21/05 TO 11/28/05

PAGE 2

DATE/CUSIP TRANSACTION

PRINCIPAL CASH

INVESTMENTS

INCOME CASH

INVD INCOME TAX\ PER INC DBC FND
CHK

ACCOUNT [REDACTED] RIDER C S AGY

06/21/05

654108103 7-FRR
33. RECEIVED 500 SHS MIKE INC CL B
COM RCVD FROM 1025246849

15,115.00

742718109 7-FRR
37. RECEIVED 1,200 SHS FROCTER &
GAMBLE CO COM RCVD FROM
1025246849

58,030.50

842587107 7-FRR
43. RECEIVED 1,500 SHS SOUTHERN CO
COM RCVD FROM 1025246849

42,480.00

902573104 7-FRR
45. RECEIVED 1,800 SHS US BANCORP
DEL COM NEW RCVD FROM 1025246849

50,698.00

921431104 7-FRR
49. RECEIVED 1,000 SHS VERIZON
COMMUNICATIONS COM RCVD FROM
1025246849

37,332.00

983024100 7-FRR
53. RECEIVED 1,000 SHS WYETH COM
RCVD FROM 1025246849

41,709.00

07/08/05

780257804 7-FRR
1. RECEIVED 600 SHS ROYAL DUTCH
PETE CO NY REGISTRY SH PAR N
OLDR 1.25 REC'D FROM A/C
1025246849

15,613.50

07/11/05

259908830 7-FRR
1. GIFT 8,904.72 UNITS EVERGREEN
INTERNATIONAL BOND FD CL 1 (FD
#460) FROM CHARLES RIDER AGY
ACCT #1025246849

101,190.76

915 5
MV 44,190.00

915 5
MV 65,100.00

915 5
MV 51,120.00

915 5
MV 52,776.00

915 5
MV 35,140.00

915 5
MV 44,050.00

915 5
MV 39,672.00

915 5
MV 37,417.64

10:043 842 5740

7843742242

11/28/05 13:16:11 NOV-28-2005

482

RUN NOV 28 05
AT 3:16 PM
SYSTEM DATE 11/28/05

WACHOVIA BANK, N.A.
TRANSACTION DISPLAY
FROM 06/21/05 TO 11/28/05

PAGE 3

DATE/CUSIP	TRANSACTION	PRINCIPAL CASH	INVESTMENTS	INCOME CASH	INVD INCOME TAX\	FEE INC DEC FND	CHK
ACCOUNT [REDACTED] RIDER C S AGY							
07/11/05							
299913202	7=FRR						
6. RECEIVED 2,679.53 UNITS							
EVERGREEN ADJUSTABLE RATE FD CL			25,080.40				
I (FD #056) FROM CHARLES RIDER							
AGY ACCT #1025246849					915	5	
					MV		24,973.22
300237567	7=FRR						
8. GIFT 64,652.666 UNITS EVERGREEN							
NORTH CAROLINA MUNICIPAL BOND FD			677,671.20				
CL I (FD #780) FROM CHARLES					915	5	
RIDER AGY ACCT #1025246849					MV		674,973.83
300237401	7=FRR						
13. GIFT 9,003.750245 UNITS							
EVERGREEN EMERGING MARKETS			110,003.82				
GROWTH FD CL I (FD #783) FROM					915	5	
CHARLES RIDER AGY ACCT					MV		137,667.95
#1025246849							
10/20/05							
085070832	7=FRR						
1. RECEIVED 16,030.505351 UNITS							
AMERICAN CENTURY SMALL COMPANY			140,006.10				
FD INS CL FROM 1025246849						5	
					MV		165,595.12
246248306	7=FRR						
5. RECEIVED 6,837.066381 UNITS							
DELAWARE POOLED TR INTL EQUITY			110,002.60				
PORTFOLIO FROM 1025246849						5	
					MV		138,587.34
CURRENT BALANCE		581.28	1,863,790.34	0.00			15,086.74

9/5/1

09/19/2008 10:10

20/20/2008

UNRECORDED WITHIN 10 DAYS OF 11/28/05

WILL OF
CHARLES GALEN RIDER

I, CHARLES GALEN RIDER, of Hilton Head, South Carolina, declare this to be my will and revoke all earlier wills and codicils.

My spouse is Carolyn S. Rider. I have two (2) children, Deborah R. McClure and Ginger C. Rider, living at the date of my execution of this will.

I have given to my Executor named below instructions for the burial of my body. Those instructions, although not a part of my will, express my desires, and I give my Executor full power and authority to carry out my wishes, or as he shall determine.

ARTICLE I
DISPOSITION OF ESTATE

A. Gift of Tangible Personal Property: All my tangible personal property that was not held by me solely for investment purposes, including, but not limited to, household furniture and furnishings, clothing, jewelry, collectibles and personal effects, but excluding automobiles not specifically described below and boats, shall be disposed of as follows:

1. I give specific items of tangible personal property as follows:

(a) To my spouse, Carolyn S. Rider, if my spouse survives me, the following of my automobiles: 2006 BMW, 2005 Bentley, 2004 Ferrari 360, 2000 Porsche Cabriolet, 2003 Lincoln Aviator, and 1997 Mercedes SL.

(b) To my brother, John A. Rider, if he survives me, my 1962 Studebaker GT Hawk and my 1977 Lincoln Mark V.

(c) To Ginger C. Rider, if she survives me, the master bedroom furniture located in the home at 3919 Mill Run Road, Riverwood, Terrell, North Carolina.

(d) To my grandson, Christian McClure, if he survives me, my Rolex watch.

(e) To my grandson, Austin McClure, if he survives me, my Rado watch.

2. I give all of the rest and remainder of such tangible personal property to my spouse, Carolyn S. Rider, if my spouse survives me. If my spouse does not survive me, I give all of the rest and remainder of such tangible personal property (i) to my children who survive me to be divided among them by my Executor in shares of as nearly equal value as may be practicable or (ii) to the survivor of my children if but one of them survives me.

3. The costs of safeguarding, insuring, packing, storing and delivering my tangible personal property to any beneficiary under this Paragraph shall be paid from my estate as expenses of administration.

4. I may leave a writing which, although not a part of my will, expresses my desires concerning the disposition of my tangible personal property. I request, but do not require, that my wishes as set forth in any such writing be observed.

B. National College Savings Program Accounts for Grandchildren. I intend to create a National College Savings Program Account under Section 529 of the Internal Revenue Code ("Section 529 Account") for each of my grandchildren, Christian McClure and Austin McClure, and my spouse's grandchildren, Jen Felcher and Tyler Heck. If, at my death, I have not established a Section 529 Account for each of said grandchildren, my Executor shall establish an Account for each of said grandchildren for whom an account has not been established. The several Accounts may be established under the National College Savings Program in one or more states, including North Carolina, South Carolina, and Georgia. I give to each of said Accounts the sum of One Hundred Thousand Dollars (\$100,000.00), reduced by the amount, if any, contributed by me to the Account prior to my death. In establishing a Section 529 Account for a grandchild, my Executor shall designate the grandchild as the Beneficiary. My Executor shall have all of the power and authority of the Participant, including the power to designate a Successor Participant for each Account. My Executor may direct that the designation of the Successor Participant shall take effect immediately. As used herein, the terms "Participant", "Successor Participant", "Account" and "Beneficiary" shall have the same meaning as those terms have in the Program description dated March 1, 2005 of the North Carolina's National College Savings Program.

C. Gift of Real Estate. I give and devise all of my interest in real property located in the State of Pennsylvania to my brother, John A. Rider, if he survives me, and if he does not survive me, to his descendants who survive me, if any, per stirpes.

D. Charitable Gifts. I give pecuniary amounts, as follows:

- (1) To Catawba College, Salisbury, North Carolina, the sum of \$10,000.00.
- (2) To Mercersburg Academy, Mercersburg, Pennsylvania, the sum of \$10,000.00.
- (3) To Victory Junction Gang Camp, Inc., 4500 Adam's Way, Randleman, North Carolina 27317, the sum of \$10,000.00.

E. Gift of Residuary Estate. I give my residuary estate, being all my real and personal property, wherever located, not otherwise effectively disposed of, but excluding any property over which I may have a power of appointment, to the acting Trustee of the Charles Galen Rider Revocable Trust dated February 3, 2003, of which I am Grantor and Trustee, to be added to and disposed of as part of the trusts created under the provisions of that trust instrument, including any

amendments to it in effect at the time of my death. Thomas M. Grady shall become successor trustee at my death. The trust instrument grants to the Trustee and any successor Trustee, with respect to real property of the trust, the power to sell, exchange, give options upon, partition, lease, or otherwise dispose of any property or interest therein which the trustee may hold from time to time, with or without order of court, at public or private sale or otherwise, upon such terms and conditions, including credit, and for such consideration as the Trustee shall deem advisable, and to transfer and convey the property or interest therein which is at the disposal of the Trustee, in fee simple absolute or otherwise, free of all trust; and the party dealing with the Trustee shall not be under a duty to follow the proceeds or other consideration received by the trustee from such sale or exchange.

ARTICLE II PAYMENT OF DEBTS, EXPENSES AND DEATH TAXES

A. Payment of Debts and Expenses. All my debts, health care expenses, funeral expenses and the administration expenses of my estate shall be paid out of my residuary estate. I authorize my Executor, in the Executor's discretion, to spend more than is otherwise allowed by law for a suitable gravestone and for perpetual care of the lot upon which my grave is located.

B. Payment of Death Taxes. All death taxes (other than death taxes which are paid from property passing outside of this will pursuant to the terms of the governing instrument) shall be paid out of my residuary estate as an administration expense and shall not be charged against or recovered from any recipient or beneficiary of the property taxed, except that my Executor shall recover as provided by law any death tax attributable to property over which I have a power of appointment or in which I have a qualifying income interest for life to the extent that any death tax recoverable by law is not otherwise paid out of such property.

C. Payment of Debts, Expenses and Death Taxes Out of Trust if Residuary Estate Insufficient. If my residuary estate is insufficient, either in whole or in part, to pay all of my debts, health care expenses, funeral expenses, the administration expenses of my estate and the death taxes payable out of my residuary estate, my Executor shall certify to the Trustee acting under the trust instrument referred to in Article I of this will the amount of the insufficiency which amount shall be paid out of the property of the trust as provided in that instrument.

ARTICLE III THE EXECUTOR

A. Appointment of Executor. I appoint Thomas M. Grady of Concord, North Carolina to be my Executor. If Thomas M. Grady fails or ceases to act for any reason, I appoint Wachovia Bank, National Association to be my Executor. If it becomes necessary for a representative of my estate to qualify in any jurisdiction other than the State of South Carolina in which my Executor shall be unable or unwilling to qualify as Executor, then my Executor shall have the right to appoint an individual or corporate representative of my estate in such jurisdiction. Any such representative is authorized and requested to appoint my domiciliary Executor as agent to handle the details of the administration of my estate in such other jurisdiction. Any such representative is requested to

complete the administration of my estate in such other jurisdiction as soon as possible and to transfer any property received in such administration to my domiciliary Executor.

B. Waiver of Bond and Court Supervision. No bond or other security shall be required from any Executor. Any Executor may act without qualifying before any court or filing with any court any inventory, accounting or other report relating to the administration of my estate unless otherwise required by law to do so.

C. Compensation of Executor. A corporate Executor may receive compensation for its services in accordance with its published schedule of fees in effect at the time the services under this will are rendered. An individual Executor may receive that compensation for such Executor's services which is allowed by law at the time the services under this will are rendered.

D. No Requirement of Successor Executor to Audit. No successor Executor shall be required to review or audit the accounts or transactions or otherwise inquire into any act or omission of any predecessor Executor or to assert any claim against any such predecessor or his or her estate and shall not be liable for any acts or omissions of any predecessor Executor.

E. Powers of Successor Executor. Any successor Executor may exercise any and all of the powers, authority, and discretion conferred upon the original Executor as fully and to the same extent as if such successor had originally been named Executor.

ARTICLE IV ADMINISTRATIVE POWERS OF THE EXECUTOR

In the management, care and distribution of my estate, I confer upon my Executor, and any successor Executor, full power and authority to do and perform all things reasonably necessary for the proper administration of my estate. In addition to all powers granted to my Executor by law, I grant to my Executor with respect to the property in my estate, regardless of whether title to any real property passing under this will is vested in my Executor, the discretionary powers set forth below to be exercised without court order for any purpose that my Executor may deem advisable:

A. Investments. The power to acquire and retain for any period of time as investments, without diversification as to kind or amount, any real or personal property, or interest in such property (including an undivided, temporary or remainder interest), whether or not originally a part of my estate or the trust or subsequently acquired, income or non-income producing, or located within or outside the United States, and including, but not limited to, notes, bonds, debentures, mortgages and other obligations, secured or unsecured, common and preferred stocks, mutual funds, common trust funds, general and limited partnership interests and leases;

B. Sale or Other Disposition of Property. The power to sell, exchange, convert, partition or abandon or otherwise dispose of, or grant options with respect to, any real or personal property, at public or private sale or otherwise, upon any terms and conditions, including credit, with or without security;

C. Management of Property. The power to take possession, custody, control and otherwise manage any real or personal property, including, but not limited to, the power (i) to protect, develop, subdivide and consolidate such property, (ii) to lease such property upon any terms and conditions, including options to renew or purchase and for any period or periods of time although such period or periods may extend beyond the administration of my estate and to modify, renew or extend any existing leases, (iii) to erect, repair, or make improvements to any building or other property and to remove existing structures, (iv) to establish and maintain reserves for the maintenance, protection and improvement of such property and for other purposes, (v) to initiate or continue farming, mining or timber operations on such property, (vi) to purchase and carry casualty and liability insurance, (vii) to grant or release easements with respect to such property, (viii) to dedicate or withdraw from dedication such property from public use, and (ix) to join with co-owners in exercising any such powers;

D. Business Interests. The power to continue to own, or to form initially, and operate any business interest, whether in the form of a proprietorship, corporation, general or limited partnership, joint venture or other organization, including, but not limited to, the power (i) to effect incorporation, dissolution or other change in the form of the organization of such business interest, (ii) to dispose of any part of such business interest or acquire the interest of others, (iii) to continue, enter into, modify or terminate any agreements relating to any such business interest, (iv) to invest capital or additional capital in or lend money to such business interest, and (v) to exercise powers concerning such business interest notwithstanding the fact that a conflict of interest as a fiduciary and as an individual may exist;

E. Borrowing Money. Subject to Paragraph M, the power (i) to borrow money for the benefit of my estate from my Executor individually or from others, upon any terms and conditions, (ii) to secure the payment of any amount so borrowed by mortgaging, pledging or otherwise encumbering any real or personal property, and (iii) to modify, renew or extend the time for payment of any obligation, secured or unsecured, payable by my estate or the trust, for any period or periods of time, and upon any terms and conditions;

F. Lending Money. Subject to Paragraph M, the power (i) to lend money to any person upon any terms and conditions, (ii) to modify, renew or extend the time for payment of any obligation, secured or unsecured, payable to my estate or the trust for any period or periods of time and upon any terms and conditions, (iii) to foreclose as an incident to the collection of any obligation, any deed of trust or other lien securing such obligation, and (iv) to bid on the property at such foreclosure sale or otherwise acquire the property without foreclosure and to retain the property so obtained;

G. Holding Property in Nominee Form. The power to register and hold any securities or other property in the name of a nominee or in any other form without disclosure of the fiduciary relationship, or to hold the same unregistered in such form that they will pass by delivery, but no such registration or holding shall relieve my Executor from responsibility for the acts of the nominee;

H. Exercise of Security Rights. With regard to securities, including stocks, bonds and any evidence of indebtedness, the power (i) to vote any such securities in person or by

special, limited or general proxy at any shareholders' meeting, with or without the power of substitution, (ii) to consent to or participate in any contract, lease, mortgage, foreclosure, voting trust, purchase, sale or other action by any corporation, company or association, (iii) to consent to, participate in, facilitate or implement any plan of incorporation, reincorporation, reorganization, consolidation, merger, liquidation, readjustment or other similar plan with respect to any such corporation, company or association, and (iv) to exercise all options, rights and privileges, including the exercise or sale of conversion, subscription or other rights of whatever nature pertaining to any such securities and to subscribe for additional securities or other property;

I. Banking Transactions. The power (i) to open, deposit cash or other assets to the credit of and maintain one or more checking, savings, cash, margin or other account in any banking, trust, brokerage or investment institution, including any corporate fiduciary, (ii) to exercise any right, option, or privilege pertaining to any such account, and (iii) to lease one or more safe deposit boxes for safekeeping of estate or trust assets;

J. Collection of Death Benefits. The power (i) to collect the proceeds of any life insurance policy or other contract providing for death benefits, including individual retirement accounts and qualified plans, and (ii) to elect any mode of payment under any such policy or contract;

K. Action on Claims. The power to compromise, settle, adjust or arbitrate, sue on, recover damages for, defend, abandon or otherwise deal with any claim or demand in favor of or against my estate or the trust upon any terms and conditions;

L. Employment of Advisors. The power to employ persons, firms and corporations to advise or assist in the proper administration of my estate or the trust or otherwise, including, but not limited to, agents, accountants, auditors, brokers, attorneys-at-law, attorneys-in-fact, custodians, investment counsel, rental agents, realtors, appraisers and tax specialists, and to charge the expense of such employment to my estate or the trust;

M. Dealing With Estates and Trusts. The power to sell any property to, or to purchase any property from, any trust created by me during life or under this will, or my estate, or the estate of my spouse or any descendant of mine, or any trust created by my spouse or any descendant of mine by will or during life, at the fair market value thereof, or to lend money to any such estate or trust at an adequate rate of interest and with adequate security, as determined by my Executor, even though the same person or corporation may be acting as an Executor or Trustee of any such other estate or trust and as my Executor hereunder;

N. Division or Distribution of Assets. Whenever authorized or directed to divide or distribute my estate, the power to make such division or distribution (including the satisfaction of any pecuniary sum) in cash or in specific property, real or personal, or an undivided interest in such property, or partly in cash and partly in specific property, without obligation to make pro rata distributions of specific assets and without liability for, or obligation to make compensating adjustments by reason of, disproportionate distributions of unrealized gain for income tax

purposes, except that any assets so distributed in kind shall be valued at their date of distribution values;

O. Credits or Charges to Income and Principal. The power to determine whether items should be charged or credited to income or principal, or be apportioned between income and principal, including without limitation the power to amortize or not to amortize any part or all of any premium or discount, to treat any part or all of any profit resulting from the sale or other disposition of any property, whether purchased at a premium or discount, as income or principal, including the proceeds of the sale of timber, minerals, and other natural resources, to treat any dividend or other distribution on any property as income or principal or apportion the same between income and principal, to charge any expenses against income or principal or apportion the same, and to provide or not to provide a reasonable reserve against depreciation, depletion, or obsolescence on any property subject to depreciation, depletion, or obsolescence. My Executor shall exercise my Executor's discretion in such manner as my Executor may reasonably deem equitable and just under all the circumstances and regardless of whether such items are charged or credited to or apportioned between income and principal as provided in the Principal and Income Act, provided that income on the property of my estate used to pay debts, taxes, expenses, and other such charges shall be treated as income of my estate and shall not be treated as part of the principal thereof;

P. Distributions to or for the Benefit of Beneficiaries. Whenever authorized or directed to distribute property to a beneficiary, whether or not under a legal disability, the power to distribute such property, unless otherwise directed, (i) directly to such beneficiary, including the transfer of property into such beneficiary's name as by depositing cash or registering securities in his or her name, (ii) to the custodian of such beneficiary under a uniform gifts or transfers to minors act, (iii) to the legal or natural guardian of the person or property of such beneficiary, or (iv) to any other person, firm or institution for the benefit of such beneficiary, and the receipt of any of the foregoing shall constitute a full acquittance of my Executor to the extent of the distribution so made;

Q. Retention and Acquisition of Bank Securities. The power (i) to retain for any period or periods of time securities which are securities of any corporate fiduciary acting under this will or of any corporation owning stock of the corporate fiduciary or of any subsidiary or affiliate of or successor to such corporation, and (ii) to acquire such securities by purchase, exchange or otherwise;

R. Renunciation and Disclaimer. With regard to my Executor, the power to renounce or disclaim in whole or in part the right to succession to any property or interest in property passing to me as heir, beneficiary under a will or contract, or otherwise;

S. Execution and Delivery of Documents. The power to execute and deliver, modify or rescind any and all instruments, under seal or otherwise, including, but not limited to, contracts, deeds, leases and notes, to carry out the administration of my estate;

T. Actions Regarding Environmental Law. The power (i) to inspect any estate property, including interests in sole proprietorships, partnerships or corporations and any assets

owned by any such business enterprise, to determine compliance with any environmental law affecting such property; (ii) to respond or take any other action necessary to prevent, abate or otherwise remedy any actual or threatened violation of any environmental law affecting any of such property, either before or after the initiation of an enforcement action by any governmental body; (iii) to settle or compromise at any time any and all claims against my estate which may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting estate property; (iv) to disclaim any power granted or implied by any document, statute, or rule of law which my Executor determines may cause my Executor to incur personal liability under any environmental law; (v) to decline to serve as a fiduciary under this will or, having undertaken to serve, resign at any time my Executor believes there is or may be a conflict between my Executor in my Executor's fiduciary capacity and in my Executor's individual capacity because of potential claims or liabilities which might be asserted against my Executor because of the type or condition of estate assets; (vi) to charge the cost of any inspection, renew, abatement, response, cleanup or remedial action against the income or principal of my estate. My Executor shall not be personally liable to any beneficiary or other party for any decrease in value of estate property by reason of my Executor's compliance with any environmental law, specifically including any reporting requirement under such law. Neither the acceptance by my Executor of property or a failure by my Executor to inspect property shall be deemed to create any inference as to whether or not there is or may be any liability under any environmental law with respect to such property. For purposes of this Paragraph, "environmental law" means any federal, state or local law, rule, regulation or ordinance relating to protection of the environment or human health, and "hazardous substance" means any substance defined as hazardous or toxic or otherwise regulated by any environmental law; and

U. Tax Election. The power to make any election permitted by any tax law, including the authority to deduct administration expenses against estate income, to select the estate tax valuation date, to file joint returns, to consent to have gifts made by my spouse treated as if made partially by me, to elect to qualify any property or interest in property as qualified terminable interest property, and to elect to allocate or not to allocate any exemption from the federal generation-skipping transfer tax to any property (including any property as to which a qualified terminable property election has been made by my Executor) as to which I am the transferor for purposes of the tax, regardless of whether such property is included in my probate estate, if the fiduciaries determine that such election is for the combined best interest of my estate or of such trust and the beneficiaries thereof, and shall be authorized to make, or not to make, such adjustments among the interested parties or shares as the fiduciaries may reasonably deem equitable and just under all circumstances. It is my desire that my Executor elect to claim such expenses as deductions on the particular tax returns which, in the opinion of my Executor, should result in the smallest combined taxes being paid, irrespective of whether such expenses shall be payable from income or corpus; and my Executor is directed not to make adjustments between income or principal, or between property interests passing to beneficiaries under my will which may be substantially affected as a result of any election under this Paragraph. It is my wish that such property interests as may be determined as a result of the election of my Executor under this Paragraph shall be the interest such beneficiary shall receive. The fiduciaries shall not be liable for any such election and no beneficiary shall have any claim against my Executor or my estate by reason of the exercise of the judgment of my Executor in this respect.

ARTICLE V
PRESUMPTION OF SURVIVORSHIP

If any beneficiary under this will and I should die under such circumstances that there is uncertainty as to which person predeceased the other, it shall be conclusively presumed for the purposes of this will that such beneficiary predeceased me, except that it shall be conclusively presumed that my spouse, Carolyn S. Rider, survived me.

ARTICLE VI
DEFINITIONS

A. "Executor." The term "Executor" or "Executors" includes any personal representative or representatives of my estate acting under this will such as a successor Executor or Executors and any Administrator with the will annexed. It also includes the term "Executrix" whenever the context requires it.

B. "Death Taxes." The term "death taxes" means inheritance, estate, supplemental estate, generation-skipping, transfer and succession taxes, and any interest and penalties on these taxes, imposed by reason of my death by any jurisdiction with respect to property passing under or outside of the provisions of this will or any codicil to it which is includible in my estate for the purpose of determining such tax, including, but not limited to, any tax on property includible under section 2041 (relating to powers of appointment), section 2042 (relating to life insurance proceeds), or section 2044 (relating to qualified terminable interest property) of the Internal Revenue Code of 1986, as amended, or any comparable provision of state law, but excluding, however, any tax imposed by section 2032A(c) (relating to qualified real property) or chapter 13 (relating to generation-skipping transfers) of the Code, or any comparable provision of state law, for which my estate is not liable.

C. "Descendants." The term "descendants" means lawful lineal blood descendants in any degree of the ancestor designated, but such term shall include any person adopted prior to the time that person reaches the age of eighteen (18) and the lawful lineal descendants of any such person, whether of the blood or by adoption prior to such age.

D. "Per stirpes." Whenever property is to be divided among an individual's then living descendants, "per stirpes," the property shall be divided into as many equal shares as there are children of the individual who are then living or who have died leaving descendants then living. A share allocated to a deceased child of the individual shall be divided further among such deceased child's then living descendants in the same manner.

I, CHARLES GALEN RIDER, the testator, sign my name to this instrument this 22 day of June 2005, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign it for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Charles Galen Rider
Charles Galen Rider

We, Samuel F. Davis Jr and SHERRI L. Johnston, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the Testator, and in the presence of each other, hereby signs this will as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Samuel F. Davis Jr
(Witness)
Sherri L. Johnston
(Witness)

Concord, NC
(Residence)
Charlotte, NC
(Residence)

The State of North Carolina

County of Mecklenburg

Subscribed, sworn to, and acknowledged before me by Charles Galen Rider, the Testator, and subscribed and sworn to before me by Samuel F. Davis, Jr. and Sherri L. Johnston, witnesses, this 22 day of June, 2005.

Elizabeth S. Criss (Seal)
Notary Public for said County and State

My Commission Expires: 10-07-08

RECORDED BY
BEAUFORT COUNTY
PROBATE COURT
05 AUG 25 1:42

RECORDED
BEAUFORT COUNTY PROBATE COURT
BEAUFORT, SOUTH CAROLINA
Case Number 2005-709 Date 8-25-05
Rose Ready 1st

FIRST AMENDMENT AND RESTATEMENT OF
REVOCABLE TRUST AGREEMENT
CHARLES GALEN RIDER, GRANTOR AND TRUSTEE

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012-700
COPY

**FIRST AMENDMENT AND RESTATEMENT
OF REVOCABLE TRUST AGREEMENT
OF CHARLES GALEN RIDER**

Under the terms of ARTICLE XX of the REVOCABLE TRUST AGREEMENT DATED February 3, 2003, entered into by me, CHARLES GALEN RIDER, as Grantor and Trustee, I reserved the right to amend or revoke that agreement by written instrument. I hereby amend that agreement by substituting for it this amending instrument, which sets forth all of the terms and conditions relating to the administration, investment, and distribution of the property now and from time to time hereafter held under that agreement and the income thereof after this date.

As Grantor, I am referred to in this trust instrument in the first person; and, as Trustee, I am referred to in this trust instrument as the "Trustee."

For convenience, this trust, as hereby amended and as hereafter may be amended from time to time, shall be known as the CHARLES GALEN RIDER REVOCABLE TRUST dated February 3, 2003, and it shall be sufficient that it be referred to as such in any deed, assignment, beneficiary designation, bequest, or devise.

**ARTICLE I
TRUST PROPERTY**

A. Existing Trust Property. The Trustee is now holding trust property under this trust. The Trustee agrees to hold the existing trust property, any additions thereto, and any investments and reinvestments thereof, under the terms of this trust instrument.

B. Additions to Trust Property. With the consent of the Trustee, I or any other person may make additions to the principal of any trust under this trust instrument by lifetime gift, will, designation of the Trustee as beneficiary or otherwise.

**ARTICLE II
DISPOSITION OF TRUST PROPERTY
DURING GRANTOR'S LIFETIME**

During my lifetime the trust property shall be disposed of as follows:

A. Distribution for Support. The Trustee shall distribute all or any portion of the net income and principal of the trust to either or both of my spouse, Carolyn S. Rider, and me, in such amounts and at such times as the Trustee determines to be necessary for my support and my spouse's support in reasonable comfort and in our accustomed manner of living after taking into consideration other financial resources available.

B. Distribution as Grantor Directs. In addition, the Trustee shall distribute the net income and principal as I may direct from time to time by instructions signed by me and delivered to the Trustee, except that during such periods as I am incapacitated the Trustee, in the Trustee's discretion, may decline to follow any such instructions.

ARTICLE III
ALLOCATION OF TRUST PROPERTY
UPON GRANTOR'S DEATH

Upon my death the Trustee shall allocate the trust property (other than property that is payable to the Trustee as a result of my death and directed to be disposed of as a part of a specific trust created under this trust instrument) which remains after providing for payment of (i) all expenses of administering such trust property that are chargeable to principal after my death and until allocation is completed and (ii) all amounts to be paid under the Article entitled "Bequests, Debts, expenses and Taxes of Grantor's Estate," as follows:

A. Allocation of Property if Spouse Survives Grantor. If my spouse, Carolyn S. Rider, survives me,

1. The Trustee shall set aside as a separate share referred to as the "Family Share" a pecuniary sum equal to the greater of (a) Two Million Dollars (\$2,000,000.00) or (b) the largest amount, if any, that can pass under this Article free of federal estate tax in the federal estate tax proceeding relating to my estate by reason of (i) the applicable credit amount and (ii) the state death tax credit to the extent that use of the state death tax credit does not require an increase in state death taxes paid which are computed by reference to the state death tax credit. In determining the largest amount that can pass free of federal estate tax the Trustee shall take account of (i) the value of property passing to beneficiaries in any manner other than pursuant to this Article which is includible in my gross estate but which does not qualify for the marital or charitable deduction in computing my federal estate tax, and (ii) all charges to principal that are not allowed as deductions in computing such tax. The values as finally determined for federal estate tax purposes shall be used in ascertaining the amount of this pecuniary sum. Any assets distributed in kind in satisfaction of this pecuniary sum shall be valued at their date of distribution values. The Family Share shall be disposed of for the benefit of my descendants in accordance with the provisions of the Article entitled "Trusts for Children."

2. The Trustee shall distribute the sum of One Million Dollars (\$1,000,000.00) to my spouse, Carolyn S. Rider, in fee simple, as soon as practical after my death.

3. The balance of the trust property, if any, shall be disposed of as follows:

a. The Trustee shall hold the balance of the trust property in a separate trust referred to as the "Spouse's Trust" and dispose of it for the benefit of my spouse in accordance with the provisions of the Article entitled "Spouse's Trust."

b. Only assets which qualify for the marital deduction in the federal estate tax proceeding relating to my estate shall be allocated to the Spouse's Trust.

c. If my spouse disclaims, in whole or in part, my spouse's interest in the property allocated to the Spouse's Trust, the Trustee shall add the disclaimed property to the property allocated to the Family Share and dispose of it for the benefit of my descendants as if an original part of such property.

d. It is my intent that if the personal representative of my estate elects to treat all or any part of the property allocated to the Spouse's Trust as qualified terminable interest property, such property shall qualify for the marital deduction in the federal estate-tax proceeding relating to my estate. Therefore, all questions relating to the Spouse's Trust or allocation of property to it shall be resolved accordingly. No powers and discretions shall be exercised except in a manner consistent with my intent.

B. Allocation of Property if Spouse Does Not Survive Grantor. If my spouse, Carolyn Sue Rider, does not survive me, then

1. If a descendant of mine survives me, all of the trust property shall be held in trust and disposed of for the benefit of my children and their descendants in accordance with the provisions of the Article entitled "Trusts for Children."

2. If no descendant of mine survives me, all of the trust property shall be disposed of for the benefit of the contingent beneficiaries in accordance with the provisions of the Article entitled "Contingent Beneficiaries."

ARTICLE IV SPOUSE'S TRUST

The trust property directed to be held in the Spouse's Trust in accordance with the provisions of this Article shall be disposed of as follows:

A. Distribution During Spouse's Lifetime. During the lifetime of my spouse, Carolyn S. Rider,

1. The Trustee shall distribute to my spouse annually the greater of (a) the net income of the trust or (b) Thirty Five Thousand Dollars (\$35,000.00) per month. I direct that the Trustee shall distribute to my spouse the sum of \$35,000.00 monthly and, at the end of each calendar quarter, the amount, if any, by which the net income of the trust for that calendar quarter exceeds the monthly distributions. It is my intention that the Trustee shall so manage the trust that there shall be produced for my spouse such annual distributable income as is consistent with the value of the trust property and with its preservation. In furtherance of this express intention, any unproductive property in the trust shall be converted by the Trustee within a reasonable time upon receipt of signed instructions from my spouse to this effect.

2. The Trustee shall distribute all or any portion of the principal of the trust to my spouse in such amounts and at such times as the Trustee determines to be necessary for my spouse's support in reasonable comfort and in my spouse's accustomed manner of living after taking into consideration other financial resources available to my spouse, except that such distributions shall be made first from the portion of the trust, if any, which qualified for the marital deduction in the federal estate tax proceeding relating to my estate.

3. If the personal representative of my estate elects to qualify only a portion of the property passing to the Spouse's Trust for the federal estate tax marital deduction, the Trustee, in the Trustee's discretion, may at any time separate all of the property that would be includible in my spouse's gross estate for federal estate tax purposes if my spouse died

immediately before such separation from the property not so includible and hold such properties in two separate Spouse's Trusts each of which shall be disposed of in accordance with the provisions of this Article.

4. The Spouse's Trust is intended to qualify as a "qualified subchapter S trust" as referred to in section 1361, as amended, and is to be interpreted and administered in such a manner as to qualify as an eligible shareholder of an S corporation under the provisions of such section. I request my spouse, with the assistance of the Trustee, to make the necessary election to treat the Spouse's Trust as a qualified subchapter S trust with respect to any S corporation shares held in the trust. If at any time my spouse is taxed with all or any part of the taxable income of the S corporation the stock of which is an asset of this trust, then when my spouse does not actually receive such income, the Trustee may distribute to my spouse income or principal in an amount sufficient to enable my spouse to pay any federal or state income taxes directly attributable to such income, as determined by the Trustee in the Trustee's discretion.

B. Residential Property. It is my intention that the residential property consisting of the residence having an address of 39 Castlebridge Lane, Hilton Head Island, South Carolina 29928 and two adjoining vacant lots, which have addresses of 37 and 41 Castlebridge Lane, which I now own and occupy with my spouse, Carolyn S. Rider, ("Property"), shall be allocated to the Spouse's Trust and held in the trust so long as my spouse, Carolyn S. Rider, requests that such Property be held as a residence. My spouse shall have full use and enjoyment of the Property as her residence rent free and shall have the same right of use of the Property as a life tenant would have, including the right to rent the same and to receive the rental income. It is my intent that my spouse own an equivalent "life estate" interest in the Property, coupled with the authority of my spouse to direct the Trustee to sell the Property and to purchase another residence (which my spouse may select) to be held by the Trustee under the terms provided in this paragraph B.

1. Sales Proceeds and Reinvestment. Upon the sale of the Property held hereunder, my spouse shall have two (2) years from the date of the sale of the Property to direct the Trustee to reinvest the proceeds into another residence of my spouse's choosing, in accordance with the following provisions:

a. Any residence selected must be owned in fee simple by the Trust, and may not be a lesser interest, such as a life estate in an assisted living facility. If my spouse does not select a qualifying property within said two-year period or if the cost of the replacement residence is less than the proceeds from the sale, the proceeds from the sale not reinvested shall be held in the same manner as the other assets of the Spouse's Trust and disposed of in accordance with the provisions of the Article entitled, "Spouse's Trust."

b. During the term after the sale of the Property, but before the reinvestment of the proceeds in a replacement residence, the Trustee shall distribute to my spouse the net income earned on the investment of the proceeds with the other net income of the Spouse's Trust in accordance with the provisions of subparagraph 1 of paragraph A of this Article. It is my intention that the Trustee shall so manage the proceeds that there shall be produced for my spouse such annual distributable income as is consistent with the value of the proceeds and with its preservation. In furtherance of this express intention, any unproductive

property in the trust shall be converted by the Trustee within a reasonable time upon receipt of signed instructions from my spouse to this effect.

c. My spouse shall enjoy a subsequent right to direct the Trustee to sell any replacement residence and reinvest it in a different replacement residence under the same terms provided for in this paragraph B.

2. *Distribution upon Spouse's Death.* Upon the death of my spouse, Carolyn Sue Rider, the Trustee shall administer and distribute the Property and the income from the Property in the same manner as the other assets of the Spouse's Trust.

C. Distribution upon Spouse's Death. Upon the death of my spouse, Carolyn Sue Rider,

1. The Trustee shall distribute to my spouse's estate all the accrued or undistributed income for the period between the last income distribution date and the date of the death of my spouse.

2. The remaining trust property shall be disposed of as follows:

a. If the value of any of the trust property is included in my spouse's gross estate for federal estate tax or state death tax purposes; then unless my spouse provides otherwise in my spouse's will by making specific reference to this subparagraph 2, the Trustee shall pay to the personal representative of my spouse's estate or to the appropriate taxing authorities the amount by which the federal estate tax or state death tax imposed on my spouse's estate exceeds the federal estate tax or state death tax that would have been payable if the value of this property had not been included in my spouse's gross estate. For purposes of the foregoing sentence the term "federal estate tax" or "state death tax" shall include any interest and penalties on such tax. In payment of any such federal estate tax payable by the Trustee, the Trustee shall redeem or transfer to my spouse's estate for redemption by it all bonds issued by the United States Treasury Department which may be redeemed at their par value plus accrued interest in payment of such tax.

b. The Trustee shall distribute the balance of the trust property, as follows:

(1) If a descendant of mine survives my spouse, the trust property not so appointed shall be held in trust and disposed of for the benefit of my children and their descendants in accordance with the provisions of the Article entitled "Trusts for Children."

(2) If no descendant of mine survives my spouse, such trust property shall be disposed of for the benefit of my descendants and other contingent beneficiaries in accordance with the provisions of the Article entitled "Contingent Beneficiaries."

ARTICLE V
TRUSTS FOR CHILDREN

When at my death or at the death of my spouse, Carolyn S. Rider, trust property is directed to be held in trust for the benefit of my children and their descendants in accordance with the provisions of this Article, such trust property shall be disposed of as follows:

A. Separation of Children's GST Exempt Property from Children's GST Nonexempt Property.

1. At my death, the Trustee shall set allocate the trust property, which is directed to be held in trust in accordance with the provisions of this Article, into two parts, referred to as the "GST Exempt Property" and the "GST Nonexempt Property." The GST Exempt Property shall be a pecuniary sum equal to the smaller of (i) my available generation-skipping tax exemption or (ii) one-half in value of the trust property. The values as finally determined for federal estate tax purposes shall be used in ascertaining the amount of this pecuniary sum. Any assets distributed in kind in satisfaction of this pecuniary sum shall be valued at their date of distribution values. The balance of the trust property shall be allocated to the GST Nonexempt Property. The GST Exempt Property shall be held in trust for the benefit of my descendants in accordance with the provisions of the Article entitled, "Trust for Descendants." The Trustee shall divide the GST Nonexempt Property into as many equal shares as necessary so that one such share shall be named for my daughter, Ginger C. Rider, if she survives me or if she predeceases me and has left descendants then living, and one such equal share shall be named for my daughter, Deborah R. McClure, if she survives me or if she predeceases me and has left descendants then living. A share of the GST Nonexempt Property named for a deceased child of mine shall be distributed to child's descendants, per stirpes, except that the property otherwise distributable to a grandchild of mine, which shall mean a child of a deceased child of mine, shall be held in a separate trust for the benefit of such grandchild in accordance with the provisions of the Article entitled, "Trusts for Grandchildren." A share of the GST Nonexempt Property named for a living child of mine shall be held as a separate trust named for the child to be disposed of for the benefit of such child in accordance with the provisions of Paragraph B of this Article.

2. Upon the death of my spouse, Carolyn S. Rider, if she survives me,

a. The Trustee shall set aside as "GST Exempt Property" (i) that portion of the Spouse's Trust as to which the personal representative of the estate of my spouse makes an election as authorized by section 2632 of the Code to allocate all or a portion of my spouse's generation-skipping transfer tax exemption and (ii) any other property directed to be made a part of the GST Exempt Property, but only if such property will not cause the inclusion ratio of any trust containing such property to change to a number greater than zero. For the purposes of subparagraph (i), all computations shall be made on the basis of property values as finally determined by the personal representative of the estate of my spouse for federal estate tax purposes and the Trustee, in dividing the amount in the Spouse's Trust pursuant to this provision and satisfying the allocation of such amount, if any, shall distribute property having an aggregate fair market value at the date or dates of distribution equal to the amount of this allocation, and

this allocation shall carry with it its proportionate part of the income of the trust estate from the date of my spouse's death to such date or dates of distribution.

b. The balance of the trust property shall be referred to as the "GST Nonexempt Property."

c. The GST Exempt Property shall be held in trust or added to the separate trust created at my death, if any, for the benefit of my descendants in accordance with the provisions of the Article entitled, "Trust for Descendants."

d. The Trustee shall allocate the GST Nonexempt Property into as many equal shares as may be necessary so that one share of each may be named for each child of mine who is then living and one share named for each deceased child of mine who has left descendants then living. A share of GST Nonexempt Property named for a living child of mine shall be held in a separate trust or added to the separate trust named for that child and created at my death, if any, for the benefit of such child in accordance with the provisions of Paragraph B of this Article. A share of GST Nonexempt Property named for a deceased child of mine shall be distributed to the then living descendants of such deceased child, per stirpes.

B. Separate Trust for Each Child. The trust property directed to be held in a separate trust named for a living child of mine shall be disposed of as follows:

1. During the lifetime of the child for whom the trust is named, the Trustee shall distribute all of the current net income to the child for whom the trust is named and may distribute all or any portion of the principal of the trust to any one or more of the group consisting of the child and the child's descendants in such amounts and at such times as the Trustee, in the Trustee's discretion, may determine.

2. Upon the death of the child,

a. The Trustee shall distribute all or so much of the then remaining principal and undistributed income of the trust named for the child to such one or more appointees among my descendants and the creditors of the child's estate, and in such manner and proportions, either outright or in trust, as the child may have appointed her last will making specific reference to this general testamentary power of appointment.

b. If any part of the then remaining principal and undistributed income of the trust has not been effectively appointed by the child in accordance with such child's general testamentary power of appointment, the trust property not so appointed shall be distributed to the then living descendants of the deceased child, per stirpes, and if no descendants of the deceased child are then living, such trust property shall be distributed to my then living descendants, per stirpes; provided, however, any of such property that is distributable to a grandchild of mine shall be held in trust for the benefit of such grandchild of mine and his or her descendants in accordance with the provisions of the Article entitled, "Trusts for Grandchildren." If no descendants of mine are then living, such trust property shall be disposed of for the benefit of the other contingent beneficiaries in accordance with the provisions of the Article entitled "Contingent Beneficiaries."

ARTICLE VI
TRUSTS FOR GRANDCHILDREN

When at my death, trust property is directed to be held in trust for the benefit of a grandchild of mine and his or her descendants in accordance with the provisions of this Article, such trust property shall be held in a separate trust for the benefit of such grandchild and disposed of as follows:

A. During the lifetime of the grandchild,

1. The Trustee may distribute all or any portion of the net income and principal of the trust to any one or more of the group consisting of the grandchild and the grandchild's descendants in such amounts and at such times as the Trustee, in the Trustee's discretion, may determine.

2. In addition, after the grandchild reaches the age of twenty-five (25), the Trustee shall distribute all or any portion of the principal of the trust to the grandchild and such other appointees, and in such manner and proportions, either outright or in trust, as the grandchild may appoint from time to time by instructions signed by the grandchild and delivered to the Trustee after the right to appoint has accrued, but the aggregate amount so appointed shall not exceed one-third ($1/3$) of the principal of the trust before the grandchild reaches the age of thirty (30), nor two-thirds ($2/3$) of the principal of the trust before the grandchild reaches the age of thirty-five (35). However, during such periods as the grandchild is incapacitated the Trustee, in the Trustee's discretion, may decline to follow any such instructions. The amount subject to appointment at any one time shall be based upon the value of the principal of the trust as of the date such appointment is made plus all previous appointments, if any, valued as of the date of each such appointment.

B. Upon the death of the grandchild,

1. So much of the then remaining principal and undistributed income of the trust as could have been appointed by the grandchild at the date of the grandchild's death in accordance with such grandchild's inter vivos power of appointment, but was not so appointed prior to the grandchild's death, shall be distributed to such appointees, including the grandchild's estate, and in such manner and proportions, either outright or in trust, as the grandchild may have appointed by his or her last will making specific reference to this general testamentary power of appointment.

2. So much of the then remaining principal and undistributed income of the trust as could not have been appointed by the grandchild at the date of the grandchild's death in accordance with such grandchild's inter vivos power of appointment shall be distributed to such appointees among my descendants (other than the grandchild) and the spouses of my descendants (including former spouses of deceased descendants), and in such manner and proportions, either outright or in trust, as the grandchild may have appointed by his or her last will making specific reference to this special testamentary power of appointment.

3. If any part of the then remaining principal and undistributed income of the trust has not been effectively appointed by the grandchild in accordance with such grandchild's general or special testamentary power of appointment, the trust property not so appointed shall be distributed to the then living descendants of the deceased grandchild, per stirpes, and if no descendants of the deceased grandchild are then living, such trust property shall be disposed of for the benefit of my descendants and the other contingent beneficiaries in accordance with the provisions of the Article entitled "Contingent Beneficiaries."

ARTICLE VII TRUST FOR DESCENDANTS

When trust property is directed to be disposed of for the benefit of my descendants in accordance with the provisions of this Article, such trust property shall be disposed of as follows:

A. Distributions During Trust Term. The Trustee may distribute all or any portion of the net income and principal of the trust to any one or more of the group consisting of my descendants in such amounts and at such times as the Trustee, in the Trustee's discretion, may determine.

B. Termination of Trust. This trust shall terminate upon the death of the last to die of my children and grandchildren. Upon such termination, the then remaining principal and undistributed income of the trust shall be distributed to my then living descendants, per stirpes, if any, or, if none, such trust property shall be disposed of for the benefit of my descendants and the other contingent beneficiaries in accordance with the provisions of the Article entitled "Contingent Beneficiaries."

ARTICLE VIII CONTINGENT BENEFICIARIES

When trust property is directed to be disposed of for the benefit of my descendants and the other contingent beneficiaries in accordance with the provisions of this Article, such trust property shall be disposed of as follows:

A. Distribution if Descendants of Grantor are Living. If descendants of mine are then living, the Trustee shall distribute such trust property to such descendants, per stirpes, except that with respect to any share distributable to a child of mine, the Trustee, in the Trustee's discretion, may (i) add such share to the principal of any such trust and administer such share as a part of such trust, or (ii) hold such share in a separate trust and dispose of it for the benefit of such child in accordance with the provisions of the Article entitled "Trusts for Children."

B. Distribution if No Descendants of Grantor are Living. If no descendants of mine are then living, the Trustee shall distribute such trust property to the person or persons who would have been entitled to receive my personal property under the laws providing for the distribution of property in case of intestacy had I died intestate at that time the owner of the trust property, unmarried and domiciled in North Carolina.

ARTICLE IX
TRUST FOR BENEFICIARY UNDER AGE TWENTY-ONE

If in accordance with the provisions of this trust instrument any trust property becomes distributable outright to a beneficiary who is less than twenty-one (21) years of age, equitable title to such property shall be indefeasibly vested in such beneficiary, but the Trustee is authorized, in the Trustee's discretion, to retain such property and administer it in a separate trust for the benefit of such beneficiary as follows:

A. Distribution Until Beneficiary Reaches Age Twenty-One or Dies. Until the beneficiary reaches the age of twenty-one (21) or sooner dies, the Trustee may distribute all or any portion of the net income and principal of the trust to the beneficiary in such amounts and at such times as the Trustee, in the Trustee's discretion, may determine.

B. Distribution When Beneficiary Reaches Age Twenty-One or Dies. When the beneficiary reaches the age of twenty-one (21) the Trustee shall distribute the then remaining principal and undistributed income to the beneficiary. If the beneficiary dies before reaching such age, then upon the death of the beneficiary, the Trustee shall distribute the then remaining principal and undistributed income to the estate of the beneficiary.

ARTICLE X
SPECIAL TERMINATION OF TRUSTS

Notwithstanding any directions given the Trustee as to the discretionary distribution of income and principal under the terms of this trust instrument:

A. Termination of Small Trusts. If after my death the principal and undistributed income of any trust shall be less than an amount which the Trustee deems practical for continuance of the trust, the Trustee may, in the Trustee's discretion, terminate the trust by distributing all of the then remaining principal and undistributed income to my spouse, Carolyn S. Rider, if my spouse is then living and, if not, to the person or persons to whom the income payments of the trust could be made, such persons, if there be more than one who are descendants of mine, to take per stirpes.

B. Termination Within Period of Rule Against Perpetuities. Any trust under this trust instrument in which equitable title to the property is not indefeasibly vested in the beneficiary shall terminate twenty-one (21) years after the date of the death of the survivor of me, my spouse, Carolyn S. Rider, and all of my descendants who are alive on (i) the date of my death or (ii) such earlier date when I no longer have the right to revoke this trust instrument. Upon such termination the Trustee shall distribute the then remaining principal and undistributed income of such trust to the person or persons to whom the income payments could be made under such trust immediately prior to its termination, such persons, if there be more than one who are descendants of mine, to take per stirpes.

ARTICLE XI
PROVISIONS RELATING TO DISCRETION OF TRUSTEE

A. Considerations in Making Discretionary Distributions. In deciding whether to make distributions of the net income or principal of any trust which are within the discretion of the Trustee and not limited by a standard, the Trustee should consider the following matters which are not intended to limit or direct the exercise of such discretion in any way:

1. During my lifetime I expect that the Trustee will make discretionary distributions only when I am incapacitated although I recognize that circumstances may arise which may make such distributions appropriate even though I am not incapacitated.

2. Both during my lifetime and after my death the Trustee's discretion should be exercised for such purposes as the Trustee shall deem reasonable and appropriate for the welfare, enjoyment and education (including college and post-graduate) of the beneficiaries.

3. The Trustee may take into consideration other financial resources of the beneficiaries but is not required to do so.

4. Whenever there is more than one beneficiary of a trust, distributions of income and principal may be made by the Trustee without obligation to equalize such distributions among the beneficiaries.

5. After my death my spouse during my spouse's lifetime and thereafter my children should be deemed the primary beneficiaries of the trust and their welfare, enjoyment and education should be regarded as paramount to the conservation of the trust for the benefit of succeeding beneficiaries or remaindermen.

6. Whenever the Trustee has the authority to make discretionary distributions to any child of mine, the Trustee may, in the Trustee's discretion, treat any distributions to a child for such purposes as building or buying a home or starting in a business or profession as advancements to be charged in any manner which the Trustee deems equitable against any amount the child is subsequently entitled to withdraw or against the share of the child or the descendants of the child upon division or distribution of the trust into separate shares.

7. The Trustee should consider making distributions which, in the Trustee's opinion, may result in overall tax savings. For example:

a. After my death the Trustee should consider making distributions to a beneficiary who is a non-skip person from a trust which has an inclusion ratio for federal generation-skipping tax purposes of more than zero when, in the Trustee's opinion, overall transfer taxes may be saved by making such distributions. The Trustee should also consider exhausting the assets of such a trust by making distributions to such a beneficiary before making any discretionary distributions to the same beneficiary from a trust which has an inclusion ratio of zero.

b. If one or more trusts are established under this trust instrument after my death all or part of which qualified for the marital deduction in the federal estate tax proceeding relating to my estate, a "marital deduction trust," then

(1) In order to save death taxes in my spouse's estate the Trustee should consider exhausting the assets of such trust before making any discretionary distributions to my spouse from any other trust.

(2) In order to save generation-skipping transfer taxes, the Trustee should consider exhausting the assets of any marital deduction trust which has the highest inclusion ratio for federal generation-skipping tax purposes before making any discretionary distributions to my spouse from any marital deduction trust with a lower inclusion ratio.

c. During my lifetime if I am incapacitated the Trustee should consider making distributions (i) to my attorney-in-fact, if any, to allow such attorney-in-fact to institute a gift program, or to continue any gift program which I may have instituted, or (ii) to my descendants, to make use of federal and state gift tax exclusions, exemptions, and credits, when such distributions, in the Trustee's opinion, would likely save death taxes in my estate or my spouse's estate.

B. Discretionary Accumulation of Income. To the extent that the Trustee is not required to make distributions of the net income of a trust, the Trustee is authorized, in the Trustee's discretion, (i) to accumulate such net income and at any time thereafter to allocate and distribute all or any portion of such net income to the beneficiaries eligible to receive the same in such proportions as the Trustee may determine, or (ii) to accumulate income without allocation and at any time thereafter to add such income so accumulated to the principal of the trust.

C. Protective Trust Provisions. No beneficiary of any trust created under this instrument shall have the power to anticipate, encumber, or transfer any interest in the trust estate in any manner. No part of any trust estate shall be liable for or charged with any debts, contracts, liabilities, or torts of a beneficiary or be subject to seizure or other process by any creditor of a beneficiary. Notwithstanding the foregoing, if any beneficiary of any trust created under this instrument (except my spouse to the extent he or she is a beneficiary of any such trust whose value absent this provision would be allowable as a marital deduction in the estate tax proceeding relating to my death) shall attempt to anticipate, pledge, assign, sell, transfer, alienate or encumber his or her interest in the income or principal of such trust; or if any creditor or claimant shall attempt to subject such interest to the payment of any debt, liability or obligation of any such beneficiary; or if such beneficiary shall be subject to bankruptcy, insolvency or receivership proceedings, thereupon any absolute right of such beneficiary to income or principal from such trust shall cease. Thereafter, and until such time as the Trustee is able to distribute such property to such beneficiary, the Trustee may accumulate trust income, if any, to which such beneficiary would otherwise be entitled or the Trustee may distribute the same to the other beneficiaries, if any, of the trust entitled to receive such income and shall be held harmless in making such discretionary distributions. In no event shall the Trustee be required or compelled to pay any income or principal to or for the benefit of such beneficiary, and, upon the death of

such beneficiary, any property held or accumulated in his or her trust shall be distributed in accordance with the provisions provided for principal dispositions at his or her death.

D. Limitations on Trustee in Exercising Discretion. Notwithstanding any other provision of this trust instrument, a Trustee shall not possess or participate in the exercise of any discretionary power granted to a Trustee to make distributions of net income or principal of a trust (i) to himself or herself or to any other person or institution which has the effect of discharging such Trustee's individual legal obligation or (ii) which would constitute a gift for federal gift tax purposes by such Trustee. The foregoing limitation is not intended to prohibit a Trustee who is a beneficiary of a trust from possessing or participating in the exercise of a power to distribute property to such Trustee pursuant to an ascertainable standard. The purpose of this provision is to prevent a Trustee from being taxed because of such a power and to avoid the appointment of a special fiduciary under North Carolina law, if possible, and it should be so construed.

ARTICLE XII PAYMENT OF BEQUESTS, DEBTS, EXPENSES AND TAXES OF GRANTOR'S ESTATE

Notwithstanding the directions previously given as to the disposition of the trust property after my death:

A. Redemption of U.S. Bonds in Payment of Federal Estate Tax of Grantor's Estate. The Trustee, in payment of the federal estate tax imposed by reason of my death, shall redeem or transfer to my estate for redemption by it all bonds issued by the United States Treasury Department which may be redeemed at their par value plus accrued interest in payment of such tax.

B. Payment of Bequests, Debts, Expenses and Taxes Certified by Personal Representative of Grantor's Estate. The Trustee shall pay those amounts to my estate or to the persons or authorities eligible to receive the same which are certified by the personal representative of my estate as being required to pay (i) any bequest in my will, (ii) any of my debts, health care expenses, funeral expenses and administration expenses of my estate, except that the Trustee, in the Trustee's discretion, may decline to pay any of my debts or expenses from life insurance proceeds which are exempt from creditors' claims, and (iii) any death taxes imposed by reason of my death, including any inheritance, estate, generation-skipping, transfer or succession taxes and any interest and penalties in connection with such taxes. Such amounts shall be paid first from the trust property which is subject to allocation under Article III. So long as other property is available, such amounts shall not be paid from any property which would otherwise be exempt from death taxes imposed by reason of my death.

ARTICLE XIII ADMINISTRATIVE POWERS OF TRUSTEE

In the management, care and distribution of each trust created hereunder, I confer upon the Trustee of such trust, and any successor Trustee, all of the powers set forth in North Carolina General Statutes § 32-27, which are hereby incorporated by reference as they exist at the date of

my execution of this trust instrument, except for North Carolina General Statutes § 32-27(29) which is expressly not incorporated herein. These powers are granted to the Trustee pursuant to North Carolina General Statutes § 32-26, and shall be in addition to, and not in limitation of, the provisions of North Carolina General Statutes § 36A-136.

In addition to the powers incorporated above, I grant to the Trustee the discretionary powers set forth below to be exercised without court order for any purpose that the Trustee may deem advisable:

A. Distributions to or for the Benefit of Beneficiaries. Whenever authorized or directed to distribute property to a beneficiary, whether or not under a legal disability, the power to distribute such property, unless otherwise directed, (i) directly to such beneficiary, including the transfer of property into such beneficiary's name as by depositing cash or registering securities in his or her name, (ii) to the custodian of such beneficiary under a uniform gifts or transfers to minors act, (iii) to the legal or natural guardian of the person or property of such beneficiary, or (iv) to any other person, firm or institution for the benefit of such beneficiary, and the receipt of any of the foregoing shall constitute a full acquittance of the Trustee to the extent of the distribution so made;

B. Dealing With Estates and Trusts. The power to sell any property to, or to purchase any property from, any other trust created by me during life or under my will, or my estate, or the estate of my spouse or any descendant of mine, or any trust created by my spouse or any descendant of mine by will or during life, at the fair market value thereof, or to lend money to any such estate or trust at an adequate rate of interest and with adequate security, as determined by the Trustee, even though the same person or corporation may be acting as an Executor or Trustee of any such other estate or trust and as the Trustee hereunder;

C. Credits or Charges to Income and Principal. The power to determine whether items should be charged or credited to income or principal, or be apportioned between income and principal, including without limitation the power to amortize or not to amortize any part or all of any premium or discount, to treat any part or all of any profit resulting from the sale or other disposition of any property, whether purchased at a premium or discount, as income or principal, including the proceeds of the sale of timber, minerals, and other natural resources, to treat any dividend or other distribution on any property as income or principal or apportion the same between income and principal, to charge any expenses against income or principal or apportion the same, and to provide or not to provide a reasonable reserve against depreciation, depletion, or obsolescence on any property subject to depreciation, depletion, or obsolescence. The Trustee shall exercise the Trustee's discretion in such manner as the Trustee may reasonably deem equitable and just under all the circumstances and regardless of whether such items are charged or credited to or apportioned between income and principal as provided in Chapter 37A of the General Statutes of North Carolina.

D. S Corporation Provisions.

1. If at the time of my death I own an interest in stock of a corporation that has elected under the provisions of Subchapter S of the Internal Revenue Code of 1986, or any successor thereto, I authorize my personal representative to take such steps as may be required

by the Internal Revenue Code or regulations promulgated thereunder to continue said S election after my death if my personal representative, in its discretion, deems it to be in the best interests of my estate and the beneficiaries thereof. However, if my personal representative, in its discretion, deems it to be in the best interests of my estate and the beneficiaries thereof to terminate the S election, I further authorize my personal representative to file a revocation of said election so that the S election of such corporation will be terminated following my death.

2. I recognize that it may be important following my death to elect or maintain S corporation status for any corporation the shares of which may become part of a trust established under the provisions of this trust instrument. In such event, the Trustees are authorized to retain any such shares of S corporation stock and to administer any trust holding shares of any such corporation that intends to elect or has elected to be taxed as an S corporation for federal income tax purposes as a Qualified Subchapter S Trust pursuant to section 1361(d) of the Internal Revenue Code of 1986 (or any corresponding or successor provision of any future tax laws). Therefore, the provisions of any such trust holding such shares shall be administered and interpreted in such a manner so that such trust will qualify as a qualified subchapter S trust under section 1361(d) of the Internal Revenue Code of 1986 (or any corresponding or successor provision of any future tax laws).

3. If any trust created by this instrument holds stock in a corporation that is eligible for treatment as an "S Corporation" under Section 1361 of the Code, and the corporation proposed to elect or has elected such treatment, the beneficiary of the trust (or his or her representative) is strongly encouraged to consider filing the election under Section 1361(d)(2) of the Code for treatment of the trust as a permitted shareholder. I also express the hope that any successor beneficiary will permit the election to continue in effect or will file a new election, if necessary.

ARTICLE XIV SPECIAL PROVISIONS RELATING TO LIFE INSURANCE

The following provisions relate to life insurance policies:

A. Maintenance of Life Insurance Policies on Grantor's Life Owned by Grantor. The Trustee is authorized, in the Trustee's discretion, to use the net income and principal of the trust during my lifetime to pay premiums, interest or other charges on any insurance policy on my life which is owned by me. I reserve all rights of whatever nature with respect to any such policy, including the right to change the beneficiary, to borrow from the policy and surrender it for its cash value, without the knowledge of the Trustee or the beneficiaries of the trust.

B. Acquisition and Maintenance of Life Insurance Policies Owned by the Trust. The Trustee is authorized, in the Trustee's discretion, to acquire by gift and to use the net income and principal of any trust to purchase and to maintain as an investment any policy of insurance on my life or on the life of a beneficiary of the trust to whom the income could be distributed. The Trustee shall be vested with all rights of ownership with respect to any such policy, including the right to borrow from it and surrender it for its cash value. So long as the policy is held by the Trustee, the proceeds shall be payable to the trust.

C. Restrictions Concerning Life Insurance Policies Owned by the Trust.
Notwithstanding the foregoing,

1. If an income beneficiary (other than me) has a power to appoint trust property, such power shall not be applicable to any policy on such beneficiary's life, and such policy and its proceeds shall be disposed of as if the power had not been exercised with respect to such policy or its proceeds.

2. An individual Trustee whose life is insured (except for me if I am acting as a Trustee) shall have no right, but the other Trustee or Trustees, if any, shall have the sole right to exercise the powers of a Trustee concerning any such policy, including the exercise of any incidents of ownership with respect to such policy.

3. The Trustee is not authorized to insure the life of my spouse, Carolyn S. Rider, by using any income or principal of a trust which is eligible for the marital deduction in the federal estate tax proceeding relating to my estate.

ARTICLE XV SUCCESSOR TRUSTEE AND OTHER ADMINISTRATIVE PROVISIONS

The procedure for the removal or resignation of the then acting Trustee of any separate trust without court order and for the appointment of a successor Trustee without court order, as well as other administrative provisions relating to the Trustee, shall be as follows:

A. Removal of Trustee. I shall have the right at any time and from time to time to remove a Trustee by giving written notice of such removal to the Trustee. Such removal shall become effective only upon acceptance of the trusteeship by a successor Trustee if the Trustee given notice of removal is then acting as sole Trustee.

B. Resignation of Trustee. A Trustee shall have the right to resign at any time by giving written notice to the successor Trustee designated below or, if none, to the person or persons designated below who are authorized to appoint a successor Trustee. Such resignation shall become effective only upon acceptance of the trusteeship by a successor Trustee if the Trustee giving notice of resignation is then acting as sole Trustee.

C. Appointment of Successor Trustee. If a Trustee gives notice of resignation, is given notice of removal, becomes incapacitated, dies or otherwise ceases to act as Trustee, a successor Trustee may be appointed as follows:

1. I shall have the right to appoint a successor Trustee. If I am not living and competent, Thomas M. Grady of Concord, North Carolina shall become Trustee. If Thomas M. Grady fails or ceases to act for any reason and I am not living and competent, Wachovia Bank, National Association shall become Trustee. If Wachovia Bank, National Association fails or ceases to act for any reason and I am not living and competent, the following persons in the order named shall have the right to appoint a successor Trustee:

a. Thomas M. Grady, if he is living and competent and, if not,

b. A majority of the beneficiaries (other than me) to whom the income of the trust could then be paid. If a beneficiary is a minor or not competent, the appointment on his or her behalf may be made by a person who is (i) the guardian of the beneficiary's estate or, if none, (ii) a parent of the beneficiary or, if no such parent is living and competent, (iii) the guardian of the person of the beneficiary.

2. Any successor Trustee appointed pursuant to the foregoing provisions (other than one appointed by me) must be (i) an association or a corporation qualified to exercise trust powers or (ii) if the successor Trustee is appointed by Thomas M. Grady, an individual other than my spouse, Carolyn S. Rider, descendants of mine, or persons subordinate to my spouse or any of my descendants.

3. The appointment of any successor Trustee shall be effected by an instrument which has been signed by the person or persons having the right of such appointment and by the successor Trustee in acceptance of the appointment and which has been delivered to the then acting Trustee, if any.

D. No Requirement of Successor Trustee to Audit. No successor Trustee shall be required to review or audit the accounts and transactions or otherwise to inquire into any act or omission of any predecessor Trustee or to assert any claim against such predecessor or his or his estate and shall not be liable for acts or omissions of any predecessor Trustee.

E. Transfer of Trust Property to a Nonresident Trustee. If a nonresident successor Trustee is appointed, the trust property may be transferred without court order to the nonresident successor Trustee or such other entity as the nonresident successor Trustee may direct, but the trust shall continue to be administered in accordance with the laws of the State of North Carolina, which is the state of permanent residence of the original Trustee.

F. Powers of Successor Trustee. Any successor Trustee may exercise all the powers and authority conferred upon the original Trustee, including the right to resign.

G. Other Provisions Regarding Trustee.

1. A corporate Trustee may receive compensation for its services in accordance with its published schedule of fees in effect at the time the services under this trust instrument are rendered. An individual Trustee, other than Thomas M. Grady, may receive that compensation for such Trustee's services which is allowed by law at the time the services under this trust instrument are rendered.

2. Thomas M. Grady may receive reasonable compensation for his services, which compensation shall not exceed the fees published by Wachovia Bank, National Association, or its successors, in effect at the time the services under this trust instrument are rendered.

3. No bond or other security shall be required from any Trustee. Any Trustee may act without qualifying before any court or filing with any court any inventory, accounting or other report relating to the administration of the trust unless otherwise required by law to do so.

4. No person or institution dealing with the Trustee shall be required to see to the application of any money or other property delivered to the Trustee or to inquire into the necessity or propriety of any action taken or not taken by the Trustee.

5. The Trustee shall furnish upon request, at least annually, accounts of receipts and disbursements of trust property to me if I am living and, if not, to my spouse, if she is then living, my children who are then living, and, if my daughter Deborah R. McClure is not then living, to each beneficiary to whom income of the trust could then be paid who is not under any legal disability and to each person (other than a governmental authority) having custody of any such beneficiary who is under a legal disability.

ARTICLE XVI PRESUMPTION OF SURVIVORSHIP

A. Simultaneous Death. If any beneficiary under this trust instrument and I should die under such circumstances that there is uncertainty as to which person predeceased the other, it shall be conclusively presumed for the purposes of this trust instrument that such beneficiary predeceased me, except that it shall be conclusively presumed that my spouse, Carolyn S. Rider, survived me.

B. Predeceased Child. If an individual who is a member of the intervening generation between any skip person, as such term is defined in section 2613(a) of the Internal Revenue Code, and me or my spouse, dies no later than ninety (90) days after any transfer is made for generation-skipping transfer tax purposes, the deceased individual shall be treated as having predeceased the transferor, as defined in section 2652(a) of the Internal Revenue Code.

ARTICLE XVII DEFINITIONS

For purposes of this trust instrument:

A. "Child," "Children" and "Descendants." The terms "child" and "children" mean lawful lineal blood descendants in the first degree of the parent designated, and the term "descendants" means lawful lineal blood descendants in any degree of the ancestor designated, but such terms shall include any person legally adopted prior to the time that person reaches the age of eighteen (18) and the lawful lineal descendants of any such person, whether of the blood or by adoption prior to such age.

B. "Per Stirpes." Whenever property is to be divided among an individual's then living descendants, "per stirpes," the property shall be divided into as many equal shares as there are children of the individual who are then living or who have died leaving descendants then living. A share allocated to a deceased child of the individual shall be divided further among such deceased child's then living descendants in the same manner.

C. "Incapacitated" or "Not Competent." An individual shall be deemed "incapacitated" or "not competent" under any one or more of the following circumstances: (i) during any period that the individual is legally incompetent as determined by a court of competent jurisdiction; (ii) during any period beginning when two physicians licensed to practice

medicine certify in writing that, in their opinion, the individual, as a result of illness, age or other cause, no longer has the capacity to act prudently or effectively in financial affairs and continuing until two such physicians (whether or not those making the initial determination) certify in writing that, in their opinion, the individual's capacity is restored: or (iii) during any period that a person (other than such individual) or an institution who is a Trustee, or, if none, who is designated as a successor Trustee, or, if none, who can appoint a successor Trustee, has evidence that the individual is absent without explanation or is being detained against his or her will under circumstances in which he or she does not have the capacity to act prudently or effectively in financial affairs.

D. "Available Generation-Skipping Tax Exemption." The term "available generation-skipping tax exemption" of an individual means an amount equal to the generation-skipping transfer tax exemption provided by section 2631(a) of the Internal Revenue Code that has not been allocated by such individual (or by operation of law) to property transferred by such individual during such individual's lifetime. For this purpose, if such individual has died without filing a gift tax return which is required to be filed and which has a due date (including extensions) after such individual's death, then such individual shall be deemed to have allocated such generation-skipping tax exemption to all the property with respect to which such individual is the transferor (as defined in section 2652(a) of the Internal Revenue Code) that (i) may at some time be subject to the federal generation-skipping transfer tax, (ii) is subject to be reported on such gift tax return, (iii) is to or for the benefit of such individual's descendants, and (iv) does not qualify for any other exemption or exclusion from the federal generation-skipping transfer tax. However, an individual shall not be deemed to have allocated such individual's exemption to any trust if the entire trust principal may, at any time, either be required under the terms of the governing instrument to be paid to a child of such individual (other than as an invasion of principal in the discretion of the Trustee or pursuant to a standard), or be subject to federal estate tax by reason of the death of the child of such individual.

ARTICLE XVIII APPLICABLE LAW

This trust has been accepted by the Trustee in North Carolina, and all questions pertaining to the validity and construction of this instrument and to the administration of the trust shall be determined in accordance with the laws of that State.

ARTICLE XIX TAX SAVINGS CLAUSES

A. Marital Deduction. It is my intent that any property allocated to the Spouse's Nonexempt Trust and Exempt Trust which the personal representative of my estate elects to treat as qualified terminable interest property shall qualify for the marital deduction in the federal estate tax proceeding relating to my estate. Therefore, all questions relating to the Spouse's Trusts or the allocation of property to them shall be resolved accordingly. No powers and discretions of the Trustee shall be exercised except in a manner consistent with my intent.

B. Generation-Skipping Transfer Tax Exemption. It is also my intent that the Trustee preserve the federal generation-skipping tax exemption. Therefore all questions relating

to this exemption shall be resolved accordingly. No powers and discretions of the Trustee shall be exercised except in a manner consistent with my intent.

ARTICLE XX
AMENDMENT AND REVOCATION

I reserve the right at any time to alter, amend, modify or revoke this trust instrument in whole or in part by an instrument delivered to the Trustee. This reserved right to alter, amend, modify or revoke the trust is a personal power and cannot be exercised by my attorney-in-fact or any conservator, guardian or other personal representative appointed by a court as a result of any protective proceeding for my person or estate.

The Trustee and I have signed and sealed this instrument on the 22 day June, 2005.

GRANTOR:

Charles Galen Rider (SEAL)
Charles Galen Rider

TRUSTEE:

Charles Galen Rider (SEAL)
Charles Galen Rider

Signed, Sealed and Delivered In the Presence of:

David F. Davis
Witness #1

William S. Givens
Witness #2

State of North Carolina)

County of Mecklenburg)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s(he) was present and saw the within CHARLES GALEN RIDER sign, seal and as his act and deed, deliver the within First Amendment and Restatement of Charles Galen Rider Revocable Trust Agreement dated February 3, 2003; and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.

David F. Davis
Witness #1

SWORN to before me this 22 day of
June 2005.

Michael S. Grues
Notary Public for said County and State
My Commission Expires: 10-07-008

NORTH CAROLINA
CABARRUS COUNTY

I, a Notary Public in and for said County and State, do hereby certify that CHARLES GALEN RIDER, Grantor and Trustee, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and Notarial Seal, this 22 day of June 2005.

(SEAL)

Michael S. Grues
Notary Public

My Commission Expires:

10-07-008

Exhibit "F"

Second Amendment of Revocable Trust

CLERK OF COURT
 HANCOCK COUNTY
 PROBATE COURT

SECOND AMENDMENT 05 AUG 25 PM 1:42
 OF REVOCABLE TRUST AGREEMENT
 OF CHARLES GALEN RIDER

Under the terms of ARTICLE XX of the FIRST AMENDMENT AND RESTATEMENT OF REVOCABLE TRUST AGREEMENT OF CHARLES GALEN RIDER, signed by me, as Grantor and Trustee, on June 22, 2005, which amended and restated the CHARLES GALEN RIDER REVOCABLE TRUST dated February 3, 2003, I reserved the right to amend or revoke that instrument by written instrument. I hereby amend that trust instrument, as amended, as follows:

FIRST: I hereby appoint Thomas M. Grady as Trustee to serve with me as a co-Trustee of this Trust.

SECOND: I amend Paragraph C. of Article XV and subparagraph 1 of Paragraph C. of Article XV in their entirety, as follows:

"C. Appointment of Successor Trustee. If a Trustee gives notice of resignation, is given notice of removal, becomes incapacitated, dies or otherwise ceases to act as Trustee, a successor Trustee may be appointed as follows:

1. I shall have the right to appoint a successor Trustee. If I am not living and competent, Thomas M. Grady of Concord, North Carolina shall become the sole Trustee. If Thomas M. Grady fails or ceases to act for any reason and I am not living and competent, Wachovia Bank, National Association shall become Trustee. If Wachovia Bank, National Association fails or ceases to act for any reason and I am not living and competent, the following persons in the order named shall have the right to appoint a successor Trustee:"

THIRD: I amend Article XVIII in its entirety, as follows:

"ARTICLE XVIII
 APPLICABLE LAW

This trust was first executed by me and accepted by me as Trustee in North Carolina. The First Amendment and Restatement was executed by me in North Carolina. Thomas M. Grady, a resident of North Carolina, has accepted this trust in North Carolina. The situs of this trust is in North Carolina, and it is my intention that the situs of this trust shall remain in North Carolina so long as Thomas M. Grady serves as a Trustee. All questions pertaining to the validity and construction of this instrument and to the administration of the trust shall be determined in accordance with the laws of that State."

FOURTH: I hereby ratify and confirm the Trust instrument, as hereby amended, reserving to myself the right to revoke and amend the Trust instrument, in whole or in part, as provided in of Article XX.

The Trustee and I have signed and sealed this instrument on the 6th day July, 2005.

Charles H. Rider

(SEAL)

Charles Galen Rider
Grantor and Trustee

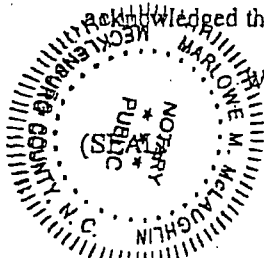
Thomas M. Grady

(SEAL)

Thomas M. Grady
Trustee

State of North Carolina
County of Catawba

I, a Notary Public in and for ^{Mecklenburg} ~~said~~ County and State, do hereby certify that
CHARLES GALEN RIDER, Grantor and Trustee, personally appeared before me this day and
acknowledged the execution of the foregoing instrument.



WITNESS my hand and Notarial Seal, this 6th day of July 2005.

Marlowe M. McLaughlin
Notary Public

My Commission Expires:

9-28-05

State of North Carolina
County of Catawba

I, a Notary Public in and for ^{Mecklenburg} ~~said~~ County and State, do hereby certify that
THOMAS M. GRADY, Trustee, personally appeared before me this day and acknowledged the
execution of the foregoing instrument.



WITNESS my hand and Notarial Seal, this 6th day of July 2005.

Marlowe M. McLaughlin
Notary Public

My Commission Expires:

9-28-05

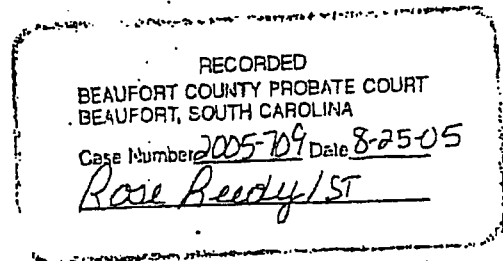


Exhibit "G"

Certificate of Death

EXHIBIT "G"

NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES

CERTIFICATE OF DEATH

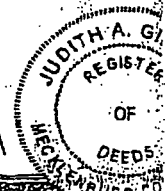
Registration District No. 060-95 Local No. 2005003030

05 AUG 25 PM 1:42

WITNESS MY HAND AND OFFICIAL SEAL THIS THE 14 TH DAY OF JULY 2005

JUDITH A. GIBSON
REGISTER OF DEEDS

BY: Charles H. Fild
ASSISTANT/DEPUTY REGISTER OF DEEDS



STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2007-CP-07-3057

IN THE MATTER OF THE)
ESTATE OF CHARLES GALEN RIDER)
A/K/A C. G. RIDER)
_____)

THOMAS M. GRADY, PERSONAL
REPRESENTATIVE,

Petitioner,

v.

CAROLYN S. RIDER, et al.,

Respondents.

-AND-

EX PARTE: DEBORAH RIDER
McCLURE,

Petitioner.

**CERTIFICATE OF RETURN
TO APPELLATE COURT FOR
CASE ON APPEAL**

PART 1 OF 2

TO: CLERK OF COURT FOR BEAUFORT COUNTY, SOUTH CAROLINA

This certifies that the attachments are true copies of the testimony, proceedings and judgment in the above-referenced matter on appeal to the Circuit Court (the "Appellate Court") which are filed herewith in your office in accordance with S.C. Code Section 62-1-308(b), in two (2) Parts, of which this constitutes Part 1. The attachments include audio cassette copies of the original tape-recorded transcript of the hearing held on July 10, 2007.

FRANCIS M. SIMON
PROBATE JUDGE

By: Connie D. Simon
Deputy Clerk of Probate Court

Beaufort, South Carolina
February 4, 2008

CERTIFICATE OF MAILING

This certifies that a true copy of the foregoing Certificate of Return to Appellate Court for Case on Appeal, Part 1 of 2, without attachments, was this day mailed by U. S. Mail, first class and postage prepaid, to the following named persons at their respective addresses shown below:

Stephen E. Carter, Esquire
McNair Law Firm, P.C.
P.O. Drawer 3
Hilton Head Island, SC 29938-0003

Terry A. Finger, Esquire
Finger, Fraser & Andrews, P.A.
P.O. Box 24005
Hilton Head Island, SC 29925-4005

William A. Ruth, Esquire
Ruth & MacNeille, P.A.
P.O. Drawer 5706
Hilton Head Island, SC 29938-5706

2000 FEB - 1 AM 9:48
ELIZABETH M. SMITH
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Connie D. Simmons
Deputy Clerk of Probate Court

Beaufort, South Carolina
February 1, 2008

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2007-CP-07-3057

IN THE MATTER OF THE
ESTATE OF CHARLES GALEN RIDER
A/K/A C. G. RIDER

THOMAS M. GRADY, PERSONAL
REPRESENTATIVE,

Petitioner,

v.

CAROLYN S. RIDER, et al.,

Respondents.

-AND-

EX PARTE: DEBORAH RIDER
McCLURE,

Petitioner.

CERTIFICATE OF RETURN
TO APPELLATE COURT FOR
CASE ON APPEAL

PART 2 OF 2

ELIZABETH M. SMITH
BEAUFORT COUNTY S.C.
CLERK OF COURT

2008 FEB - 1 AM 9:48

TO: CLERK OF COURT FOR BEAUFORT COUNTY, SOUTH CAROLINA

This certifies that the attachments are true copies of the testimony, proceedings and judgment in the above-referenced matter on appeal to the Circuit Court (the "Appellate Court"), which are filed herewith in your office in accordance with S.C. Code Section 62-1-308(b), in two (2) Parts, of which this constitutes Part 2.

FRANCIS M. SIMON
PROBATE JUDGE

By: Connie D. Simon
Deputy Clerk of Probate Court

Beaufort, South Carolina
February 1, 2008

PROBATE COURT
BEAUFORT COUNTY, SC

2008 FEB - 1 AM 9:56

FILED

CERTIFICATE OF MAILING

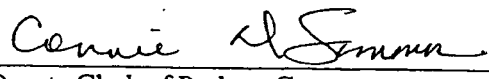
This certifies that a true copy of the foregoing Certificate of Return to Appellate Court for Case on Appeal, Part 2 of 2, without attachments, was this day mailed by U. S. Mail, first class and postage prepaid, to the following named persons at their respective addresses shown below:

Stephen E. Carter, Esquire
McNair Law Firm, P.C.
P.O. Drawer 3
Hilton Head Island, SC 29938-0003

Terry A. Finger, Esquire
Finger, Fraser & Andrews, P.A.
P.O. Box 24005
Hilton Head Island, SC 29925-4005

William A. Ruth, Esquire
Ruth & MacNeille, P.A.
P.O. Drawer 5706
Hilton Head Island, SC 29938-5706

2008 FEB - 1 AM 9:48
ELIZABETH S. SMITH
BEAUFORT COUNTY S.C.
CLERK OF COURT


Deputy Clerk of Probate Court

Beaufort, South Carolina
February 1, 2008

FILED
2008 FEB - 1 AM 9:56
PROBATE COURT
BEAUFORT COUNTY, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2007-CP-07-3057

In the Matter of the Estate of Charles Galen Rider, a/k/a C.G. Rider Carolyn S. Rider,
et al.....Appellant,

v.

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

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

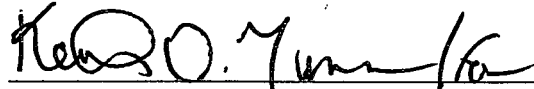
CERTIFICATE OF COUNSEL

Pursuant to South Carolina Appellate Court Rule 210(g), the Record on Appeal contains all material proposed to be included by any of the parties and not any other matter.

Note: The July 5, 2006 Beaufort County Probate Court Order referenced in the Appellant's Designation of Matter has not been included (it was submitted to the Court as a proposed Order and file-stamped, but was apparently never signed by the Court). In addition, the Probate Court's Fiduciary Letters referenced in the Appellant's Designation

of Matter has not been included, as it does not appear to have direct bearing on the issues under appeal.

November 6th, 2009



Laurel R.S. Blair, Esq. (S.C. Bar # 66338)
Womble Carlyle Sandridge & Rice, PLLC
550 South Main Street, Suite 400
Greenville, SC 29601
Telephone: (864) 255-5400
Counsel for the Appellant Carolyn S. Rider

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2007-CP-07-3057

In the Matter of the Estate of Charles Galen Rider, a/k/a C.G. Rider Carolyn S. Rider,
et al.....Appellant,

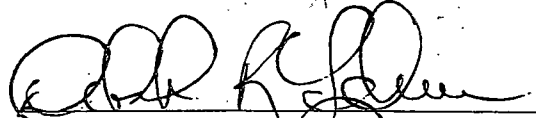
v.

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

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

CERTIFICATE OF SERVICE

I certify that I have served a copy of the Appellant's Record on Appeal by depositing a copy of it in the United States Mail, postage prepaid, on November 6th, 2009, addressed to: Douglas W. MacNeille, Esq., Ruth & MacNeille, P.A., P.O. Drawer 5706, Hilton Head Island, SC 29938-5706, Daphne Burns, Esq., P.O. Box 60983, Reno, NV 89506-0983 (as Counsel for the McClure Respondents) and Stephen E. Carter, Esq., McNair Law Firm, P.A., P.O. Drawer 3, Hilton Head Island, SC 29938-0003, Counsel for the Estate of Charles G. Rider.



Deborah R. Lehman, Legal Assistant to
Laurel R.S. Blair, Esq. (S.C. Bar # 66338)
Womble Carlyle Sandridge & Rice, PLLC
550 S. Main Street, Suite 400
Greenville, SC 29601

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2007-CP-07-3057

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

Carolyn S. Rider.....Appellant,
v.

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

and

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

FINAL BRIEF OF THE APPELLANT, CAROLYN S. RIDER

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STATEMENT OF ISSUES ON APPEAL

- A. The Decedent's June 17, 2005 written instruction to Wachovia Bank, N.A. directing transfer of specified securities and cash to his wife Carolyn S. Rider constitutes a valid entitlement order under Article 8 of the South Carolina Uniform Commercial Code ("UCC"), which entitlement order was effective on the June 17, 2005 date it was made. The \$304,082.46 asset amount at issue in this appeal legally became property of Carolyn S. Rider on June 17, 2005 before the Decedent's July 8, 2005 death.
- B. The Decedent's June 17, 2005 entitlement order and Wachovia Bank's compliance with that entitlement order prior to the Decedent's death constitute "prior actions" under Paragraph 13 of the 1993 Investment Agency Agreement, the validity and enforceability of which "prior actions" are not affected by the Decedent's death.
- C. The October 20, 2005, \$304,082.46 transfer to Carolyn S. Rider constitutes a completed lifetime, inter vivos gift made as of June 17, 2005, prior to the Decedent's July 8, 2005 death. Therefore, the \$304,082.46 amount at issue constitutes property of Carolyn S. Rider rather than property of the Decedent's estate.
- D. No party has appealed the lower court Order(s) as to the June 21, 2005, July 8, 2005 and July 11, 2005 asset transfers to Carolyn S. Rider. Therefore, those rulings are the law of the case, and only the October 20, 2005, \$304,082.46 asset transfer is under appellate review.

STATEMENT OF THE CASE

The Estate of Charles G. Rider filed a July 5, 2006 Petition for Declaratory Judgment in Beaufort County Probate Court, requesting a determination as to whether certain securities transferred to Mr. Rider's wife Carolyn S. Rider pursuant to Mr. Rider's June 17, 2005 written transfer instruction to Wachovia Bank, N.A. (Trust Department) were completed transfers to Mrs. Rider as of the June 17, 2005 transfer instruction date (making those assets property of Mrs. Rider rather than estate assets), and whether the fact that certain securities transfers physically occurred after Mr. Rider's July 8, 2005 date of death made those assets estate property rather than property of Mrs. Rider. (R. pp. 37-52). The Estate's Petition contained an unintentional error in its references to a June 15, 2005 transfer instruction date (R. p. 39, paragraphs 10, 11, 12; R. p. 41 paragraph A); it is undisputed that the actual date of the Decedent's written transfer instruction letter to Wachovia Bank was June 17, 2005 (R. p. 70 paragraph 2; R. p. 246).

Trial of the matter occurred on July 10, 2007, the Honorable Kenneth E. Fulp, Jr. presiding. The Beaufort County Probate Court issued an October 12, 2007 Order finding, *inter alia*, that a preponderance of the evidence showed Charles G. Rider's intention to transfer \$2,000,000.00 in securities to his wife as a separate gift from those made for his wife in his Will and Trust (as amended), that Mr. Rider never attempted to rescind or modify his June 17, 2005 transfer instruction to Wachovia Bank, Mr. Rider's Agency Agreement with Wachovia Bank was not terminated before his death, that Article 8 of the South Carolina Uniform Commercial Code (S.C. Code Ann. Sections 36-8-102 *et seq.*) applied to the issue along with and did not supplant the law of agency, all asset transfers posted to Mrs. Rider's account on June 21, 2005 July 8, 2005 and July 11,

2005 (totaling \$1,707,932.64) pursuant to the Decedent's June 17, 2005 transfer instruction were effectuated before Mr. Rider's death and are therefore non-probate assets, the \$304,082.46 transfer posted to Mrs. Rider's account on October 20, 2005 pursuant to Mr. Rider's same June 17, 2005 transfer instruction was not effectuated before Wachovia Bank's authority under the Agency Agreement was terminated late on July 8, 2005 when it received notice of Mr. Rider's death, and that \$304,082.46 is therefore part of the Decedent's probate estate rather than property of Mrs. Rider. (R. pp. 18-29).

Carolyn S. Rider's Notice of Appeal to the Beaufort County Court of Common Pleas dated October 19, 2007 was served on October 19, 2007 and filed on October 22, 2007. (R. pp. 118-119; R. pp. 354-356). On November 15, 2007, Ms. Rider's Grounds of Appeal dated November 15, 2007 were served; they were filed with the Beaufort County Court of Common Pleas and Beaufort County Probate Court (R. pp. 120-122; R. pp. 354-356; R. p. 35 lines 15-18). The Beaufort County Probate Clerk's Return was filed with the Beaufort County Court of Common Pleas on February 1, 2008. (R. pp. 522-525). The appellate hearing occurred on October 1, 2008 before the Beaufort County Court of Common Pleas, the Honorable Carmen T. Mullen presiding. The Beaufort County Court of Common Pleas issued its Order dated November 13, 2008 (filed November 17, 2008), affirming the Probate Court's Order, ruling, *inter alia*, that Appellant Carolyn S. Rider's appeal was timely perfected as required by S.C. Code Ann. Section 62-1-308(a), that the Beaufort County Probate Court's Order was supported by the facts and law of the case, and there was no clear abuse of discretion. (R. pp. 31-36).

This appeal followed. Carolyn S. Rider's Notice of Appeal dated December 17, 2008 was served on December 18, 2008, and timely filed with the Beaufort County Court of Common Pleas on December 22, 2008 and with the South Carolina Court of Appeals (R. p. 123). By February 24, 2009 and March 30, 2009 Orders, the Court of Appeals granted the Appellant extensions of time for filing/service of her Initial Brief and Designation of Matter to April 6, 2009 and May 6, 2009.

No party except Carolyn S. Rider has appealed as to any issue.

ARGUMENT

I. STANDARD OF REVIEW

The standard of review for matters originating in the probate court is determined based upon whether the essential nature of the cause of action in the probate court was at law or in equity. Nationsbank of South Carolina v. Greenwood, 321 S.C. 386, 392, 468 S.E.2d 658, 662 (Ct. App. 1996). A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue. Atkins v. Horace Mann Ins. Co., 376 S.C. 625, 629-30, 658 S.E.2d 106, 109 (Ct. App. 2008).

In the case below, the matter before the Probate Court was a declaratory judgment action, in which action the Estate of Charles G. Rider asked the Probate Court to apply South Carolina's Uniform Commercial Code ("UCC") and law of agency to determine whether transfers made pursuant to an Investment Agency Agreement were valid. An action involving interpretation of a contract and statutes is an action at law. Auto Owners Ins. Co v. Rollison, 378 S.C. 600, 606-07, 663 S.E.2d 484, 487 (2008). Since the underlying cause of action involved construction of a contract and interpretation of a statute, it is an action at law.

In an action at law on appeal, the appellate court will review issues of law de novo, and will not disturb findings of fact if there is any evidence that reasonably supports the findings of the judge or jury. See, Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) (issues of law); Nationsbank, 321 S.C. at 392, 468 S.E.2d at 662 (questions of fact). Interpretation of a statute is an issue of law; therefore, the Court of Appeals would review the UCC issue de novo. Summerville, 378 S.C. at 110, 662 S.E.2d at 41. Agency is generally a question of fact, unless the facts are admitted. McFaddin v. Bland, 147 S.C. 27, 144 S.E. 592 (1928).

Where, as here, the question of agency has been decided based upon the language of a contract and not upon disputed facts, it is a question of law. Because both the UCC and agency are issues of law in this case, review on appeal is de novo. In addition, this appeal involves stipulated and undisputed facts; therefore, the appellate court is free to review whether the trial court properly applied the law to those facts. McGirt v. Nelson, 360 S.C. 307, 599 S.E.2d 620 (Ct. App. 2004) (citing WDW Props. v. City of Sumter, 342 S.C. 6, 10, 535 S.E.2d 631, 632 (2000)).

II. MATERIAL FACTS

The parties executed a Stipulation of Facts dated July 10, 2007. (R. pp. 70-117; R. pp. 136 line 3 to p. 143 line 3). There appears to be an unintentional error in paragraph 8, page 2 of the Stipulation of Facts which simultaneously and inconsistently represents the October 20, 2005 asset transfer at issue as “Three Hundred Four Thousand One Hundred Eighty-Two and 46/100 Dollars” and “(\$304,082.46).” (R. p. 70 line 22). Upon information and belief, the correct amount is Three Hundred Four Thousand Eighty Two Dollars and Forty Six Cents (\$304,082.46).

Mr. Charles Galen Rider (hereinafter the “Decedent”) executed his Last Will and Testament and First Amendment of Revocable Trust Agreement on June 22, 2005, and executed his Second Amendment of Revocable Trust Agreement on July 6, 2005. (R. pp. 251-261; R. pp. 262-283; R. pp. 284-286).

The Decedent executed a valid and enforceable Investment Agency Agreement (dated September 27, 1993, accepted September 28, 1993) with First Union National Bank of North Carolina (the predecessor of Wachovia Bank, N.A., hereinafter “Wachovia Bank” for purposes of this appeal). (R. pp. 244-245; R. p. 70 paragraph 1).

Prior to his death, the Decedent did not terminate, rescind or modify the 1993 Investment Agency Agreement.

Paragraph 13 of that 1993 Investment Agency Agreement provides:

“This agreement may be terminated by either party by giving thirty (30) days notice in writing to the other party or by my death, provided that termination by reason of my death shall be effective only upon receipt of actual knowledge thereof by one of your responsible officials and *shall not affect the validity of any prior actions*. Your authority hereunder shall not terminate in the event of my disability. (R. p. 245; emphasis added).

On June 17, 2005, the Decedent sent his executed transfer instruction letter (hereinafter “entitlement order”) to Wachovia Bank, N.A., which entitlement order stated “please accept this letter as my authority and direction to transfer the assets listed on the following page to a new agency account to be opened for my wife, Carolyn Sue Rider.” (R. p. 246; R. pp. 70-71 paragraph 2). The page attached to and incorporated by reference into the Decedent’s June 17, 2005 letter was entitled “Assets to Transfer to Agency Account for Carolyn Sue Rider,” and designated a specific list of itemized assets totaling \$2,000,000.00. (R. p. 247). The Decedent never rescinded or modified his June 17, 2005 entitlement order.

Prior to the Decedent’s death on July 8, 2005, Wachovia Bank issued instructions for implementation of all asset transfers contemplated by the Decedent’s June 17, 2005 entitlement order. (R. p. 173 line 5 to p. 174 line 22). Corresponding asset transfer amounts and final settlement dates were as follows: \$733,228.00 on June 21, 2005, \$39,672.00 on July 8, 2005, \$935,032.64 on July 11, 2008, and \$304,082.46 on October 20, 2005. (R. p. 71, paragraphs 3, 5, 7 and 8; R. p. 172 line 2 to p. 174 line 22). All transfers made pursuant to the Decedent’s entitlement order total \$2,012,115.00. (R. p. 72

lines 1-2). Appreciation of the specific securities between the date of the Decedent's June 17, 2005 entitlement order and the last date of asset transfer accounts for the \$12,115.00 difference between the amount of assets transferred and the \$2,000,000.00 amount originally designated for transfer. (R. p. 72 lines 2-5).

It is undisputed that final settlement of the June 21, 2005 and July 8, 2005 asset transfers preceded the death of the Decedent, who died at 2:45 p.m. on July 8, 2005. (R. p. 287; R. pp. 248-250; R. p. 172 line 2 to p. 174 line 22; R. p. 34 line 19 to p. 35 line 8). It is also undisputed that Wachovia Bank's July 11, 2005 asset transfer was initiated before Wachovia's responsible official received actual notice of the Decedent's death. (R. p. 34 line 19 to p. 35 line 8; R. p. 172 line 2 to p. 174 line 22). No party has appealed the Probate Court and Circuit Court Orders ruling that securities totaling \$1,707,932.64 in value (transferred on June 21, 2005, July 8, 2005 and July 11, 2005) were effectively transferred to the Decedent's wife, Carolyn S. Rider before the Decedent's death. (R. pp. 18-29; R. pp. 30-36).

There is no evidence that Wachovia Bank received any instruction from the Decedent's Personal Representative before or after the October 20, 2005 asset transfer, which October 20, 2005 asset transfer in the amount of \$304,082.46 is the only contested asset transfer under appeal and review.

III. CONTESTED ISSUES

- A. THE DECEDENT'S JUNE 17, 2005 WRITTEN INSTRUCTION TO WACHOVIA BANK, N.A. DIRECTING TRANSFER OF SPECIFIED SECURITIES AND CASH TO HIS WIFE CAROLYN S. RIDER CONSTITUTES A VALID ENTITLEMENT ORDER UNDER ARTICLE 8 OF THE SOUTH CAROLINA UNIFORM COMMERCIAL CODE ("UCC"), WHICH ENTITLEMENT ORDER WAS EFFECTIVE ON THE JUNE 17, 2005

DATE IT WAS MADE. THE \$304,082.46 ASSET AMOUNT AT ISSUE IN THIS APPEAL LEGALLY BECAME PROPERTY OF CAROLYN S. RIDER ON JUNE 17, 2005 BEFORE THE DECEDENT'S JULY 8, 2005 DEATH.

The Decedent's June 17, 2005 letter instructing Wachovia to transfer \$2,000,000.00 in specified securities and cash to his wife Carolyn S. Rider constitutes a valid entitlement order under Article 8 of the South Carolina Uniform Commercial Code ("UCC"), which order was effective on the June 17, 2005 date it was made. The entire \$2,000,000.00 (including the \$304,082.46 October 20, 2005 asset transfer at issue in this appeal) therefore became the property of Mrs. Rider on June 17, 2005.

1. Choice of Law: Law of the Decedent's South Carolina Domicile Controls.

The Decedent's Estate was opened in Beaufort County, South Carolina under Estate File No. 2005ES0700709. (R. p. 288). As indicated by the notarized estate administration documents (including but not limited to the Inventory and Appraisement) filed by Thomas M. Grady as Personal Representative of the Charles Galen Rider Estate, the Decedent's official domicile at death was Beaufort County, South Carolina. (R. pp. 288-293). Since the Decedent's domicile was South Carolina, assets at issue and the securities intermediary are in South Carolina, and there is no document venue limitation, South Carolina law properly governs administration of the Decedent's affairs, estate, and related matters. See, e.g., S.C. Code Ann. Sections 62-1-301 and 62-1-302(a)(1). All matters at issue in this appeal involve a determination of whether the Decedent effectively transferred certain assets to Carolyn S. Rider before his death, and whether those assets constitute estate assets or non-probate assets. South Carolina law applies to all matters at issue in this appeal.

2. The South Carolina Uniform Commercial Code (UCC) Governs Asset Disposition and Displaces Common Law.

The South Carolina Uniform Commercial Code (hereinafter "UCC"), specifically, Title 36, Chapter 8 of the UCC (S.C. Code Ann. Section 36-8-101 *et seq.*), comprehensively addresses the subject matter at issue in this appeal. Displacement of the common law occurs when one or more particular provisions of the Uniform Commercial Code (UCC) comprehensively address a particular subject. Hitachi Electronic Devices (USA) v. Platinum Technologies, Inc., 366 S.C. 163, 621 S.E.2d 38 (2005); Flavor-Inn, Inc. v. NCNB Nat'l Bank of S.C., 309 S.C. 508, 511, 424 S.E.2d 534, 536 (Ct. App. 1992). Only where the UCC is incomplete or displaced does the common law provide applicable rules. Hitachi Electronic Devices (USA) v. Platinum Technologies, Inc., 366 S.C. 163 at 170, 621 S.E.2d 38 at 41. S.C. Code Ann. Section 36-1-103 states, in pertinent part:

Unless displaced by the particular provisions of this act, the principles of law and equity, including...the law relative to...capacity to contract, principal and agent,...or other validating or invalidating cause shall supplement its provisions. (emphasis added)

In the case at hand, the Decedent's June 17, 2005 entitlement order to Wachovia Bank is comprehensively addressed by the UCC (S.C. Code Ann. Sections 36-8-102 *et seq.*), which displaces the common law (including the common law of agency). As addressed in detail *infra*, the Decedent was an entitlement holder under S.C. Code Ann. Section 36-8-102 (a)(7), his June 17, 2005 written instruction was an effective entitlement order as of the June 17, 2005 date it was made under S.C. Code Ann. Sections 36-8-102(8) and 36-8-107(b), Wachovia Bank was the Decedent's securities intermediary under S.C. Code Ann. Section 36-8-102(a)(14)(ii), and S.C. Code Ann. Sections 36-8-506 and 36-8-507 govern the security intermediary's compliance with the entitlement

order. Since the UCC comprehensively addresses all aspects of the Decedent's entitlement order, its effectiveness, its implementation and associated circumstances, the UCC displaces the common law of agency where it conflicts with the UCC.

The lower courts' application of the common law of agency and rulings on the subject of "effectuation" (a term which does not appear in relevant UCC provisions) to invalidate the October 20, 2005 asset transfer of \$304,082.46 constitutes reversible error. The Court of Common Pleas Order expressly incorporates by reference the Probate Court's Order and its findings of fact, conclusions of law and legal authorities. Both the Probate Court and Court of Common Pleas Orders made specific, detailed Findings of Fact which conclude that the UCC (including S.C. Code Ann. Sections 36-8-501(a) and 36-8-102) applies in the case at hand, and are therefore inconsistent in ruling that Carolyn S. Rider is not entitled to all assets covered and listed in the entitlement order.

3. The Decedent's June 17, 2005 Written Instructions to Wachovia Bank Constitute a Valid Entitlement Order Which Was Effective on the June 17, 2005.

Effectiveness of an indorsement, instruction or entitlement order is determined as of the date the indorsement, instruction or entitlement order is made, and an indorsement, instruction or entitlement order does not become ineffective by reason of any later change of circumstances. S.C. Code Ann. Section 36-8-107(e). An entitlement order is effective if it is made by the appropriate person, it is made by a person having power under the law of agency to transfer the security, or it has been ratified by an appropriate person. S. C. Code Ann. Section 36-8-107(b). An "appropriate person" means, with respect to an entitlement order, the entitlement holder. S.C. Code Ann. Section 36-8-107(a)(3). The UCC defines an "entitlement holder" as "a person identified in the

records of a securities intermediary as the person having a security entitlement against the securities intermediary.” S.C. Code Ann. Section 36-8-102 (a)(7).

A “securities intermediary” is defined as “a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.” S.C. Code Ann. Section 36-8-102 (a)(14)(ii). A “security entitlement” is defined as “the rights and property interest of an entitlement holder with respect to a financial asset [defined as a security in Part 5 of UCC Article 8].” S.C. Code Ann. Section 36-8-102(17). An “entitlement order” is defined as “a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.” S.C. Code Ann. Section 36-8-102(8).

Wachovia Bank, N.A. is a financial institution which maintains securities accounts for customers in the ordinary course of its business, serving as a securities intermediary. Wachovia Bank, N.A. maintained securities account(s) for the Decedent in the normal course of its business, and therefore served as the Decedent’s securities intermediary under S.C. Code Ann. Section 36-8-102 (a)(14)(ii). The Decedent Charles G. Rider is the person identified in the records of Wachovia Bank, N.A. as having rights and property interests in the securities which he designated for transfer in his June 17, 2005 document. (R. pp. 244-250). Therefore, the Decedent was the “entitlement holder” as defined by S.C. Code Ann. Section 36-8-102(8) and qualified as an “appropriate person” under S.C. Code Ann. Section 36-8-107(a)(3) to issue or make his June 17, 2005 entitlement order. The Decedent’s account falls within the definition of “securities account” under S.C. Code Ann. Section 36-8-501(a).

The Decedent's June 17, 2005 written instruction to Wachovia Bank, N.A. directing transfer of his ownership interests in specific securities to Carolyn S. Rider falls within the definition of "entitlement order" set forth in S.C. Code Ann. Section 36-8-102(a)(8) since it was a notification communicated to Wachovia Bank (which served as his securities intermediary in the normal course of its business) directing transfer of a financial asset to which the Decedent had a security entitlement. Under S.C. Code Ann. Sections 36-8-107(b) and 36-8-107(e), the Decedent's entitlement order was effective for purposes of transferring assets upon the date of its June 17, 2005 issue, and did not become ineffective by reason of any later change in circumstances, including death of the entitlement holder (which issue is addressed *infra*). S.C. Code Ann. Sections 36-8-506 and 36-8-507 required the bank as securities intermediary to comply with the Decedent's entitlement order. The Decedent's June 17, 2005 entitlement order did not specify a time period for asset transfer, and all assets designated by the Decedent's entitlement order were transferred. (R. pp. 246-250). Under the UCC, the securities/assets designated in the Decedent's June 17, 2005 entitlement order are deemed to have been effectively transferred to Carolyn S. Rider as of June 17, 2005. Since Carolyn S. Rider received asset ownership on June 17, 2005, she also received the right to receive all rights and interests associated with such ownership, including but not limited to the appreciation of all designated securities between the date of the June 17, 2005 entitlement order and the date of asset transfer.

4. The Decedent's Death as Entitlement Holder Did Not Constitute a Change of Circumstances Sufficient to Alter the Effect, Validity and Enforceability of His June 17, 2005 Entitlement Order.

S.C. Code Ann. Section 36-8-107(e) states that effectiveness of an indorsement, instruction, or entitlement order *is determined as of the date of the indorsement, instruction or entitlement order, and an indorsement, instruction or entitlement order does not become ineffective by reason of any later change in circumstances.* S.C. Code Ann. Section 36-8-107(e). (emphasis added). The statute does not specify death of the entitlement holder or any other change in circumstances sufficient to render an effective entitlement order ineffective.

As discussed above, the Decedent's entitlement order was effective as of June 17, 2005 because it met the relevant statutory requirements of S.C. Code Ann. Sections 36-8-102 and 107. Under S.C. Code Ann. Section 36-8-107(e), the effectiveness of the Decedent's June 17, 2005 entitlement order did not become ineffective by reason of any later change in circumstances, including the Decedent's July 8, 2005 death. The Decedent's entitlement order designated no particular time deadline for implementation of asset transfer. (R. pp. 246-247). S.C. Code Ann. Sections 36-8-506 and 36-8-507 require a security intermediary to exercise the entitlement order. S.C. Code Ann. Sections 36-5-506 and 36-5-507. Once the entitlement order became effective on June 17, 2005, its exercise and implementation were governed by the UCC. Trial testimony indicates that Wachovia Bank took action to implement the entitlement order prior to the Decedent's death. (R. p. 172 line 4 to p. 174 line 22). The lower courts' application of the common law of agency and "effectuation" analysis (a term which does not appear in relevant UCC provisions) to find that the October 20, 2005 asset transfer was not valid, constitutes reversible error.

- B. THE DECEDENT'S JUNE 17, 2005 ENTITLEMENT ORDER AND WACHOVIA BANK'S COMPLIANCE WITH THAT ORDER PRIOR TO THE DECEDENT'S DEATH CONSTITUTE "PRIOR ACTIONS" UNDER THE 1993 INVESTMENT AGENCY AGREEMENT, THE VALIDITY AND ENFORCEABILITY OF WHICH "PRIOR ACTIONS" ARE NOT AFFECTED BY THE DECEDENT'S DEATH.

Paragraph 10 of the 1993 Investment Agency Agreement gave Wachovia Bank (as successor in interest to its predecessor bank) authority and discretion to "follow and rely on any instructions" believed to be genuine, with respect to the Decedent's assets in the bank's control. Specifically, Paragraph 10 states: "You may, in your discretion, *follow and rely on any instructions* given orally, by telephone, telegraph, cable or radio that you believe to be genuine. You shall endeavor to obtain written confirmation of such instruction." (emphasis added). (R. p. 245, paragraph 10).

Paragraph 13 of the 1993 Investment Agency Agreement states, in pertinent part: "This agreement may be terminated by either party by giving thirty (30) days notice in writing to the other party or by my death, provided that termination by reason of my death shall be effective only upon the receipt of actual knowledge thereof by one of your responsible officials *and shall not affect the validity of any prior actions.*" (emphasis added). (R. p. 245, paragraph 13). The language "any prior actions" applies to the Decedent as well as to Wachovia Bank, since there is no limiting reference contained in Paragraph 13. (R. p. 245, paragraph 13).

The plain language of Investment Agency Agreement Paragraph 13 clearly indicates the Decedent's (as well as the bank's) express understanding that if the Agreement were terminated by reason of Charles G. Rider's death, *any prior actions*, including the Decedent's instructions to the bank prior to his death, would continue to be valid and enforceable, requiring the bank's compliance and reliance. (R. p. 245,

paragraph 13). Trial testimony of Wachovia Bank representative Lynn DiLella confirms Wachovia Bank's understanding that the Decedent's June 17, 2005 written instruction to transfer \$2,000,000.00 to Carolyn Sue Rider constitutes a "prior act" under Paragraph 13 of the 1993 Investment Agency Agreement, and that under Paragraph 13 Wachovia was obligated to fulfill the Decedent's valid "prior actions." (R. p. 170 lines 3-23).

Trial testimony of Wachovia Bank representative Lynn DiLella indicates that *prior to the Decedent's death*, Wachovia Bank's Trust Department issued instructions to implement transfer of *all* assets to Carolyn S. Rider which were specified in the Decedent's June 17, 2005 instruction. (R. p. 173 line 25 to p. 174 line 22). In addition, Ms. DiLella testified that Wachovia made the asset transfers consistent with the Decedent's expectations as set forth in his June 17, 2005 instructions. (R. p. 175 lines 6-12). Since Wachovia issued asset transfer implementation instructions in compliance with the Decedent's June 17, 2005 entitlement order/instructions *prior to his death*, Wachovia's compliance with the Decedent's June 17, 2005 entitlement order/instructions *also* constitutes a "prior action" preceding the Decedent's death, which prior action is valid and enforceable and unaffected by the Decedent's death under Paragraphs 13 and 10 of the 1993 Investment Agency Agreement. Trial testimony of Wachovia Bank representatives Lynn DiLella and Jonathan Rhomey indicates that final settlement after issuance of the bank's asset transfer instructions could take days, weeks or months, depending upon the type of asset involved. (R. p. 164 line 23 to p. 165 line 24; R. p. 182 lines 13-16).

Under S.C. Code Ann. Sections 36-8-107 and 36-8-102, the Decedent's June 17, 2005 entitlement order was effective on June 17, 2005, the date it was made. There is no

evidence to suggest that the Decedent's June 17, 2005 entitlement order and Wachovia's compliance with the entitlement order before the Decedent's death do not constitute "prior actions" under the terms of the 1993 Investment Agency Agreement.

The lower courts committed reversible error amounting to a clear abuse of discretion in their incorrect application of the law of agency, their disregard of trial testimony evidence offered by Wachovia Bank (bank compliance with the entitlement order prior to the Decedent's death) and the Personal Representative (Decedent's intent to transfer a total amount of \$2,000,000.00 to Decedent's wife) and their ruling that the 1993 Investment Agency Agreement's termination at the Decedent's death removed Wachovia Bank's authority to comply with the Decedent's June 17, 2005 entitlement order with regard to the October 20, 2005 asset transfer. The lower courts failed to make a proper analysis and failed to properly apply the law to the facts on the issue of whether the Decedent's June 17, 2005 entitlement order and Wachovia Bank's compliance with said entitlement order were "prior actions" unaffected by the Decedent's July 8, 2005 death or termination of the Investment Agency Agreement. In addition, the lower court rulings are inconsistent: they approved a July 11, 2005 asset transfer which occurred after the date of death since transfer was initiated before the date of death without actual knowledge of the death, but would not approve validity of the October 20, 2005 asset transfer which was also, according to the trial testimony of Wachovia Bank, initiated before the date of death (and thus, before Wachovia could have had actual notice of the death).

Even if Wachovia Bank's compliance with the Decedent's entitlement order is not deemed to constitute a "prior action" under the 1993 Investment Agency Agreement, the

UCC and Paragraph 10 of the 1993 Investment Agency Agreement authorize Wachovia Bank's October 20, 2005 \$304,082.46 asset transfer in reliance on the Decedent's "prior action." The Decedent's July 8, 2005 death does not undermine the validity and enforceability of his June 17, 2005 entitlement order, nor does it remove Wachovia Bank's authority to comply with that instruction after July 8, 2005.

The lower courts misapplied S.C. Code Ann. Section 36-8-507(a), stating that Section 36-8-507(a) "appears to contemplate that an entitlement order, effective upon issuance, must still be carried out by the securities intermediary, in order for the transfer to be "effectuated." (R. p. 25 lines 24-25; R. p. 35 lines 24-27). S.C. Code Ann. Section 36-8-507(a) does *not* stand for that proposition. Rather, S.C. Code Ann. Section 36-8-507(a) indicates merely that a securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order; and a securities intermediary may act as agreed upon by the entitlement holder and securities intermediary or (absent agreement between the entitlement holder and securities intermediary), may act according to reasonable commercial standards. S.C. Code Ann. Section 36-8-507(a).

C. THE OCTOBER 20, 2005 \$304,082.46 TRANSFER TO CAROLYN S. RIDER CONSTITUTES A COMPLETED LIFETIME, INTER VIVOS GIFT, MADE AS OF JUNE 17, 2005, PRIOR TO THE DECEDENT'S JULY 8, 2005 DATE OF DEATH.

The \$304,082.46 transfer to Carolyn S. Rider constitutes a completed inter vivos gift made as of the June 17, 2005 date of the Decedent's written instruction to Wachovia Bank, well prior to the Decedent's death on July 8, 2005. Since the \$304,082.46 gift

became the property of Carolyn S. Rider on June 17, 2005, those assets do not constitute assets of the Decedent's estate.

An inter vivos gift requires the absolute transfer of possession and title, *so far as the donor can make it so* by intent and delivery. See, Baptist Foundation for Christian Education v. Baptist College at Charleston, 282 S.C. 53, 317 S.E.2d 453 (1984) (emphasis added).

The evidence clearly indicates the Decedent's intention to make a \$2,000,000.00 inter vivos gift to Carolyn S. Rider. Trial testimony of the Decedent's Personal Representative and estate planning counsel Thomas M. Grady, Esq. indicates that the Decedent intended to convey during his lifetime \$2,000,000.00 to his wife, Carolyn S. Rider, in order to make sure his wife had adequate funds to maintain her standard of living between the time of his death and during the time of his estate's probate administration. (R. p. 192 line 9 to p. 193 line 6; R. p. 194 line 17 to p. 195 line 13). The Personal Representative's trial testimony further indicates that the Decedent's \$2,000,000.00 transfer to Carolyn S. Rider was *not* an advance related to the Decedent's \$1,000,000.00 bequest to his wife under his Will. (R. p. 194 line 21 to p. 195 line 13). In addition, trial testimony of Wachovia Bank representative Lynn DiLella indicated that she received a June 8, 2005 telephone call from the Decedent, who informed her of his desire to move \$2,000,000.00 in stocks and bonds into an account for Carolyn Sue Rider. (R. p. 156 lines 13-24).

Wachovia Bank, N.A. already had control of the Decedent's securities and cash assets on June 17, 2005, pursuant to the 1993 Investment Agency Agreement. All that was required in order to implement complete and unconditional delivery of the securities

and cash to Carolyn S. Rider's Wachovia account was the Decedent's instruction to Wachovia Bank directing such asset transfer to Mrs. Rider's Wachovia account, given the circumstances and nature of the property. By virtue of his June 17, 2005 written directive to Wachovia Bank, the Decedent relinquished control over his designated assets and took all action within his power to immediately transfer designated assets to Carolyn S. Rider. The Decedent did not physically hold the assets at issue due to the nature of those assets, so he was not in a position to physically hand them to Mrs. Rider. The Decedent's written instruction to Wachovia Bank was the extent of the action he could take in order to deliver those assets to Carolyn S. Rider. This type of constructive delivery has been ruled an effective inter vivos gift, in circumstances where physical delivery by the donor was not practical. See, e.g., In Re Cohn's Will, 187 AD. 392, 176 N.Y.S.225 (N.Y. 1919).

The Decedent's June 17, 2005 instruction indicates his clear intention for the bank to execute immediate transfer of absolute asset ownership to Carolyn S. Rider, and does not indicate any Decedent right or intention to reserve any interest in the assets, or delay asset transfer. (R. p. 246-247). Given the nature of the assets and the fact that they were under management by a third party, Carolyn S. Rider was not in a position to affirmatively act in order to accept or take possession of the property. The Decedent's inter vivos gift was therefore made and completed at the time of the Decedent's June 17, 2005 written instruction to Wachovia Bank.

The Decedent never gave any other instruction to Wachovia Bank during the time period between his June 17, 2005 written asset transfer directive and his death on July 8, 2005, nor is there any evidence that the Decedent or Carolyn S. Rider had any reason to

know of any alleged delay in execution of the Decedent's June 17, 2005 instructions. The Decedent made no attempt from June 17, 2005 until his death on July 8, 2005 to revoke, rescind or modify his written June 17, 2005 directive for asset transfer to Carolyn S. Rider. Trial testimony of Wachovia Bank representative Lynn DiLella indicates that Wachovia's Trust Department complied with the Decedent's June 17, 2005 asset transfer instructions *before the Decedent's death*, although final settlement of the \$304,082.46 did not occur until October 20, 2005. (R. p. 172 line 4 to p. 174 line 22). The record does not indicate on precisely what date Wachovia Bank complied with the Decedent's June 17, 2005 instructions prior to his death; however, on that date, the Decedent could not have revoked the gift. There is no evidence of record to indicate why final settlement of the \$304,082.46 asset transfer did not occur until October 20, 2005.

The Decedent's June 17, 2005 instruction constitutes actual (or at a minimum, constructive or symbolic) delivery of the gift to Mrs. Rider. Under a completed inter vivos gift theory, the \$304,082.46 amount at issue became property of Carolyn S. Rider on June 17, 2005. In the alternative, the Decedent's inter vivos gift of \$304,082.46 was completed prior to the Decedent's death when Wachovia complied with the June 17, 2005 instructions by issuing instructions for implementation of asset transfer.

D. NO PARTY HAS APPEALED THE LOWER COURT ORDER(S) AS TO THE JUNE 21, 2005, JULY 8, 2005 AND JULY 11, 2005 ASSET TRANSFERS TO CAROLYN S. RIDER. THEREFORE, THOSE RULINGS ARE THE LAW OF THE CASE, AND ONLY THE OCTOBER 20, 2005, \$304,082.46 ASSET TRANSFER IS UNDER APPELLATE REVIEW.

The Appellant has not received notice of any cross-appeal filed by another party in connection with the present appeal. Timely cross-appeal would have been required pursuant to South Carolina Appellate Court Rule 203(c) in order for any party to appeal

the lower court Order(s) enforcing the June 21, 2005, July 8, 2005 and July 11, 2005 asset transfers to Carolyn S. Rider.

When a party fails to cross-appeal, the unappealed portion of the judgment becomes the law of the case and is not reviewable by the appellate court. South Carolina Appellate Court Rule 203(c); USAA Property and Casualty Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008) (citing Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 187, 512 S.E.2d 123, 129 (Ct. App. 1999)(holding a lower court's finding was the law of the case because respondent failed to cross appeal the issue); Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 171, 175, 525 S.E.2d 869,871 (2000) (finding an unappealed ruling, right or wrong, is the law of the case). Therefore, only the October 20, 2005, \$304,082.46 asset transfer is under appellate review.

CONCLUSION

Based on the grounds set forth herein, the Appellant respectfully contends that the October 20, 2005 \$304,082.46 asset transfer to Carolyn S. Rider was valid, enforceable, proper and consistent with the Decedent's intent, and that the Order(s) of the lower court(s) should be reversed as to that October 20, 2005 \$304,082.46 transfer.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2007-CP-07-3057

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

Carolyn S. Rider.....Appellant,

v.

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

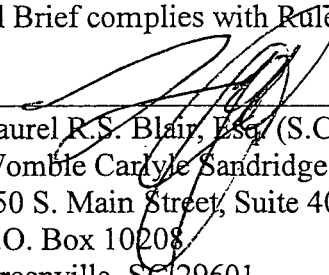
and

Deborah Rider McClure, Ginger C. Rider, Christian James McClure and Austin Patrick
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b) SCACR.

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CERTIFICATE OF SERVICE

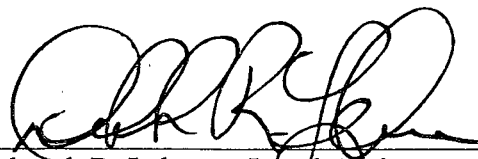
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THE STATE OF SOUTH CAROLINA
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STATEMENT OF ISSUES ON APPEAL

- I. Whether Wachovia had the authority to transfer assets after Charles Rider's death.
- II. Whether Carolyn Rider acquired a securities entitlement to assets transferred to her agency account after Charles Rider's death.
- III. Whether the transfers constituted a completed inter vivos gift.

STATEMENT OF THE CASE

This is an action to determine whether certain financial assets totaling Two Million Dollars should be included in a probate estate. On June 30, 2006, the Personal Representative of the Estate of Charles Rider filed a petition with the Probate Court in Beaufort County requesting an order that either (a) all assets transferred to an agency account for Carolyn Rider, decedent's second wife, pursuant to a letter signed on June 17, 2005, were completed transfers as of the date of the letter, or (b) assets transferred after Charles Rider's death, on July 8, 2005, were incomplete transfers and, therefore, part of the probate estate. R., Vol. I, pp. 37-41.

On August 14, 2006, Deborah Rider McClure and Ginger C. Rider, daughters of Charles Rider, and Christian James McClure and Austin Patrick McClure, grandsons of Charles Rider, filed a response to the petition in which they denied: (1) the June 17, 2005 letter was an entitlement order pursuant to Section 36-8-102(8) of the South Carolina Code; (2) the financial assets were effectively transferred to Carolyn Rider as of the date of the letter; and (3) the transfers were completed inter vivos gifts as of the date of the letter. R., Vol. I, pp. 65-66.

On September 11, 2006, Carolyn Rider filed an answer to the petition in which she admitted that Wachovia made the following four transfers: (1) On June 21, 2005, Wachovia transferred \$733,228.00 dollars worth of securities to her agency account; (2) on July 8, 2005, Wachovia transferred \$39,672.00 dollars worth of securities to her agency account; (3) on July 11, 2005, Wachovia transferred \$935,032.64 worth of securities to her account; and (4) on October 20 2005, Wachovia transferred \$304,182.46 worth of securities to her agency account. R., Vol. I, pp. 57-58.

On July 10, 2007, the parties filed a Stipulations of Facts. R., Vol. I, pp. 70-116. On that same date, a trial on the petition was held before the Honorable Kenneth E. Fulp, Jr., Associate Judge of the Beaufort County Probate Court. On October 12, 2007, the Court entered an order of judgment in which the Court held the following:

1. The June 17, 2005 letter was an entitlement order pursuant to Article 8 of the Uniform Commercial Code;
2. The securities transfers required delivery for completion;
3. Wachovia's authority to act as an agent for Charles Rider terminated upon notification of his death on July 8, 2007;
4. The first three transfers were effective because Wachovia testified at trial that it generally takes several days to transfer securities from one account to another;
5. The October 20, 2007 transfer was part of the probate estate because Wachovia did not take the necessary steps to effectuate that transfer prior to the death of Charles Rider; and
6. The law of principal and agency supplements the provisions of Article 8.

R., Vol. I, pp. 18-29. On October 19, 2007, Carolyn Rider appealed the Order of Judgment to the Beaufort County Court of Common Pleas. R., Vol. I, pp. 118-19. On November 11, 2007, Carolyn Rider filed her grounds for appeal, which were: (1) the entitlement order was effective on the day it was made; (2) the Probate Court erred in applying the law of agency; (3) the Probate Court erred in not applying the "prior acts" provisions to the actions of the principal; and (4) the Probate Court's order frustrates the intent of Charles Rider. R., Vol. I, pp. 120-21.

On November 17, 2008, the Court of Common Pleas entered its Appellate Order in which it affirmed the holding of the Probate Court. R., Vol. I, pp. 31-36.

On December 17, 2008, Carolyn Rider appealed the Appellate Order of the Circuit Court to the South Carolina Court of Appeals. R., Vol. I, p. 123.

STATEMENT OF FACTS

On September 27, 1993, Charles Rider entered into an Investment Agency Agreement (the "Agency Agreement") with First Union National Bank of North Carolina, a predecessor of Wachovia Bank, N.A. ("Wachovia"). R., Vol. II, pp. 244-45 and Vol. I, p. 70. Under the terms of the Agency Agreement, Charles Rider authorized First Union and, by succession, Wachovia, to do the following on his behalf:

[O]pen and maintain an Agency Account (Discretionary) for me, and . . . hold therein, as my Agent, all cash, stocks, bonds, securities and other property time to time deposited with or collected by you for such account, subject to the following instructions and such other instructions as may from time to time be furnished in writing by me or my attorney-in-fact.

R., Vol. II, p. 244. The instructions set forth in the Agency Agreement included the following:

1. You are to provide investment review and management of the Account, taking such action as you, in your discretion, deem best with respect to the investment and reinvestment of the property held herein as though you were the owner of such property. Your authority extends, though is not limited to the sale and purchase of securities, the sale of [sic] exercise of warrants, subscription rights and other rights of similar nature.

. . .

R., Vol. II, p. 244 and Vol. I, p. 20. The Agency Agreement provided for its termination upon death of the principal:

This agreement may be terminated by either party by giving thirty (30) days notice in writing to the other party or by my death, provided that termination by reason of my death shall be effective only upon receipt of actual knowledge thereof by one of your responsible officials and shall not affect the validity of any prior actions. . . .

R., Vol. II, p. 245 and Vol. I, p. 22.

Less than three weeks before his death from colon cancer, when he was in terminal condition, Charles Rider signed a letter (the "Letter") giving Wachovia authority

to transfer unspecified securities and cash to a "new agency account" to be opened for his second wife, Carolyn Rider. R., Vol. I, pp. 192, 20 and Vol. II, p. 246. Despite the fact that Charles Rider was a sophisticated businessman – he owned a racing team – the documents involved in this transfer of over Two Million Dollars are rudimentary, if not perfunctory. R., Vol. I, p. 188. The Letter does not state when the assets are to be transferred. R., Vol. II, p. 246. The Letter does not state the amount or value of the assets to be transferred. R., Vol. II, p. 246. The Letter references assets listed on a "following page"; the page attached to the Letter lists assets totaling \$2,000,000.00. R., Vol. II, p. 246 and Vol. I, p. 20. The page attached to the Letter was neither signed nor initialed by Charles Rider. R., Vol. II, pp. 248-50. The page attached to the Letter has a market values date several days before the Letter; it is not otherwise dated. R., Vol. II, pp. 248-50.

Before Charles Rider passed, Wachovia made the following two transfers of financial assets from Charles Rider's agency account to an agency account for Carolyn Rider:

1. On June 21, 2005, Wachovia transferred shares of stocks in the amount of \$733,228.00 from Charles Rider's agency account to an account for Carolyn Rider. R., Vol. I, pp. 20, 71 and Vol. II, pp. 248-50.
2. On July 8, 2005, Wachovia transferred stock in the amount of \$38,672.00 from Charles Rider's agency account to an agency account for Carolyn Rider. R., Vol. I, pp. 20, 71 and Vol. II, pp. 248-50.

On Friday, July 8, 2005, at approximately 2:45 p.m., Charles Rider died in a hospital in Charlotte, North Carolina. R., Vol. I, p. 21 and Vol. II, p. 287. By approximately 4:30 p.m. that day, Charles Rider's daughter, Deborah Rider McClure, informed Leila Evans, Charles Rider's relationship manager at Wachovia, by telephone

of Charles Rider's death. R., Vol. I, pp. 21, 162. The relationship manager is the customer's primary contact with Wachovia. R., Vol. I, p. 22. By Sunday, July 10, 2005, Leila Evans informed Lynn DiLella, an officer of Wachovia's Wealth Management Group that managed Charles Rider's investment account, of Charles Rider's death. R., Vol. I, pp. 22-23, 162.

On July 11, 2005, Wachovia transferred shares in mutual funds totaling \$935,032.64 from Charles Rider's agency account to an account for Carolyn Rider. R., Vol. I, pp. 21 and 71 and Vol. II, pp. 248-50.

On October 20, 2005, Wachovia transferred shares of mutual funds totaling \$304,182.46 from Charles Rider's agency account to an agency account for Carolyn. R., Vol. I, pp. 21 and 71 and Vol. II, pp. 248-50.

I. STANDARD OF REVIEW

This Court has de novo review of the questions of law presented in this case. *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). The Court is “free to decide a question of law with no particular deference” to the lower court. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000).

II. APPLICABLE LAW

Carolyn Rider asserts that South Carolina law applies to issues involving performance of the Agency Agreement, relying on sections 62-1-301 and 62-1-302(a)(1) of the Probate Code. Those sections speak to the jurisdiction of the South Carolina courts over probate matters; they do not decide which state’s law governs contracts made and performed in another state.

A. Issues Relating to Details of the Performance of the Agency Agreement Are Determined by the Law of North Carolina

Issues relating to the details of the performance of a contract are determined by the law of the place of performance. Restatement (Second) of Conflicts § 206. The rationale for this rule is that the “[d]etails involving the manner, method and time of performance are of primary concern to the state where the acts involving them are done. . . . It is therefore appropriate that as to such details the parties should comply with the requirements of this state.” Restatement (Second) of Conflicts § 206 cmt. a.

The Agency Agreement was made and performed in the state of North Carolina. R., Vol. II, pp. 244-46. The Agency Agreement was made between Wachovia’s successor, First Union National Bank of North Carolina, based in Charlotte, and Charles

Rider, who was then domiciled in the state of North Carolina. R., Vol. II, pp. 244-46. Charles Rider's Letter specifically directs the particular office of Wachovia Trust, in Charlotte, North Carolina to serve as his agent pursuant to the Agency Agreement. R., Vol. II, pp. 244-46.

B. Charles Rider and Wachovia Implicitly, If Not Explicitly, Chose North Carolina Law to Govern the Terms and Performance of the Contract

In accordance with the rule of law that issues relating to the details of performance of a contract are determined by the local law of the place of performance, the Agency Agreement explicitly directs Wachovia Trust to prepare, file, and pay North Carolina Intangibles Tax for Charles Rider and charge the North Carolina tax to his North Carolina account. R., Vol. II, p. 244. Through this provision, Charles Rider and Wachovia Trust complied with North Carolina law and applied North Carolina law to the terms of the agreement. Restatement (Second) of Conflicts § 187 cmt. a. Although there is no specific choice of law provision in the Agency Agreement, with this provision Charles Rider and Wachovia implicitly, if not explicitly, adopted the law of North Carolina to govern the terms and performance of the Agency Agreement. Because North Carolina law governed the terms and performance of the agency agreement before Charles Rider's death, North Carolina law should apply irrespective of his death. *Cf. Ragan v. Wheat First Securities, Inc.*, 138 N.C.App. 453, 531 S.E.2d 874 (N.C.App. 2000) (North Carolina court applied law of Virginia to terms of securities agreement between decedent and bank).

Because common law dictates that issues relating to the details of performance of a contract are determined by the law of the place of performance, and Charles Rider and

Wachovia implicitly, if not explicitly, chose North Carolina law, North Carolina law applies to the terms and performance of the Agency Agreement.

III. BECAUSE WACHOVIA'S AUTHORITY TO TRANSFER ASSETS PURSUANT TO THE AGENCY AGREEMENT TERMINATED UPON CHARLES RIDER'S DEATH, THE FINANCIAL ASSETS TRANSFERRED AFTER HIS DEATH ARE PART OF THE PROBATE ESTATE

Wachovia's authority to transfer assets pursuant to the Agency Agreement terminated upon Charles Rider's death. R., Vol. II, p. 245. Wachovia received notice of Charles Rider's death on the date of his death. R., Vol. I, pp. 18-19, 162. Any financial assets not transferred as of that date are part of the probate estate.

A. Wachovia Was Charles Rider's Agent and Had the Authority to Act on His Behalf Until July 8, 2005

An agency is a fiduciary relationship whereby one party, the agent, acts on behalf of another party, the principal, subject to the principal's control. 3 Am. Jur. 2d Agency § 1; Restatement (Third) of Agency § 1.01. Here, Wachovia acted as an agent for Charles Rider pursuant to the terms of the Agency Agreement. R., Vol. II, pp. 244-45. Pursuant to the Agency Agreement, Wachovia had the authority, among other related things, to provide investment review and management of an investment account; purchase and sell securities, warrants, subscription and other rights in accordance with Charles Rider's investment objective; and register stock certificates and other registered securities in its name as his agent. R., Vol. II, p. 244.

The death of a principal terminates an agent's authority once the agent has notice of the principal's death. Restatement (Third) of Agency § 3.07(2); *see also*, *Parker v. First Citizens Bank & Trust Co.*, 229 N.C. 527, 50 S.E.2d 304 (1948); *Carver v. Morrow*, 213 S.C. 199, 48 S.E.2d 814, 817 (1948). "The reason for this rule is that the authorized

acts of the agent are in their nature the acts of the principal, and by legal fiction the agent's exercise of authority is regarded as an execution of the principal's continuing will." *Id.*

This principle was affirmed by the terms of the Agency Agreement, which reads:

This agreement may be terminated by either party giving thirty (30) days notice in writing to the other party or by [Charles Rider's] death, provided that termination by reason of [Charles Rider's] death shall be effective only upon receipt of actual knowledge thereof by one of [Wachovia's] responsible officials

R., Vol. II, p. 244. Charles Rider's daughter, Deborah Rider McClure, notified his relationship manager at Wachovia of his death on the date of his death. R., Vol. I, pp. 21, 162. The relationship manager is the customer's primary contact with Wachovia. R., Vol. I, p. 22. By Sunday, July 10, 2005, Leila Evans informed Lynn DiLella, an officer of Wachovia's "Wealth Management Group," that managed Charles Rider's investment account, of Charles Rider's death. R., Vol. I, pp. 22-23, 162. Accordingly, under the law and terms of the Agency Agreement, Wachovia had the authority to manage Charles Rider's agency account as his agent until July 8, 2005, when Wachovia was notified of Charles Rider's death.

- B. Because There is No Evidence in the Record to Support a Finding that the Assets Transferred After Charles Rider's Death Were in the Process of Being Transferred Before his Death, Assets Wachovia Transferred After July 8, 2005 Are Part of the Probate Estate

Carolyn Rider asserts that Wachovia began the process of transferring the financial assets before Charles Rider's death, but neither she nor Wachovia offered any evidence at trial to support that contention. Carolyn Rider did not testify with any specificity as to when the transfer process began as to any of the financial assets; instead, Wachovia spoke in general terms as to how long the process may take as to various types

of assets. R., Vol. I, pp. 163-67, 181-82. Neither Carolyn Rider nor Wachovia produced any documents showing when the transfer process began as to any of the financial assets. Importantly, Wachovia testified that such documents exist. R., Vol. I, p. 181. Wachovia testified that when a letter such as Charles Rider's is received by Wachovia's trust department, Wachovia uses a specific form that gives instructions to various departments depending upon what securities are being transferred. R., Vol. I, pp. 181-82, 174. Neither Carolyn Rider nor Wachovia produced this initial form or any other or subsequent forms or documentation showing when the transfer process began or was underway as to the transfer of any of the financial assets. Equally important, Wachovia maintained its silence when Carolyn Rider asked if the July 8, 2005 transfer was started at least a couple of days prior to that date. R., Vol. I, p. 172. Admissions may be implied from mere silence. *Guignard Brick Works v. Allen University*, 155 S.C. 507, 152 S.E. 707, 708 (1930). Only when questioned in broader terms did Wachovia assent to questioning as to when transfers were initiated. R., Vol. I, pp. 170-74.

Because there is no evidence in the record to support a finding that the assets transferred after Charles Rider's death were in the process of being transferred before his death, the assets Wachovia transferred into Carolyn Rider's account on July 11, 2005 and October 20, 2005 are part of the probate estate. Wachovia did not have the authority to transfer them after Charles Rider's death.

IV. THE JULY 11, 2005 AND OCTOBER 20, 2005 TRANSFERS ARE PART OF THE PROBATE ESTATE BECAUSE CAROLYN RIDER DID NOT ACQUIRE A SECURITIES ENTITLEMENT TO ANY OF THE ASSETS UNTIL THEY WERE TRANSFERRED INTO HER ACCOUNT

Carolyn Rider offers a strained legal fiction to convince this Court that she became an entitlement holder of all of the assets before they were credited to her account. Carolyn Rider misleads the Court with this argument. The Probate Court held, and the Court of Common Pleas affirmed, that until the transfers were effectuated, the financial assets did not become the property of Carolyn Rider. This holding is consistent with Article 8 of the Uniform Commercial Code.

Article 8 pertains to investment securities and states that a “*person acquires a security entitlement if a securities intermediary . . . indicates by book entry that a financial asset has been credited to the person’s securities account.*” S.C. Code Ann. § 36-8-501(b)(1) (1976 & Supp. 2008); N.C. Gen. Stat. § 25-8-501(b)(1) (1997) (emphasis added). This is the manner in which Wachovia acknowledged that Carolyn Rider had a security entitlement to the financial assets. *See R.*, Vol. II, pp. 248-50. A “‘securities entitlement’ means the rights and property interest of an entitlement holder with respect to a financial asset” S.C. Code Ann. § 36-8-102(17) (1976 & Supp. 2008); N.C. Gen. Stat. § 25-8-102(17) (1997). A “financial asset” is a security. S.C. Code Ann. § 36-8-102(9) (1976 & Supp. 2008); N.C. Gen. Stat. § 25-8-102(9) (1997). A “securities intermediary” includes a bank “that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.” S.C. Code Ann. § 36-8-102(4) (1976 & Supp. 2008); N.C. Gen. Stat. § 25-8-102(4) (1997). An “entitlement holder” means a person identified in the records of a securities intermediary as the person

having a security entitlement against the securities intermediary.” S.C. Code Ann. § 36-8-102(7) (1976 & Supp. 2008); N.C. Gen. Stat. § 25-8-102(7) (1997).

Thus, pursuant to the UCC, law of principal and agent, Agency Agreement, and Letter, Charles Rider, the entitlement holder, directed Wachovia, the securities intermediary, to transfer financial assets to an agency account for Carolyn Rider. Carolyn Rider acquired a security entitlement to the financial assets when they were credited to her account on June 21, 2005 and July 8, 2005. R., Vol. I, p. 172. After approximately 4:30 p.m. on July 8, 2005, when Wachovia was notified of Charles Rider’s death, Wachovia no longer had the authority to act as Charles Rider’s agent. R., Vol. I, p. 162 and Vol. II, pp. 244-45. Because Wachovia was without the authority to act as an agent for Charles Rider after his death, Carolyn Rider does not have a security entitlement to the financial assets transferred to her account on July 11, 2005 and October 20, 2005. Those financial assets are part of the probate estate.

Carolyn Rider urges this Court to hold that the Letter was a valid entitlement order pursuant to Sections 506, 507, and 107 of Article 8. She further urges this Court to hold that, as an entitlement order, it was effective on the date it was signed *and, therefore, the transfers requested in the Letter were effective as of the date of the Letter.* There is no basis in the Uniform Commercial Code or otherwise for this legal fiction.

Sections 506 and 507 of Article 8 “deal with aspects of securities holding that are related to investment decisions.” S.C. Code Ann. § 36-8-506 cmt. 3 (1976 & Supp. 2008); N.C. Gen. Stat. § 25-8-506 cmt. 3 (1997). The “point of these sections is to identify what it means to have a security entitlement, *not to specify the details of performance of these duties.*” S.C. Code Ann. § 36-8-509 cmt.; N.C. Gen. Stat. § 25-8-

509 cmt. (emphasis added). Indeed, “[m]ost of the law governing that relationship is the common law of contract and agency, supplemented or supplanted by regulatory law.” *Id.*

Section 107(e) states that the “effectiveness of an . . . entitlement order is determined as of the date it is made.” S.C. Code Ann. § 36-8-107(e) cmt. 6 (1976 & Supp. 2008); N.C. Gen. Stat. § 25-8-107(e) (1997). If the Court determines the Letter is an entitlement order, this section merely states that the Letter is effective as of the date it was signed for purposes of determining the securities intermediary’s duties to act. *See* S.C. Code Ann. § 36-8-507 (1976 & Supp. 2008); N.C. Gen. Stat. § 25-8-507 (1997) (“[T]his sections states another aspect of duties”). These sections do not speak to the date the transfers were subsequently made or the date Carolyn Rider gained a securities entitlement to the financial assets. In other words, these sections may serve as a basis for Wachovia’s liability in transferring the financial assets but they do not speak to the issues now before the Court.

Finally, Carolyn Rider asserts that this Court should use the language of Section 1-103 of the Uniform Commercial Code to *supplant* the applicable provisions of the Agency Agreement. Section 1-103 states that the law of principal and agent apply to *supplement* the provisions of the UCC. S.C. Code Ann. § 36-1-103 (1976 & Supp. 2008); N.C. Gen. Stat. § 25-1-103 (1997); *see also*, S.C. Code Ann. § 36-8-509 cmt.; N.C. Gen. Stat. § 25-8-509 cmt. The Agency Agreement, and law of principal and agent, supplement Article 8 by, for instance, providing that the Agency Agreement terminates upon notification of Charles Rider’s death, and that Wachovia ceased to have authority to act on Charles Rider’s behalf after his death. Only if Article 8 is misconstrued, as

Carolyn Rider urges, do its provisions conflict with the Agency Agreement, the law relative to principal and agent, and the actions of the parties and Wachovia in this case.

Accordingly, because Carolyn Rider did not acquire a securities entitlement to the July 11, 2005 and October 20, 2005 transfers, the financial assets are part of the probate estate.

V. THE PRIOR ACTIONS PROVISION IN THE AGENCY AGREEMENT PERTAINS TO PRIOR ACTIONS OF THE AGENT, NOT THE PRINCIPAL, IN ACCORDANCE WITH AGENCY LAW

Carolyn Rider attempts to create a legal fiction out of a phrase in the termination clause of the Agency Agreement – arguing that the “prior actions” provision refers to actions of the principal under the agency agreement. Carolyn Rider misleads the Court with this assertion and argument.

The law of agency states that when the principal terminates or repudiates the agency agreement, the principal “cannot deprive the agent of compensation for a result which the agent actually accomplished.” 3 Am.Jur.2d Agency § 256. That is, an “agent whose appointment is terminated without fault is entitled to the fair value of his or her services.” 3 Am.Jur.2d Agency § 256; *see also, Wood v. Hutchinson Coal Co.*, 176 F.2d 682 (4th Cir. 1949). The referenced statement in the Agency Agreement reiterates this principle of law. In this case, it assures that Wachovia is compensated for its actions in making the June 21, 2005 and July 8, 2005, transfers of financial assets to Carolyn Rider’s agency account. *See R.*, Vol. II, pp. 248-50. The phrase in no way anticipates or refers to actions by the principal, and Carolyn Rider cites no legal authority for this strained interpretation.

VI. THE ISSUE OF WHETHER THE TRANSFERS WERE COMPLETED INTER VIVOS GIFTS WAS NOT PRESERVED FOR APPEAL; IN ANY EVENT, THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT A FINDING THAT THE TRANSFERS WERE COMPLETED INTER VIVOS GIFTS; WACHOVIA TESTIFIED THAT CHARLES RIDER DID NOT INTEND THE TRANSFERS TO BE GIFTS; AND THE ELEMENTS OF A COMPLETED INTER VIVOS GIFT ARE NOT PRESENT

Carolyn Rider asserts that the transfers were completed inter vivos gifts as of June 17, 2005. Carolyn Rider did not preserve this issue for appellate review and is therefore precluded from raising this issue on appeal. In any event, there is no evidence in the record that the transfers were completed inter vivos gifts, and the elements of a completed inter vivos gift are not present; therefore, Carolyn Rider's claim fails.

A. Carolyn Rider Did Not Preserve the Issue for Appellate Review

The South Carolina Supreme Court's "longstanding principle of error preservation" is that "[p]reserving issues for appellate review is a fundamental component of appellate practice." *Kennedy v. South Carolina Retirement Sys.*, 349 S.C. 531, 532-33, 564 S.E.2d 322, 323 (2001), quoting Jean H. Toal, Shahin Vafai & Robert Muckenfuss, *Appellate Practice in South Carolina* 55 (2nd ed. 2002). □ That is, "one cannot present and try a case on one theory and then attack the result below by presenting another theory on appeal. *Id.*, citing *Butler v. Town of Edgefield*, 328 S.C. 238, 493 S.E.2d 838 (1997). "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." Toal, *supra*.

In order to preserve an issue for appeal, the appellant must present claims or defenses in the pleadings or properly raise the issue at trial for the trial court to rule. Toal, *supra* at 55-57. Carolyn Rider did not plead or claim a defense that any of the

transfers were completed inter vivos gifts in her answer to the petition for declaratory judgment. She also did not raise at trial the issue of whether any of the transfers were completed inter vivos gifts. In any event, there is no evidence in the record to support this claim, and the elements of a completed inter vivos gift are not present. Accordingly, Carolyn Rider's claim that the transfers were completed inter vivos gifts fails.

B. Carolyn Rider Did Not Plead a Claim or Defense That Any of the Transfers Were Completed Inter Vivos Gifts in her Answer to the Petition for Declaratory Judgment

Claims or defenses not presented in the pleadings are not preserved for appeal.

McNeely v. South Carolina Farm Bureau Mut. Ins. Co., 259 S.C. 39, 190 S.E.2d 499 (1972); Toal, *supra* at 56.

Carolyn Rider did not plead a claim or defense that any of the transfers of financial assets were completed inter vivos gifts in her answer to the petition for declaratory judgment. *See R.*, Vol. I, pp. 57-64. Accordingly, Carolyn Rider is precluded from raising on appeal a claim or defense that any of the transfers were completed inter vivos gifts.

C. Carolyn Rider Did Not Raise at Trial the Issue of Whether Any of the Transfers Were Completed Inter Vivos Gifts

At the trial, Carolyn Rider did not raise the issue of whether the financial assets constituted completed inter vivos gifts. *R.*, Vol. I, pp. 124-21. Instead, Carolyn Rider objected when the transfers were characterized as gifts, and Wachovia made clear that Charles Rider did not intend the transfers of the financial assets to be gifts. *R.*, Vol. I, p. 155.

Because Carolyn Rider did not raise this issue at trial, the Respondents did not have the opportunity to develop or introduce facts or evidence to respond to such a claim,

and there is no factual record on which to base a legal argument. Accordingly, Carolyn Rider is precluded from raising on appeal a claim or defense that any of the transfers were completed inter vivos gifts.

D. Assuming, *Arguendo*, Carolyn Rider Could Assert this Claim on Appeal, Because There is No Evidence in the Record that the Transfers Were Completed Gifts, Carolyn Rider's Claim Fails

Even assuming, *arguendo*, that Carolyn Rider could assert on appeal that the July 8 and October 20, 2005 transfers were inter vivos gifts, this argument fails because there is no evidence to support a finding that the transfers were completed inter vivos gifts.

A completed inter vivos gift of stock requires three elements to be valid: (1) donative intent; (2) sufficient delivery of the stock in order to effect a gift; and (3) acceptance of the gift by the donee. 38 Am.Jur.2d Gifts § 48; *Worrell v. Lathan*, 324 S.C. 368, 371, 478 S.E.2d 287, 288 (Ct.App.1996).

1. Charles Rider Did Not Intend that the Transfers be Inter Vivos Gifts

Carolyn Rider objected at trial when the transfers were characterized as gifts, and Wachovia made clear that Charles Rider did not intend the transfers of the financial assets to be gifts. R., Vol. I, p. 155. There is no evidence in the record to the contrary. In the Letter, Charles Rider does not state that the transfer is a gift. R., Vol. II, pp. 246-47. Accordingly, because there is no evidence in the record to support a finding that the transfers were completed gifts, Carolyn Rider's claim that the post-death transfers were completed inter vivos gifts fails.

2. The Post-July 8, 2005 Transfers Were Not Sufficiently Delivered to Effect a Gift to Carolyn Rider

The law is clear that a gift must be delivered to be completed: The “mere intention to give [a gift] without delivery is unavailing, the intention must be executed by a complete and unconditional delivery. The transfer of possession and title must be absolute and go into immediate effect, so far as the donor can make it so by intent and delivery.” *Worrell v. Lathan*, 324 S.C. 368, 371, 478 S.E.2d 287, 288 (Ct.App.1996) quoting *Baptist Found. for Christian Educ. v. Baptist College at Charleston*, 282 S.C. 53, 58, 317 S.E.2d 453, 457 (Ct.App.1984). “To constitute a valid gift, the donee must have an *immediate right* to the property; in other words, *the donee must be vested with immediate dominion and control.*” *Baptist Found.*, *id.* (emphasis added). In this case, the unconditional delivery was not complete until title to the stock was transferred to Carolyn Rider’s account. Not until the stock was delivered to her account did she have a right to the property – not until it was transferred to her account was she vested with the ability to exercise dominion and control over the assets. There is no evidence in the record from which to infer that Carolyn Rider had the right to exercise dominion and control over the assets before they were transferred to her account. Further, Charles Rider did not indicate in the Letter as to when the assets were to be transferred, or which assets were to be transferred and in what amount – he neither signed nor initialed the list of assets Wachovia attached to the letter he signed. R., Vol. II, pp. 246-47. There is no urgency or immediacy to his letter – he does not request that Wachovia make an immediate transfer; he does not state the transfer is a gift. R., Vol. II, pp. 246-47. The Letter was not drafted for Charles Rider to sign on a date specific. Accordingly, because there is no evidence in the record to support a finding that the transfers were completed gifts, Carolyn Rider’s

claim that the post-death transfers were completed inter vivos gifts fails.

3. Carolyn Rider Did Not Accept the Transfers As a Gift

Acceptance by the donee of a gift inter vivos is an essential element of a gift. *Worrell*, 324 S.C. at 371, 478 S.E.2d at 289, *citing* 38 Am.Jur.2d Gifts §§ 34, 35. “Acceptance is sufficient if the gift is accepted before revocation by the donor, or *before revocation by the death of the donor*.” *Id.* (emphasis by court). Acceptance by a donee is demonstrated in two ways: (1) by the donee’s exercise of dominion over the property; or (2) by the donee’s assertion of a right to the property. 38 Am.Jur.2d Gifts § 33. Where a constructive delivery is completed, a like acceptance will suffice. For instance, where the shareholder delivers the fully endorsed stock certificates to his donee prior to writing a letter advising him of the gift, the donee’s letter to the donor stating the gift was accepted qualifies as acceptance of the gift. *Little City Foundation v. Capsonic Group, Inc.*, 231 Ill.App.3d 122, 596 N.E.2d 146 (1st Dist. 1992).

Because Charles Rider requested the stocks be delivered to an agency account for Carolyn Rider, Carolyn Rider could not exercise dominion over, or assert a right to, the stock until they were transferred to her account. See R., Vol. II, pp. 246-47. Regardless, Carolyn Rider did not accept the donee gift with any prior act, such as a letter to Charles Rider accepting the purported gifts. Because the only act of acceptance of the asset transfers was their actual transfer into Carolyn Rider’s agency account, the transfers that occurred after Charles Rider’s death on July 8, 2005 were not, and could not be, legally accepted by Carolyn Rider. Accordingly, because there is no evidence in the record to support a finding that the transfers were completed gifts, Carolyn Rider’s claim that the post-death transfers were completed gifts fails.

IV. BECAUSE THE ISSUES ON APPEAL ARE WHETHER WACHOVIA HAD THE AUTHORITY TO TRANSFER ASSETS AFTER CHARLES RIDER'S DEATH, AND WHEN CAROLYN RIDER ACQUIRED AN ENTITLEMENT TO THE TRANSFERS, THE COURT'S RESOLUTION OF THESE ISSUES WILL NECESSARILY DECIDE WHICH OF THE ASSETS WERE LEGALLY TRANSFERRED TO THE ACCOUNT FOR CAROLYN RIDER AND WHICH ARE PART OF THE PROBATE ESTATE

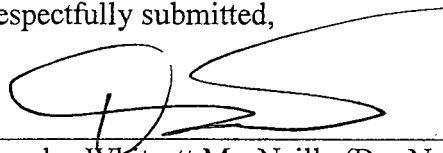
This Court has de novo review of the questions of law presented in this case, *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2000), which are whether Wachovia had the authority pursuant to the Agency Agreement to transfer financial assets to an account for Carolyn Rider after Charles Rider's death, and when Carolyn Rider acquired an entitlement to the transfers. Carolyn Rider reiterates throughout her brief that Charles Rider's children and grandchildren did not appeal the decision of the Probate Court and Court of Common Pleas. She therefore argues that only the legality of the October 20, 2005 transfer is under review. The Court's resolution of these legal issues will necessarily decide which of the proposed assets were legally transferred to the account for Carolyn Rider – whether the July 11, 2005, and October 20, 2005 transfers are part of the probate estate.

CONCLUSION

For the foregoing reasons, Deborah Rider McClure, Ginger C. Rider, Christian James, and Austin Patrick McClure respectfully request this Court find that the transfers made on July 11, 2005, and October 20, 2005, are part of the probate estate.

November 19, 2009

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen Tevis Mullen, Presiding Judge

Case No. 2007-CP-07-3057

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

Carolyn S. Rider, ...Appellant,
v.

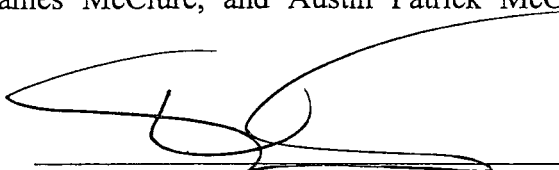
Estate of Charles Galen Rider, Thomas M.
Grady, Personal Representative, ...Respondent,

and

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

CERTIFICATE OF COUNSEL

The undersigned certifies that the final Brief of Respondents Deborah Rider McClure, Ginger C. Rider, Christian James McClure, and Austin Patrick McClure complies with SCACR Rule 211(b).



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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and

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

CERTIFICATE OF SERVICE

I certify that on the 23 day of November 2009, I served the final Brief of Respondent 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:

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Case No. 2007-CP-07-3057

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

Carolyn S. Rider.....Appellant,

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

and

Deborah Rider McClure, Ginger C. Rider, Christian James McClure and Austin Patrick
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I. THE MCCLURE RESPONDENTS FAILED TO APPEAL ANY ISSUE. THEREFORE, THEY ARE BARRED FROM ADDRESSING ANY ASSET TRANSFER OTHER THAN THE OCTOBER 20, 2005, \$304,082.46 TRANSFER AT ISSUE IN THIS APPEAL.

The McClure Respondents' Brief is inconsistent and factually incorrect with respect to the amount of assets at issue in the appeal. The Respondents' Statement of the Case suggests that two million dollars is the amount at issue. However, the Respondents also suggest that only the July 11, 2005 and October 20, 2005 asset transfers are at issue. The Respondents' Brief also incorrectly states an amount of \$304,182.46 as the amount of the October 20, 2005 transfer, when the correct amount for that transfer appears to be \$304,082.46.

Only the October 20, 2005 \$304,082.46 asset transfer is at issue in this appeal; no other asset amount or other asset transfer was raised in Carolyn Rider's appeal. No party other than Carolyn S. Rider has filed any appeal or cross-appeal in this case. Timely cross-appeal would have been required under South Carolina Appellate Court Rule 203(c). When a party fails to cross-appeal, the unappealed portion of the judgment becomes the law of the case and is not reviewable by the appellate court. South Carolina Appellate Court Rule 203(c); USAA Property and Casualty Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008)(citing Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 187, 512 S.E.2d 123, 129 (Ct. App. 1999)(holding a lower court's finding was the law of the case because respondent failed to cross appeal the issue); Charleston Lumber Co., Inc. v. Miller Housing Corp., 338 S.C. 171, 175 , 525 S.E.2d 869, 871 (2000) (finding that an unappealed ruling, right or wrong, is the law of the case).

The Court of Appeals has power and discretion to review issues which were timely and properly appealed in this case. The Respondents fail to present any legal authority to support their improper claim that the Court of Appeals' ruling on the October 20, 2005 \$304,082.46 issue "will necessarily decide" issues of law concerning other asset transfers (i.e., the July 11, 2005 asset transfer) which were never appealed. Respondents' misapply Catawba Indian Tribe of South Carolina v. State, 372 S.C. 519, 642 S.E.2d 751 (2007); that case does not stand for the proposition that issues not properly appealed may be examined on appeal. The concept of de novo review does not imply that the Court has power to address matters not appealed by any party.

II. THE MCCLURE RESPONDENTS DISREGARD EVIDENCE INDICATING THAT ALL ASSET TRANSFERS WERE IN PROCESS AT THE TIME OF THE DECEDENT'S DEATH, AND WACHOVIA HAD CONTINUING AUTHORITY TO COMPLETE THOSE TRANSACTIONS AS "PRIOR ACTIONS."

The Respondents' Brief incorrectly asserts that no evidence was offered at trial to show that asset transfer was in process at the time of the Decedent's death. The Respondents disregard the clear trial testimony of Wachovia Bank representative Lynn DiLella, who stated that *prior to the Decedent's death*, Wachovia Bank's Trust Department issued instructions to implement transfer of *all assets* to Carolyn S. Rider which were specified in the Decedent's June 17, 2005 instruction. (R. p. 172 line 4 to p. 174 line 22). In addition, trial testimony of Wachovia representatives Lynn DiLella and Jonathan Rhomey indicates that final settlement after issuance of the bank's asset transfer instructions could take days, weeks or months, depending upon the type of asset involved. (R. p. 164 line 23 to p. 165 line 24; R. p. 182 lines 13-16). The fact that no Wachovia documentation was introduced at trial by the McClure Respondents after they

had due opportunity to conduct discovery (and to cross examine the Wachovia witnesses at trial) does not constitute proper basis for the Respondents' assertion that no evidence exists to show that asset transfer was in process at the time of the Decedent's death. Wachovia trial testimony provides sufficient evidence that asset transfer was in process at the time of the Decedent's death.

The plain language on the face of the Investment Agency Agreement specifically states that death of a party "shall not affect the validity of any prior actions." (R. p. 245 paragraph 13). The term "prior actions" is not defined in the document, nor is that term limited in application to any particular party by the document's plain language. The Respondents have not alleged or shown evidence of any ambiguity in the plain language of Paragraph 13. Testimony of Wachovia representative Lynn DiLella (R. p. 172 line 4 to p. 174 line 22) indicates that all asset transfers were already initiated by Wachovia *prior to* the Decedent's death, according to the Decedent's asset transfer instructions to Wachovia contained in his June 17, 2005 letter of instruction/entitlement order *prior to* his death. The Decedent's June 17, 2005 letter of instruction/entitlement order and Wachovia's compliance with that directive, which both occurred prior to the Decedent's death, constitute "prior actions" the validity of which are not affected by the Decedent's death. The Respondents fail to offer any credible evidence to support any other interpretation and application of Paragraph 13's plain language.

III. SOUTH CAROLINA LAW GOVERNS THE INVESTMENT AGENCY AGREEMENT.

The McClure Respondents have offered no credible evidence showing that North Carolina law rather than South Carolina law governs the 1993 Investment Agency Agreement. They have offered no evidence to show where the Decedent actually signed

the document, and no evidence to show where performance actually occurred. The face and plain language of the 1993 Investment Agency Agreement are silent as to what law governs. (R. p. 244-245). The Decedent was domiciled in Beaufort County, South Carolina (R. p. 288). The Decedent's Last Will and Testament states that he is "of Hilton Head, South Carolina." (R. p. 251). Trial testimony of Wachovia representative Lynn DiLella indicates that she had several professional meetings with the Decedent over time regarding Wachovia's service under the Investment Agency Agreement, and that those meetings occurred at the Decedent's home in Hilton Head, South Carolina. (R. p. 151 line 2 to page 152 line 7). Wachovia Bank, N.A. (and/or its predecessor First Union) were doing business and had a business presence in South Carolina during the term of the Investment Agency Agreement. The Respondents present no evidence showing whether the Decedent actually complied with North Carolina law, nor does the document at issue clearly indicate where the assets were located. There is no evidence of implicit or explicit adoption of North Carolina law.

Case authority suggests that South Carolina law may apply where some aspects of a contract involve another state. *See e.g., Lister v. Nationsbank*, 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1998). Under the factual circumstances of our case set forth above, South Carolina law governs.

Under S.C. Code Ann. Section 36-1-105(1), parties may agree on governing law; failing such agreement, Title 36 applies to transactions bearing an appropriate relation to South Carolina. S.C. Code Ann. Section 36-1-105. The Official Comment (2) to S.C. Code Ann. Section 36-1-105 indicates that the Commercial Code is applicable to any transaction having an appropriate relation to any state which enacts it. The Official

Comment (3) to S.C. Code Ann. Section 36-1-105 indicates that where a transaction has significant contacts with a state which has enacted the Commercial Code and also with other jurisdictions, the question as to what relation is "appropriate" is left to judicial discretion. For the reasons stated above (including the Decedent's South Carolina domicile, the Decedent's multiple meetings concerning the assets at issue with his Wachovia banker at the Decedent's Hilton Head, South Carolina domicile, the silence of the document, etc.), the transaction at issue bears an appropriate relation to South Carolina, and South Carolina law governs. S.C. Code Ann. Section 36-1-105(2) states that if a section listed (which includes Section 36-8-110) specifies the applicable law, that provision governs. However, S.C. Code Ann. Section 36-8-110 does not appear to contemplate the situation at issue in this appeal. Nor do the Wachovia account statements introduced into evidence at trial appear to designate any jurisdiction indicative of governing law. Accordingly, South Carolina law governs.

IV. THE OCTOBER 20, 2005 \$304,082.46 TRANSFER CONSTITUTES A COMPLETED INTER VIVOS GIFT TO CAROLYN S. RIDER.

The Respondents' claim that the Appellant's inter vivos gift argument must be disregarded on the grounds that the issue was not raised and/or that Respondents did not have due opportunity to develop or introduce facts or evidence, is specious. As indicated in the Respondents' own Brief (Statement of the Case), the Respondents filed an August 4, 2006 Response to the Petition for Declaratory Judgment, in which Response the Respondents denied that the asset transfers were completed inter vivos gifts as of the date of the letter. Trial testimony indicates that at least one witness was examined on the subject. (R. p. 155 lines 2-19).

As indicated in Section III C of the Appellant's Brief, an inter vivos gift requires the absolute transfer of possession and title, *so far as the donor can make it so* by intent and delivery. Baptist Foundation for Christian Education v. Baptist College at Charleston, 282 S.C. 53, 317 S.E.2d 453 (1984) (emphasis added). Under the factual circumstances of our case (examined in detail by the Appellant's Initial Brief), constructive delivery was effective. In Re Cohn's Will, 187 A.d 392, 176 N.Y.S. 225 (N.Y. 1919).

The Respondents' mischaracterize Lynn DiLella's testimony with respect to whether the transfer was a gift. Ms. DiLella's testimony does not offer a professional opinion as to whether the asset transfer at issue was an inter vivos gift; she states merely that in her conversations with the Decedent he "did not term it a gift." (R. p. 155, lines 12-13).

V. CONCLUSION

Based on the grounds set forth in the Appellant's Final Brief and in this Final Amended Reply Brief, the Appellant respectfully contends that the October 20, 2005 \$304,082.46 asset transfer to Carolyn S. Rider is valid, enforceable, proper and consistent with the Decedent's intent, and that said assets do not constitute assets of the Decedent's estate.

The Appellant respectfully incorporates herein by reference all arguments presented in her Final Brief filed in this matter.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

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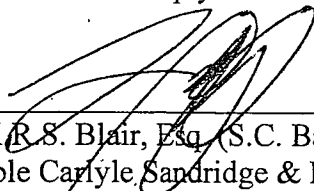
and

Deborah Rider McClure, Ginger C. Rider, Christian James McClure and Austin Patrick
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Amended Reply Brief complies with
Rule 211(b) SCACR.

November 20, 2009



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CERTIFICATE OF SERVICE

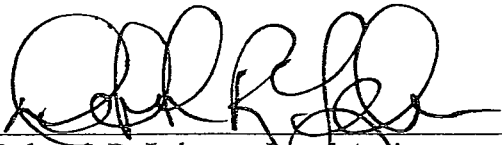
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

In the Matter of the Estate of
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Rider

Carolyn S. Rider, Appellant,

v.

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

and

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

Appeal From Beaufort County
Carmen T. Mullen, Circuit Court Judge

Opinion No. 4842
Heard May 5, 2011 – Filed June 15, 2011

AFFIRMED

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Daphne A. Burns, Stephen Edward Carter and Douglas Whitsett MacNeille, all of Hilton Head Island, for Respondents.

THOMAS, J.: In this probate action, Carolyn S. Rider (Wife) appeals a probate court order that held \$304,082.46 of mutual fund shares were part of the estate of her husband, Charles G. Rider (Decedent). Wife argues the probate court erred in reasoning the shares were not transferred to her as a gift prior to Decedent's death because (1) Decedent entered an agency agreement with his agent, Wachovia Bank (Wachovia), that provided "prior actions" of Decedent and Wachovia were not affected by Decedent's death; (2) Decedent issued an entitlement order regarding the shares before his death that made the transfer of the shares deemed completed upon the date the entitlement order was made; and (3) Decedent's transfer of the shares need only be effectuated by him so far as he could make it so. We affirm.

FACTS

In 1993, Decedent entered into an "Investment Agency Agreement" (the Agreement) with a predecessor bank of Wachovia. The Agreement authorized Wachovia to open an account for Decedent in which to hold cash, securities, and other property, subject to Decedent's instructions. The Agreement further gave Wachovia discretionary power to buy, sell, and exercise certain rights regarding those securities, and it specified when and how the Agreement would terminate:

13. This Agreement may be terminated by either party by giving thirty (30) days' notice in writing to the other party or by [Decedent's] death, provided that termination by reason of [Decedent's] death shall be effective only upon receipt of actual knowledge thereof by one of your responsible officials and shall not affect the validity of any prior

actions. Your authority hereunder shall not terminate in the event of [Decedent's] disability.

On June 8, 2005, Decedent called his wealth manager at Wachovia, Lynn DiLella (the Wealth Manager), and told her he wanted to transfer \$2,000,000 worth of securities to Wife to ensure she could maintain her standard of living between his death and the end of probate.¹ Pursuant to the call, the Wealth Manager created a list of assets to transfer and emailed the list to Wachovia's trust department. The trust department prepared a letter with an approval page to be signed by Decedent, and it mailed the list and letter to Decedent. The letter directed the trust department to transfer the securities "to a new agency account to be opened for" Wife. On June 17, 2005, Decedent executed and returned the letter to the trust department.

Between June and October 2005, four transfers were made pursuant to the letter. On June 22, a transfer of stock valued at \$733,228 was settled and reflected on Wife's new account at Wachovia. On Friday, July 8, a transfer of stock valued at \$39,672 was settled and reflected on Wife's account, and on the same day, Decedent died. Wachovia received actual knowledge of Decedent's death sometime late on either Friday, July 8 or Sunday, July 10.

On July 11, a transfer of mutual fund shares valued at \$935,032.64 was settled and reflected on Wife's account, and on October 20, a transfer of mutual fund shares valued at \$304,082.46 was settled and reflected on Wife's account.²

The personal representative of Decedent's estate filed this petition for declaratory judgment in probate court, naming Wife and ten others as respondents to the petition. Excluding Wife, four of the respondents named in the petition are respondents in this appeal (Respondents).

In the petition, the personal representative sought a determination of whether Decedent's execution of the letter completed the transfer of all the

¹ Decedent learned he had terminal cancer some time prior to the call.

² The aggregate value of securities transferred, \$2,012,115, includes appreciation between the instruction and the transfers.

securities such that they are not part of Decedent's estate. Wife filed a Notice of Appearance and an Answer, alleging all of the securities transferred pursuant to Decedent's letter are not part of Decedent's estate under the Agreement and Article 8 of the South Carolina Uniform Commercial Code (Article 8). Respondents appeared and answered as well, arguing agency rules rather than Article 8 govern whether the securities are part of the estate.

At the probate hearing, Wachovia's trust officer (the Trust Officer), testified he began working for the trust department in August 2005, after Decedent's death. He stated he replaced the trust officer who handled the first three transfers, and he explained the procedure for executing transfers of the type Decedent requested: The trust department receives an instruction to make the transfer and then completes a form, which is sent to Wachovia's "back office." The back office next gives instructions to various departments depending upon the type of securities being transferred. For mutual funds, the Trust Officer testified transfers can take "from ten days to a few weeks. Maybe longer." He conceded it was unusual for settlement of the final transfer to Wife to take as long as it did.

Even though the third and fourth transfers were not settled and reflected on Wife's account until after Decedent's death, the Wealth Manager testified she believed the trust department instructed the appropriate departments to complete all of the transfers before the death occurred.

The probate court held the transfers initiated by Decedent were intended to be inter vivos gifts and Article 8 applied to those transfers. Specifically, the probate court reasoned that Wachovia was an Article 8 "securities intermediary" and Decedent held "security entitlements" in the securities as an "entitlement holder" such that his letter constituted an "entitlement order." However, the probate court held that, pursuant to the Agreement and law of agency, Wachovia's authority to execute the entitlement order terminated when Wachovia received knowledge of Decedent's death. The court reasoned that although Decedent's entitlement order was "effective" under Article 8 when made by Decedent, the transfer was not complete until Wachovia "carried out" the entitlement order. The probate court explained that Wachovia's authority to carry out the transfers terminated before the transfer occurred because Article 8 did not supplant the

law of agency. Consequently, the probate court found the first three transfers were completed before Wachovia learned of Decedent's death and, therefore, the related securities are not part of his estate. However, the probate court found the final transfer was not completed until after Wachovia learned of Decedent's death; therefore, the probate court found those securities are part of the estate.

Wife appealed to the circuit court. She argued the probate court erred in holding the final transfer was part of Decedent's estate because the entitlement order completed the transfer of the mutual funds on the day it was made. In response, Respondents argued to affirm the probate court's decision because it was supported by the evidence. Respondents did not cross-appeal the probate court's holding as to the third transfer, and they conceded to the circuit court that the only issue remaining was whether the fourth transfer was part of the estate. The circuit court affirmed, and this appeal followed.

ISSUES ON APPEAL³

- I. Is the fourth transfer complete pursuant to the Agreement?
- II. Does Article 8 displace agency law such that all of the transfers are deemed completed before Decedent's death?
- III. Were the transfers completed "so far as Decedent could do so"?

STANDARD OF REVIEW

The standard of review for actions in the probate court depends upon whether the underlying cause of action is at law or in equity. Univ. of S. Cal. v. Moran, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005) (citation

³ This appeal raised an unpreserved issue of whether North Carolina or South Carolina law applies to this case. See Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (providing that an argument not made to an intermediate appellate court and ruled on by that court is not preserved for review in the supreme court or court of appeals). However, Respondents conceded this issue during oral argument.

omitted). "[Q]uestions of law ... may be decided with no particular deference to the lower court." Neely v. Thomasson, 365 S.C. 345, 350, 618 S.E.2d 884, 886 (2005) (citation omitted). However, in actions at law, "the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." Id. at 349-50, 618 S.E.2d at 886 (citation omitted). Therefore, this court reviews the interpretation of the Agreement and Article 8 without deference, but the probate court's findings as to whether the transfers were completed before the agency relationship was terminated must be upheld if supported by evidence. See Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 606-07, 663 S.E.2d 484, 487 (2008) (providing that an action involving the interpretation of a contract and statutes is an action at law); Holmes v. McKay, 334 S.C. 433, 439, 513 S.E.2d 851, 854 (Ct. App. 1999) (stating that whether an agency relationship exists is a question of fact).

I. The Agreement

Wife argues the mutual funds of the fourth transfer are not part of Decedent's estate because the plain language of the Agreement states that both Wachovia and Decedent's actions prior to Wachovia's actual knowledge of Decedent's death would remain enforceable. Moreover, Wife contends Wachovia retained authority to transfer the mutual funds even after it learned of Decedent's death, and Wachovia complied with those instructions before that time. We disagree.

In interpreting a contract, a court must "ascertain and give legal effect to the intentions of the parties as expressed in the language of the [contract]. If a contract's language is clear and capable of legal construction, this [c]ourt's function is to interpret its lawful meaning and the intent of the parties as found in the agreement." Cullen v. McNeal, 390 S.C. 470, 481-82, 702 S.E.2d 378, 384 (Ct. App. 2010) (alterations in original) (internal citations and quotation marks omitted).

The "prior actions" clause refers to both Decedent's and Wachovia's conduct. However, that clause did not render Decedent's instruction eternally enforceable after Wachovia learned of Decedent's death. The plain language of the Agreement shows Wachovia's authority to act for Decedent terminated

upon Wachovia's "actual knowledge" of death, and the actions of either party would remain valid if those actions occurred before that time. Consequently, whether the mutual funds in question are part of Decedent's estate depends upon whether Decedent's and Wachovia's conduct was sufficient to complete the transfers before Wachovia learned of Decedent's death.

II. Article 8

Wife argues the probate court erred in holding the mutual funds of the fourth transfer are part of Decedent's estate. She maintains the agency rule that an agent lacks authority to act for a principal after the principal's death does not apply to this action because the letter was an "effective" entitlement order under Article 8. Specifically, she contends "effective" entitlement orders transfer rights to financial assets the date they are made, and even if they do not, entitlement orders remain "effective" such that they may be completed after later changes in circumstance. We disagree.

As an initial matter, Respondents have not cross-appealed the probate court's holding that the mutual funds at issue are "financial assets" falling within Part 5 of Article 8. Nor have Respondents cross-appealed the probate court's holding Wachovia was a securities intermediary and that Decedent was an entitlement holder with a securities entitlement in the instruments at issue.⁴ Thus, those issues are not before this court. See Commercial Credit

⁴ In simple terms, a person becomes an entitlement holder by acquiring a security entitlement, which generally occurs when a security is credited to the person's account with a securities intermediary. See S.C. Code Ann. § 36-8-102(a)(7) (2003) (providing that an "entitlement holder" is "a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary"); S.C. Code Ann. § 36-8-102(a)(17) & official cmt.17 (2003) (providing that a "security entitlement" refers to a person's batch of rights against the securities intermediary and property interest in securities credited to his account by the securities intermediary); S.C. Code Ann. § 36-8-501(b)(1) (2003) (providing that a person acquires a security entitlement if a securities intermediary does any of the following three things: "(1) indicates by book entry that a financial asset has been credited to the person's securities account; (2) receives a

Loans, Inc. v. Riddle, 334 S.C. 176, 187, 512 S.E.2d 123, 129 (Ct. App. 1999) (providing that a holding contested by a respondent is the law of the case where the respondent failed to cross-appeal that holding).

As an entitlement holder, Decedent could begin the process of transferring a security entitlement by issuing an "entitlement order." An entitlement order is "a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement." S.C. Code Ann. § 36-8-102(a)(8) (2003). An entitlement order is "effective" if it is "made by the appropriate person"—in this case, the entitlement holder. S.C. Code Ann. § 36-8-107(a)(3), (b)(1) (2003). The "effectiveness" of an entitlement order "is determined as of the date" it is made, and it "does not become ineffective by reason of any later change of circumstances." S.C. Code Ann. § 36-8-107(e) (2003).

Like the issues addressed earlier in this section, Respondents have not cross-appealed the probate court's holding that Decedent's letter to Wachovia was an entitlement order and that Decedent was an appropriate person. Consequently, those issues are not before this court. See Commercial Credit Loans, Inc., 334 S.C. at 187, 512 S.E.2d at 129 (providing that a holding contested by a respondent is the law of the case where the respondent failed to cross-appeal that holding).

The parties' arguments present only two questions: (1) does Article 8's use of the term "effective" indicate an entitlement order completes a transfer of securities at the time the entitlement order is made, and (2) if the entitlement order does not complete the transfer in itself, does Article 8's provision that an entitlement order "remains effective" displace agency rules such that a securities intermediary has authority to complete the transfer after the entitlement holder's death? We answer both questions in the negative,

financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or (3) becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account").

and we hold the probate court properly found the mutual funds of the fourth transfer are part of Decedent's estate.

As a general rule, an "agency terminates upon the death of the principal. . . . [T]he authorized acts of the agent are in their nature the acts of the principal, and by legal fiction the agent's exercise of authority is regarded as an execution of the principal's continuing will." Carver v. Morrow, 213 S.C. 199, 204, 48 S.E.2d 814, 817 (1948) (citations omitted). Accordingly, actions by the principal or the agent in contemplation of a transaction before the principal's death generally do not preserve the agency for the completion of that transaction. See C.J.S. Agency § 122 (2003) ("The fact that the agent has performed, as authorized, one or several acts of that which was contemplated as a single transaction does not operate to preserve or keep alive the power until the completion of the transaction.").

Principles of agency supplement the Uniform Commercial Code (the U.C.C.) "[u]nless displaced by the particular provisions of the" U.C.C. S.C. Code Ann. § 36-1-103 (2003). "Only where the U.C.C. is incomplete does the common law provide applicable rules," and "[d]isplacement occurs when one or more particular provisions of the U.C.C. comprehensively address a particular subject." Hitachi Elec. Devices (USA), Inc. v. Platinum Techs., Inc., 366 S.C. 163, 170, 621 S.E.2d 38, 41 (2005) (citation omitted).

An entitlement order does not complete a transfer of financial assets at the time it is made. Like other orders made to agents, an entitlement order is an instruction to act in the manner the principal desires. See § 36-8-102(a)(8) (providing that an entitlement order is "a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement"). The transfer of a financial asset is complete when a securities intermediary credits the financial asset to a person's securities account. See S.C. Code Ann. § 36-8-104(b) (2003) ("A person acquires a financial asset, other than a security, or an interest therein, under this chapter, if the person acquires a security entitlement to the financial asset."); id. § 36-8-501(b) ("[A] person acquires a security entitlement if a securities intermediary: (1) indicates by book entry that a financial asset has been credited to the person's securities account").

Moreover, the fact an entitlement order "remains effective" despite later changes in circumstance does not displace the agency rule relevant to this action. An entitlement order's "effectiveness" does not refer to the securities intermediary's power to complete the transfer. Rather, "effectiveness" is a term used by Article 8 to frame whether a securities intermediary is liable for a transfer of financial assets made pursuant to an entitlement order.⁵ See S.C. Code Ann. § 36-8-507(b) (2003) ("If a securities

⁵ A comparison of Revised Article 8 with Original Article 8 is instructive on this issue. Section 107 of Revised Article 8 replaced section 308 of Original Article 8, and Revised Article 8 was specifically created to address the development of the financial assets' indirect holding system by implementing new terms such as "security entitlement," "entitlement holder," and "entitlement order." See generally S.C. Code Ann. § 36-8-101 Prefatory Note (2003) (tracing the history and development of the securities markets). Section 107 of Revised Article 8 retains most of the substance of section 308 and applies that substance to security entitlements. Compare S.C. Code Ann. § 36-8-308(4)-(5), (7), (10) (Supp. 2000) (providing that (1) an "instruction" was an order by an "appropriate person" requesting the transfer of a security be registered, and an "appropriate person" included the registered owner of the security; and (2) whether someone signing the purported instruction was an "appropriate person" was determined from the date of signing, and an instruction made by the appropriate person did not "become unauthorized . . . by virtue of any subsequent change of circumstances"), with S.C. Code Ann. §§ 36-8-102(a)(8) & 107(a)(3), (8), (b)(1), (e) (2003) (providing that (1) an entitlement order directs transfer of a financial asset; (2) an entitlement order is "effective" if it is made by the entitlement holder; and (3) the "effectiveness" of an entitlement order "is determined as of the date" it is made, and it "does not become ineffective by reason of any later change of circumstances"). However, section 107's use of "effective" replaced section 308's use of "authorized." The Amended Official Comments of section 308 explained that its use of "authorized" did not refer to agency authority but rather determined whether an issuer who registered the transfer of a security could be held liable for a transfer under section 311 of Original Article 8. See S.C. Code Ann. § 36-8-308 amended official cmt.6 (Supp. 2000) (providing that although an "instruction speak[s] as of the date of signing"

intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.").

Once one understands the import of finding an entitlement order "effective," it becomes clear that Revised Article 8 does not comprehensively address the agency rules relevant to this appeal. The fact that an entitlement order is effective does not establish that the transfer is in fact complete or deemed complete, nor does it establish that the securities intermediary retains the authority to complete the entitlement order. Therefore, whether the mutual funds of the fourth transfer are part of Decedent's estate depends upon whether Wife's accounts were credited before Wachovia learned of Decedent's death.

Here, the probate court erred in finding the mutual funds of the third transfer were not part of Decedent's estate.⁶ However, that issue is not properly before this court. Respondents never cross-appealed to the circuit

and "do[es] not become 'unauthorized' (section 311) because [the appropriate person] dies," the "[a]uthority to deliver a certificated security and thus to complete the transfer is not covered by" section 308). This is a similar function to the Revised Article 8's use of the term "effective."

⁶ The Wealth Manager testified the third transfer was not settled until after Wachovia learned Decedent passed away. And although the Wealth Manager testified she believed the trust department executed the transfer instruction before that time, the Trust Officer testified the trust department's role in executing those instructions merely constituted sending instructions to Wachovia's back office. No party introduced testimony indicating the trust department, the back office, or some other entity in fact credited those mutual funds to Wife's account before Wachovia learned of Decedent's death. Accordingly, the probate court's finding "Wachovia took the actions necessary to effectuate" the third transfer before it knew of Decedent's death was not supported by evidence.

court that those mutual funds were part of the estate, and in fact, Respondents conceded the issue during the circuit court hearing. Therefore, the probate court's holding that the mutual funds from the third transfer were not part of the estate is the law of the case. See Commercial Credit Loans, Inc., 334 S.C. at 187, 512 S.E.2d at 129 (providing that a holding contested by a respondent is the law of the case where the respondent failed to cross-appeal that holding).

As to the mutual funds of the fourth transfer, the probate court properly found their transfer was not completed before Wachovia learned of Decedent's death. The Wealth Manager testified she believed the trust department instructed the appropriate persons to transfer the mutual funds before Decedent died. However, the record did not include evidence of when the trust department in fact issued instructions to transfer the mutual funds, and more importantly, nor did the record include evidence Wife's account was credited with the mutual funds before Wachovia learned of Decedent's death. The only evidence the trust department actually made the instructions and credited the account was when settlement of the transfer was reflected on the account, and that date occurred three months after Wachovia gained actual knowledge of the death. Accordingly, even if the time of credit and settlement were different, we have no way of knowing when the credit occurred. Therefore, the probate court's holding that the mutual funds of the fourth transfer are part of the estate is supported by the evidence and not affected by an error of law.

III. Completed "So Far as Decedent Could Do So"

Even if Article 8 did not deem the fourth transfer complete, Wife argues the transfer was sufficiently complete under the law of gifts. Specifically, she maintains an inter vivos gift requires intent and delivery only "so far as the donor can make it so," and once she provided Wachovia with the instruction letter, she could do no more to ensure the transfer occurred.

Wife makes a different argument on appeal to this court than she did on appeal to the circuit court. On appeal to the circuit court, she argued the transfers constituted completed inter vivos gifts because Wachovia lacked

notice of Decedent's death when the transfers were made. Consequently, her argument is not preserved for review. See Kiawah Prop. Owners Grp., 359 S.C. at 113, 597 S.E.2d at 149 (providing that an argument not made to an intermediate appellate court and ruled on by that court is not preserved for review in the Supreme Court or Court of Appeals); cf. Taylor v. Medenica, 324 S.C. 200, 216, 479 S.E.2d 35, 43 (1996) (holding that an issue was not preserved because the appealing party argued a different ground at trial than the party argued on appeal).

CONCLUSION

For the aforementioned reasons, the ruling of the probate court is

AFFIRMED.

HUFF and WILLIAMS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2007-CP-07-3057

RECEIVED

JUN 30 2011

SC Court of Appeals

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

Carolyn S. Rider, ...Appellant,

v.

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

and

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

**APPELLANT'S PETITION FOR REHEARING
AND MEMORANDUM IN SUPPORT**

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-and-

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, the Appellant, Carolyn S. Rider, respectfully petitions the Court for a rehearing in this matter. Appellant respectfully asserts that the Court's Opinion No. 4842, filed June 15, 2011, overlooked and misapprehended certain arguments, points, facts and law, and erred in the respects set forth below.

1. THE COURT ERRED IN ITS ANALYSIS OF APPELLANT'S FIRST ISSUE ON APPEAL AND IN ITS APPLICATION OF ARTICLE 8 OF THE SOUTH CAROLINA UNIFORM COMMERCIAL CODE AND AGENCY LAW.

The \$304,082.46 asset amount at issue became legal property of Mrs. Rider on June 17, 2005, before the Decedent's July 8, 2005 death. S.C. Code Ann. Section 36-8-102(7) essentially defines an "entitlement holder" as a person identified in the records of a securities intermediary who acquires a security entitlement by virtue of any of the categories specified in S.C. Code Ann. Section 36-8-501(b). The Court erred in its analysis of whether and when transfer of legal ownership rights to the assets from the Decedent to Mrs. Rider occurred, basing its analysis on the timing of book entry under S.C. Code Ann. Section 36-8-501(b)(1) and the date of the Decedent's death, rather than correctly using the June 17, 2005 entitlement order date when legal ownership rights to the assets vested in Mrs. Rider under S.C. Code Ann. Section 36-8-501(b)(3) (which allows a person to "acquire a security entitlement if a securities intermediary...becomes obligated under other law, regulation or rule to credit a financial asset to the person's securities account...") and S.C. Code Ann. Section 36-8-104(a) ("a person acquires a security or an interest therein under this chapter if: (2) the person acquires a security entitlement to the security pursuant to Section 36-8-501"). See, S.C. Code Ann. Sections 36-8-501(b)(3) and 36-8-104(a).

The Decedent gave Wachovia Bank an effective entitlement order by virtue of his June 17, 2005 letter. Pursuant to S.C. Code Ann. Section 36-8-107(b), "An... entitlement order is

effective if: (1) it is made by the appropriate person.” The Court found, as the law of the case, that the June 17, 2005 letter was an entitlement order, and that the Decedent was an “appropriate person.” The June 17, 2005 entitlement order remained effective regardless of the Decedent’s subsequent July 8, 2005 death. Effectiveness of an... entitlement order is determined as of the date the ...entitlement order is made, and an... entitlement order does not become ineffective by reason of any later change in circumstances.” S.C. Code Ann. Section 36-8-107(e). Once given, an entitlement order is effective and is in itself a completed act; questions of agency are irrelevant. Since Mrs. Rider acquired legal rights to and ownership of the assets on June 17, 2005, the law of agency could not have revoked (or had any impact on) those rights on the Decedent’s July 8, 2005 date of death.

Once the Decedent’s effective June 17, 2005 entitlement order was given, Wachovia Bank as Decedent’s securities intermediary was required to comply with it. “A securities intermediary *shall* comply with an entitlement order if the entitlement order is originated by the appropriate person...” S.C. Code Ann. Section 36-8-507(a) (emphasis added).

By virtue of issuing an effective June 17, 2005 entitlement order with which Wachovia Bank was required to comply, the Decedent immediately created in his wife Carolyn S. Rider a “security entitlement” on June 17, 2005 giving her a legal ownership interest in the assets even prior to transfer. “A person *acquires a security or an interest therein*, under this chapter, if ... (2) the person acquires a security entitlement to the security pursuant to Section 36-8-501.” S.C. Code Ann. Section 36-8-104 (emphasis added). In addition, “[a] person acquires a security entitlement if a securities intermediary:... (3) becomes obligated under other law, regulation or rule to credit a financial asset to the person’s securities account.” S.C. Code Ann. Section 36-8-501(b)(3). Wachovia became obligated by the terms of the Decedent’s June 17, 2005 entitlement

order. Neither the Decedent's June 17, 2005 entitlement order nor Section 36-8-501(b)(3) required the bank to credit the account that same date (or before Decedent's death) in order for legal ownership rights to vest in Mrs. Rider on June 17, 2005. Issuance of the June 17, 2005 entitlement order immediately conferred upon Mrs. Rider as intended beneficiary a security entitlement, i.e., "the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5." S.C. Code Ann. Section 36-8-102(17). "A security entitlement is both a package of personal rights against the securities intermediary and an interest in the property held by the securities intermediary." S.C. Code Ann. Section 36-8-102(17), Comment 17. Mrs. Rider was an entitlement holder under S.C. Code Ann. Section 36-8-102(7); she was a person identified in the records (including but not limited to the June 17, 2005 entitlement order Wachovia received from the Decedent) of a securities intermediary as the person having a security entitlement against the securities intermediary.

Carolyn S. Rider's status as entitlement holder of a security entitlement on June 17, 2005 made subsequent events (including the Decedent's death) irrelevant because Mrs. Rider's legal interest in the assets was immediate and absolute. S.C. Code Ann. Section 36-8-104(a) supports immediate vesting, providing that "a person *acquires a security or an interest therein*, under this chapter, if... (2) the person acquires a security entitlement to the security pursuant to Section 36-8-501 (emphasis added). Under this section, obtaining enforceable rights to compel book entry is equivalent to ownership of the security itself. The Court's Opinion footnote 4 incorrectly suggests that an entitlement holder's legal rights to assets vest when a security is credited to the person's account; that is not stated in S.C. Code Ann. Sections 36-8-102(a)(7) or 36-8-102(a)(17). Under S.C. Code Ann. Section 36-8-501(b), book entry by the securities

intermediary is *not* the exclusive means by which Ms. Rider's enforceable legal rights in the assets could have vested.

The Court's errors in analysis and application of Article 8 disregard and frustrate the Decedent's clear intent to give his wife legal ownership of the assets he designated for her in his June 17, 2005 entitlement order. The drafters of Article 8 could not have intended such a result, particularly where the Decedent's intent was so clearly expressed.

There do not appear to be any South Carolina case authorities on point which address application of Article 8 under these circumstances; therefore, the implications of the Court's analysis and application of Article 8 in this appeal are even more significant. The Court's Opinion if unchanged may cause widespread commercial, systemic uncertainty which can be easily prevented by reading and applying Article 8 to give the first received written entitlement order binding effect by conferring immediate entitlement holder status to the designated beneficiary/recipient when the entitlement order is received by the securities intermediary, and confining the book entry requirement of Section 36-8-501(b)(1) to non-written entitlement orders. The transfer of rights from entitlement holder to entitlement holder is a repetitive, high-volume, expected commercial activity; daily trading of interests in securities is enormous. There are often multiple layers of securities intermediaries and entitlement holders involved in a single securities transaction, some serving simultaneously as entitlement holder and securities intermediary in the same assets; each time they issue instructions changing ownership interests in the underlying securities, they are issuing entitlement orders. Because many accounts involve assets such as certificated shares in publicly traded companies, which shares are not actually in the bank's possession but are reflected in the account, the entitlement holder can only be given enforceable rights to the assets. The Comment to S.C. Code Ann Section 36-8-102 ("Entitlement

holder”) recognizes this, stating: “As used in Article 8 the term reflects the market reality that most ‘owners’ of securities own not the security, but a derivative interest, or bundle of rights, in a fungible mass of securities legally owned by another. More than one layer of entitlement holders may exist between the legal owner of securities and the ultimate entitlement holder. Recognition of such derivative ownership is the core idea of the indirect holding system described in Part 5.” For transactions to run smoothly, there must be clarity and certainty as to precisely when entitlement holder interests arise and are transferred or terminated as to a particular security by a subsequent change caused by entitlement order. Commerce on a large scale should not be subject to disruption by random factors such as the death of individuals who issued entitlement orders. The application of Article 8 urged herein would prevent uncertainty and promote clarity, as intended by its drafters.

2. WITH RESPECT TO THE APPELLANT’S THIRD ISSUE ON APPEAL, THE COURT ERRED IN FINDING THAT THE APPELLANT’S COMPLETED INTER VIVOS GIFT ARGUMENT WAS NOT PRESERVED FOR REVIEW.

The Appellant asserted as her third issue on appeal that the \$304,082.36 amount at issue constitutes a completed lifetime, inter vivos gift from the Decedent to Carolyn S. Rider made as of June 17, 2005, prior to the Decedent’s July 8, 2005 death, and it is therefore property of Ms. Rider rather than property of the Decedent’s estate. The Record reflects that the Appellant asserted the existence of a completed inter vivos gift before the Probate Court and Circuit Court, preserving that argument for review on appeal.

The Appellant placed into the trial record for the Probate Court’s, Circuit Court’s and Court of Appeals’ consideration evidence sufficient to prove her completed inter vivos gift argument. Appellant entered into the Record evidence of the Decedent’s valid June 17, 2005 letter to Wachovia Bank gifting designated assets to Carolyn S. Rider, the 1993 Investment

Agency Agreement showing the bank's authority, custody and/or control of the assets at issue, Wachovia Bank testimony regarding its communications with the Decedent concerning his June 8, 2005 verbal gifting intention and its receipt of his June 17, 2005 letter, and the bank's issuance of instructions to comply with said letter before the Decedent's July 8, 2005 death. Appellant also entered into the Record attorney Tom Grady's testimony establishing the Decedent's intent to give his wife the assets at issue in addition to the Will's bequests, and offered Wachovia Bank testimony establishing the absence of any revocation of the gift or reservation of rights, and confirming that the Decedent could take no further action to deliver the gift beyond sending the letter, given the bank's custody and/or control of the assets. (R. pp. 244-247, 70-78, 152-185, 190-199).

Paragraphs 12 and 13 of the initial Petition for Declaratory Judgment specifically raise the issue of a completed lifetime gift. Paragraph 12 states:

"If the securities were effectively transferred to the Decedent's wife as of June 17, 2005 pursuant to the entitlement order, the fact that Wachovia did not actually transfer securities to Carolyn Rider until after the Decedent's death does not render the actual transfer of the assets an incomplete gift." (R.p. 39, paragraph 12).

Paragraph 13 states:

"If, pursuant to South Carolina Code of Laws, Wachovia was instructed by the Decedent to transfer securities to Carolyn Rider before the date of Decedent's death, the transfers shall be considered a completed lifetime gift by the Decedent to his wife and therefore not included in the Decedent's estate for probate purposes and estate tax purposes." (R.p. 39, paragraph 13).

Paragraphs 13 and 14 of Carolyn Rider's Answer to the initial Petition for Declaratory Judgment specifically admit the allegations contained in Paragraphs 12 and 13 of the Petition, asserting the existence of a completed lifetime gift. (R.p. 59, paragraphs 13 and 14).

The Appellant's oral argument before the Probate Court included the following assertions:

"Mr. Rider told everybody who was involved with this...he told his banker and he told his lawyer, I'm giving my wife \$2 million. Bank how do I do it? Bank says, Sign this. Give it back to us and it's done. That's what he did.....Everybody knows, everybody has testified that Mr. Rider intended to give \$2 million to Mrs. Rider. And if the court takes the money back away from her, then his entire intent, he followed the bank's instructions, he did what he was told to do, then his intent is entirely frustrated." (R. p. 207 l. 19 to p. 208 l. 13). "All transfers pursuant to the June 17, 2005 letter signed by Mr. Rider were done and put in place prior to his death." (R. P. 202 l. 14-21). Under the common law, my client is entitled to retain all of the funds that were transferred to her. Certainly, she's entitled to anything that was transferred prior to death." And the only testimony is that all of the transfers were done prior to the death." (R.p. 205 l. 13-18).

The Appellant's Grounds of Appeal reference a gift. (R. p. 121 paragraphs 3 and 4). Appellant raised the completed gift argument for the Circuit Court's consideration at the appellate hearing, noting Tom Grady's trial testimony "that this two million dollars was a specific gift separate and apart from his estate plan" (R.p. 226 lines 11-14), and noting the Probate Court's finding that the amount at issue is "a separate gift, separate and apart from his will and trust." (R.p. 222 l. 22 to p. 223 line 1). Appellant's July 30, 2007 post-hearing supplement to the Rider Trial Brief suggests that the effect of the Decedent's June 17, 2005 letter was not impacted by his death, and Mrs. Rider is therefore entitled to all assets given thereunder. (R.p. 416-417). Since the completed gift theory was preserved for review, it warrants the Court's consideration on rehearing.

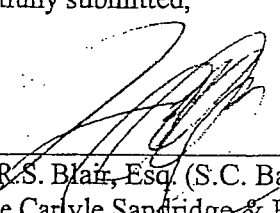
In addition, a completed gift argument is implicit in the Appellant's Article 8 argument (first issue on appeal) already before the Court, and provides support for a consistent, similar analysis of the facts outside the Article 8 context. Interpretation and application of Article 8 to provide for immediate vesting of legal ownership rights in Mrs. Rider under the June 17, 2005

entitlement order, and a completed inter vivos gift occurring on June 17, 2005 by virtue of the Decedent's same June 17, 2005 letter are consistent, and remove any necessity for later in time application of agency law at the Decedent's July 8, 2005 death.

It appears from the application of agency law in its Opinion that the Court of Appeals impliedly found that a gift had not been completed. That, combined with the Appellant's preservation of the completed inter vivos gift argument, warrants the Court's full consideration of the Appellant's third issue on appeal.

Based on the foregoing, the Appellant respectfully requests that the Court grant her Petition for Rehearing.

Respectfully submitted,



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Counsel for the Appellant
Carolyn S. Rider

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2007-CP-07-3057

RECEIVED

JUN 30 2011

SC Court of Appeals

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

Carolyn S. Rider, ...Appellant,

v.

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

and

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

CERTIFICATE OF SERVICE

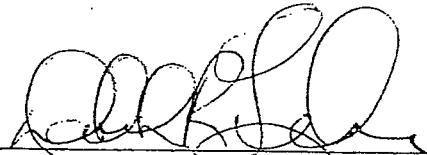
I certify that I have served a copy of the APPELLANT'S PETITION FOR
REHEARING AND MEMORANDUM IN SUPPORT by depositing a copy of it in the
United States Mail, postage prepaid, on June 30th, 2011, addressed to:

Douglas W. MacNeille, Esq.
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Hilton Head Island, SC 29938-5706

-and-

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY COURT OF COMMON PLEAS
The Honorable Carmen Tevis Mullen, Circuit Court Judge
Case No. 2007-CP-07-3057

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

Carolyn S. Rider.....Appellant,

v.

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

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

**NOTICE PURSUANT TO RULE 240, SCACR
OF RESPONDENTS DEBORAH RIDER McCLURE, et al.**

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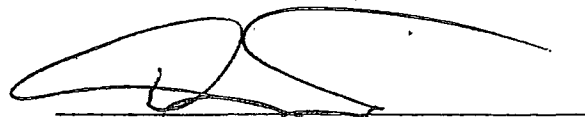
-and-

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Counsel for Respondents
Deborah Rider McClure, Ginger C. Rider,
Christian James and Austin Patrick McClure

Pursuant to Rule 240 of the Rules of Appellate Practice, Respondents Deborah Rider McClure, Ginger S. Rider, Christian James McClure, and Austin Patrick McClure (the Respondents) will not file a Return to the Appellant Carolyn S. Rider's Petition for Rehearing unless requested to do so by the Court of Appeals. If the Court requests that a Return to the Appellant's Petition for Rehearing be filed, the Respondents respectfully request that the Court of Appeals enlarge the time for filing the Return to at least ten (10) days from the date of a Court order to file a Return, as allowed under Rule 240. The Respondents oppose the Appellant's Petition, including the asserted bases for a rehearing and argument therein, and request that by not filing a Return unless requested to do so by the Court in accordance with Rule 240, they are not deemed to have consented to the relief sought in the Appellant's Petition for Rehearing.

Respectfully submitted,



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Christian James and Austin Patrick McClure

Date: July 8, 2011

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2007-CP-07-3057

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

Carolyn S. Rider.....Appellant,

v.

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

and

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

CERTIFICATE OF SERVICE

I certify that I served Respondent's Notice Pursuant to Rule 240, SCACR by depositing a
copy of it in the United States Mail, postage prepaid, on July 8, 2011, addressed to:

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The South Carolina Court of Appeals

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

Carolyn S. Rider,

Appellant,

v.

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

Respondent,

and

Deborah Rider McClure, Ginger C.
Rider, Christian James McClure. and
Austin Patrick McClure,

Respondents.

The Honorable Carmen T. Mullen
Beaufort County
Trial Court Case No. 2007-CP-07-03057

ORDER

After a careful consideration of the Petition for Rehearing, the Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is therefore ordered that the Petition for Rehearing be denied.

Samuel Hoff J.
H B W J.
Paul W. Thomas J.

Columbia, SC

 **FILED**
JUL 26 2011