

77110

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
In The Court of Common Pleas

RECEIVED

OCT 29 2015

SC Court of Appeals

The Honorable Roger M. Young  
Case No. 2011-CP-400

Appellate Case No. 2013-001893  
South Carolina Court of Appeals Unpublished Opinion No. 2015-UP-491

Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually, as Co-Trustees and beneficiaries of the Marital Trust and the Qualified Terminable Interest Trust created by the Thomas Stevenson Will, and Jacquelin S. Bennett, and Kathleen S. Turner, as Co-Personal Representatives on behalf of the Estate of Jacquelin K. Stevenson,

Appellants,

v.

T. Heyward Carter, Jr.; Evans, Carter; Kunes & Bennett, P.A.; Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison,

Defendants,

Of Whom

Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison are

Petitioners/Respondents.

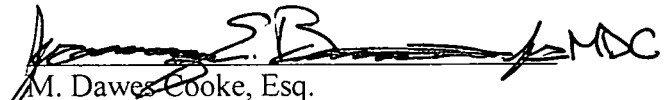
RESPONDENTS' PETITION FOR REHEARING

The Respondents, Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison, petition the South Carolina Court of Appeals for rehearing of the Court's decision in *Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually, as Co-Trustees and beneficiaries of the Marital Trust and the Qualified*

*Terminable Interest Trust created by the Thomas Stevenson Will, and Jacquelin S. Bennett, and Kathleen S. Turner, as Co-Personal Representatives on behalf of the Estate of Jacquelin K. Stevenson v. T. Heyward Carter, Jr.; Evans, Carter; Kunes & Bennett, P.A.; Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison, Unpublished Op. No. 2015-UP-491, (S.C. Ct. App. filed October 14, 2015). The grounds for this Petition for Rehearing are set forth in the accompanying memorandum. This Petition for Rehearing is based upon the Court's decision in Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually, as Co-Trustees and beneficiaries of the Marital Trust and the Qualified Terminable Interest Trust created by the Thomas Stevenson Will, and Jacquelin S. Bennett, and Kathleen S. Turner, as Co-Personal Representatives on behalf of the Estate of Jacquelin K. Stevenson v. T. Heyward Carter, Jr.; Evans, Carter; Kunes & Bennett, P.A.; Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison, Unpublished Op. No. 2015-UP-491, (S.C. Ct. App. filed October 14, 2015); the arguments herein; the Parties' Briefs and the Record on Appeal; SCACR Rule 221(a); SCACR Rule 240; and all other applicable rules of court.*



Frederick K. Sharpless, Esq.  
Sharpless & Stavola, PA  
P. O. Box 22106  
Greensboro, NC 27420  
(336) 333-6384



M. Dawes Cooke, Esq.  
Barnwell Whaley Patterson & Helms, LLC  
P. O. Drawer H  
Charleston, SC 29402  
(843) 577-7700

October 29, 2015  
Charleston, SC

**ATTORNEYS FOR  
PETITIONERS/RESPONDENTS**

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

INTRODUCTION ..... 1

STANDARD OF REVIEW ..... 3

ARGUMENTS..... 3

    1.    THIS COURT SHOULD ADDRESS RESPONDENTS’ ARGUMENTS  
          THAT ALLOWING LIABILITY TO BE IMPOSED WOULD  
          CONFLICT WITH FEDERAL LAW, ARGUMENTS THAT  
          PLAINTIFFS’ CLAIM ABATED ON THE DEATH OF JACQUELIN  
          STEVENSON, AND ARGUMENTS THAT PLAINTIFFS SUFFERED  
          NO LEGALLY COGNIZABLE DAMAGE ..... 3

        A.    The Court Should Address Respondents’ Argument That  
              Imposition of Liability in this Matter Would Conflict with Federal  
              Law, 26 U.S.C. § 7216..... 3

        B.    The Court Should Address Respondents’ Argument that Plaintiffs’  
              Claim For Aiding and Abetting a Breach of Fiduciary Duty Abated  
              on the Death of Jacquelin Stevenson ..... 6

        C.    The Court Should Address Respondents’ Argument that Plaintiffs  
              Suffered No Legally Cognizable Damage ..... 9

CONCLUSION..... 11

## TABLE OF AUTHORITIES

### CASES

<i>Ardis v. Cox</i> , 314 S.C. 512, 517, 431 S.E.2d 267, 270 (Ct. App. 1993).....	7
<i>Brailsford v. Brailsford</i> , 380 S.C. 443, 449-50, 669 S.E.2d 342, 345-46 (Ct. App. 2008).....	6, 8
<i>Checker Yellow Cab Co., Inc. v. Checker Cab &amp; Parcel Serv., Inc.</i> , 287 S.C. 608, 612, 340 S.E.2d 549, 552 (Ct. App. 1986) .....	3
<i>Church v. McGee</i> , 391 S.C. 334, 348, 705 S.E.2d 481, 489 (Ct. App. 2011) .....	10
<i>Cline v. S. Ry. Co.</i> , 113 S.C. 440, 102 S.E. 641 (1920).....	9
<i>Faircloth v. Finesod</i> , 938 F.2d 513 (4th Cir. 1991).....	9
<i>Ferguson v. Charleston Lincoln Mercury, Inc.</i> , 349 S.C. 558, 564-565, 564 S.E.2d 94, 97 (2002).....	7, 8, 9
<i>Jamison v. Ford Motor Co.</i> , 373 S.C. 248, 264, 644 S.E.2d 755, 763 (Ct. App. 2007). 4	
<i>Kennedy v. S.C. Retirement Sys.</i> , 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001).....	3
<i>Mattison v. Palmetto State Life Ins. Co.</i> , 197 S.C. 256, 15 S.E.2d 117 (1941).....	9
<i>Pamplico Bank and Trust Co. v. Prosser</i> , 259 S.C. 621, 193 S.E.2d 539 (1972) .....	9
<i>Prof'l Samplers, Inc. v. S.C. Emp't Sec. Comm'n</i> , 334 S.C. 392, 397, 513 S.E.2d 374, 377 (Ct. App. 1999) .....	4
<i>Vortex Sports &amp; Entm't, Inc. v. Ware</i> , 378 S.C. 197, 204, 662 S.E.2d 444, 448 (Ct. App. 2008).....	8

### STATUTES

26 U.S.C. § 7216.....	3, 4
S.C. Code Ann. § 15-5-90.....	6, 9
S.C. Code Ann. § 62-1-201(8).....	10
S.C. Code Ann. § 62-5-502.....	10

**RULES**

Rule 220, SCACR..... 9  
Rule 221, SCACR..... 3, 6  
Rule 240, SCACR..... 3

**REGULATIONS**

26 C.F.R § 301.7216-2..... 4

## INTRODUCTION

The Respondents petition this Honorable Court for rehearing of the recent decision of *Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually, as Co-Trustees and beneficiaries of the Marital Trust and the Qualified Terminable Interest Trust created by the Thomas Stevenson Will, and Jacquelin S. Bennett, and Kathleen S. Turner, as Co-Personal Representatives on behalf of the Estate of Jacquelin K. Stevenson v. T. Heyward Carter, Jr.; Evans, Carter; Kunes & Bennett, P.A.; Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison*, Unpublished Op. No. 2015-UP-491, (S.C. Ct. App. filed October 14, 2015). The Respondents respectfully submit that this Honorable Court failed to address three arguments by Respondents, any of which, if accepted, are dispositive of this action.

This lawsuit was filed on April 24, 2009, by:

- (1) Kathleen S. Turner, Jacquelin S. Bennett, and Genevieve S. Felder in their individual capacity;
- (2) Kathleen S. Turner, Jacquelin S. Bennett, and Genevieve S. Felder as trustees;
- (3) Kathleen S. Turner, Jacquelin S. Bennett, and Genevieve S. Felder as beneficiaries of the marital and QTIP trusts created by the will of their father, Thomas C. Stevenson, Jr.; and
- (4) Kathleen S. Turner and Jacquelin S. Bennett as personal representatives of the estate of their mother, Jacquelin K. Stevenson.

(R. p. 0031).

The Defendants were Heyward Carter, Jr., Evans Carter Kunes & Bennett, PA, Douglas Capital Management, Inc., Dixon Hughes f/k/a Pratt-Thomas Gumb & Co., PA, and Lynne L. Kerrison.<sup>1</sup> (Id.) On December 14, 2011, Plaintiffs moved to amend their

---

<sup>1</sup> The claims against Douglas Capital Management were later dismissed.

complaint to include a claim for aiding and abetting a breach of fiduciary duty. The court allowed the amendment by order dated May 17, 2012, and it was filed May 31, 2012. (R. p. 0088-0096). In this lawsuit, the Plaintiffs, residual beneficiaries of two trusts created by their father's will, seek to hold defendant-accountants liable for telling their mother, but not them, that their brothers, while trustees of the two trusts, engaged in self-dealing transactions. Plaintiffs seek damages in excess of six million dollars.

Following discovery, all Defendants moved for summary judgment. (R. pp. 0108-0110). Claims against the attorney, Heyward Carter, Jr., were resolved. (R. p. 1855, lines 10-11). Following hearing on the motions, Plaintiffs moved to withdraw a response to a Request for Admission. (R. pp. 0453-0460). An order was entered on July 3, 2013, granting Ms. Kerrison's and Dixon Hughes' motion for summary judgment. (R. pp. 0001-0022). A later motion to alter or amend the order was denied, as was the motion to withdraw the Request for Admission. (R. pp. 0027-0030). This appeal followed.

On October 14, 2015, this Court issued an Order affirming the trial court's grant of summary judgment to Respondents on Appellants' claims other than for aiding and abetting a breach of fiduciary duty, and reversing the trial court's grant of summary judgment on the claim for aiding and abetting a breach of fiduciary duty.

This matter is presently before the Court on Respondents' Petition for Rehearing, pursuant to Rule 221(a), SCACR, to address three arguments overlooked by the Court in its decision. As discussed below, this Court erred in reversing the trial court's grant of summary judgment on the claim for aiding and abetting a breach of fiduciary duty. Respondents respectfully request that this Court grant Rehearing to address these additional arguments, and affirm the trial court's entry of summary judgment on all claims.

## STANDARD OF REVIEW

Under Rule 221(a), SCACR, a party may file a petition for rehearing in accordance with Rule 240(d), SCACR. For the losing party to prevail on the petition, that party “must demonstrate the Court overlooked or misapprehended their argument.” *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). The purpose of a petition for rehearing “is not to present points the lawyers of the losing parties overlooked themselves or to have the case tried in the Court of Appeals a second time.” *Checker Yellow Cab Co., Inc. v. Checker Cab & Parcel Serv., Inc.*, 287 S.C. 608, 612, 340 S.E.2d 549, 552 (Ct. App. 1986). The appellate courts “will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party’s appeal.” Rule 221(c), SCACR.

## ARGUMENTS

**1. THIS COURT SHOULD ADDRESS RESPONDENTS’ ARGUMENTS THAT ALLOWING LIABILITY TO BE IMPOSED WOULD CONFLICT WITH FEDERAL LAW, ARGUMENTS THAT PLAINTIFFS’ CLAIM ABATED ON THE DEATH OF JACQUELIN STEVENSON, AND ARGUMENTS THAT PLAINTIFFS SUFFERED NO LEGALLY COGNIZABLE DAMAGE**

**A. The Court Should Address Respondents’ Argument That Imposition of Liability in this Matter Would Conflict with Federal Law, 26 U.S.C. § 7216**

In 1971, Congress enacted 26 U.S.C. § 7216, which prohibits “any person who is engaged in the business of preparing, or providing services in connection with the preparation of” federal tax returns from disclosing to other than specified persons or organizations any information “furnished to him for, or in connection with, the preparation any such return” and imposes criminal sanctions for a violation of this prohibition. The legislative history of the bill clearly indicates that Congress sought to prohibit tax preparers from disclosing information received during the preparation of

tax returns by providing for criminal penalties. Congress allowed only three exceptions to the general rule.<sup>2</sup>

Any common-law duty to disclose taxpayer information to third parties is preempted by 26 U.S.C. §7216. “If a state statute, administrative rule, or common law cause of action conflicts with a federal statute, it is incontestable that the state law has no efficacy.” *Jamison v. Ford Motor Co.*, 373 S.C. 248, 264, 644 S.E.2d 755, 763 (Ct. App. 2007). “Such a conflict arises when either compliance with both laws is impossible or when the state law frustrates the federal purpose and creates an obstacle to the fulfillment of federal objectives.” *Prof'l Samplers, Inc. v. S.C. Emp't Sec. Comm'n*, 334 S.C. 392, 397, 513 S.E.2d 374, 377 (Ct. App. 1999). The disclosures that Plaintiffs seek to mandate are exactly the disclosures that 26 U.S.C. § 7216 prohibits. Thus, absent consent from the client (which they did not have), federal law prohibited Lynne Kerrison and Pratt-Thomas Gumb from disclosing confidential information they learned in the course of work for the trustees of the trusts, who at that time were only contingent beneficiaries.

Plaintiffs argue that regulations adopted by the Internal Revenue Service implementing 26 U.S.C. § 7216, in particular those at found at 26 C.F.R § 301.7216-2(e), allow disclosure to “related taxpayers,” including beneficiaries of a trust. Plaintiffs are simply incorrect about the regulation. 26 C.F.R. § 301.7216(e)(2) permits a tax preparer to use information of a related party to prepare the tax return of another related party. It does not permit disclosure of information, nor its use, for any other purpose. The regulation says:

- (e) Disclosure or use of information in the case of related taxpayers.

---

<sup>2</sup> In addition to the three original exceptions to the general rule that tax information may not be disclosed (court orders, preparation of state taxes, and disclosures required by the Internal Revenue Code) in 1989 Congress allowed tax information to be disclosed for the purposes of “quality or peer reviews.” 26 U.S.C. § 7216 (b) (3).

- (1) In preparing a tax return of a second taxpayer, a tax return preparer may use, and may disclose to the second taxpayer in the form in which it appears on the return, any tax return information that the tax return preparer obtained from a first taxpayer if—
  - (i) The second taxpayer is related to the first taxpayer within the meaning of paragraph (e)(2) of this section;
  - (ii) The first taxpayer's tax interest in the information is not adverse to the second taxpayer's tax interest in the information; and
  - (iii) The first taxpayer has not expressly prohibited the disclosure or use.
- (2) For purposes of paragraph (e)(1)(i) of this section, a taxpayer is related to another taxpayer if they have any one of the following relationships: Husband and wife, child and parent, grandchild and grandparent, partner and partnership, trust or estate and beneficiary, trust or estate and fiduciary, corporation and shareholder, or members of a controlled group of corporations as defined in section 1563.

To adopt the position advocated by Plaintiffs, that accountants have a duty to tell non-clients of the possible misdeeds of their clients, would place tax preparers in the untenable position of having to choose between facing civil liability for nondisclosure or criminal liability for disclosure. That conflict is evident in this case. Plaintiffs allege that Lynne Kerrison and Pratt-Thomas Gumb breached a duty of care owed to the beneficiaries by “failing to inform the Plaintiffs, including Kathleen Turner as power of attorney for Jacquelin Stevenson, of the improper self-dealing withdrawals known to these Defendants.” (Complaint, R. p. 0037-0038, ¶ 44.) The disclosure of information to other beneficiaries, as non-clients, would have subjected Lynne Kerrison and Pratt-Thomas Gumb to criminal liability under federal law.

Plaintiffs further argue that Mrs. Stevenson was a “related taxpayer” and that disclosure was required to her directly or to her power of attorney. Again, Plaintiffs misunderstand the regulation, but in any case, disclosure was made to Mrs. Stevenson through her attorney, Carter, and this Court held there was no separate duty of disclosure to Kathleen as her mother’s power of attorney independent of the disclosures made to Carter. (Slip Op. at 6).

Plaintiffs offered no argument justifying this Court in creating a duty from an accountant to non-client trust beneficiaries, and the circuit court was correct to dismiss Plaintiffs’ claims. In any event, any such duty was satisfied by the disclosure to Carter.

**B. The Court Should Address Respondents’ Argument that Plaintiffs’ Claim For Aiding and Abetting a Breach of Fiduciary Duty Abated on the Death of Jacquelin Stevenson**

Although not cited by the trial court as a basis of its decision, Respondents argued that the trial court’s decision should be affirmed for other grounds appearing in the record. (Rule 220(c), SCACR). In the present case, Plaintiffs’ claim for aiding and abetting a breach of fiduciary duty, of which fraud is an essential element, did not survive the death of Jacquelin K. Stevenson.

While S.C. Code Ann. § 15-5-90 provides that actions based on injuries to an individual shall survive the death of that person, the common law recognizes an exception to the survivability of a claim in cases involving fraud or deceit. Furthermore, the “fraud exception to survivability is not limited only to a cause of action titled ‘fraud’” but to all actions based on theories of fraud or deceit. *Brailsford v. Brailsford*, 380 S.C. 443, 449-50, 669 S.E.2d 342, 345-46 (Ct. App. 2008). The label given to the claim by a plaintiff is irrelevant where the claim arises from fraudulent and/or deceptive conduct.

*Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 565, 564 S.E.2d 94, 97 (2002). To determine whether a claim is foreclosed by the death of the original plaintiff, notwithstanding the survival statute, courts in South Carolina look to the “nature and substance of the cause of action, rather than the form of the remedy....” *Id.* Because the actions in this case are based on the alleged fraudulent conduct of Thomas and Daniel Stevenson towards Jacquelin Stevenson, they did not survive the death of Jacquelin Stevenson.

Plaintiffs’ claim against Defendants Lynne Kerrison and Dixon Hughes must derive from the allegation that:

During Thomas C. Stevenson, III and Daniel R. Stevenson, II’s terms as co-trustees both improperly took money from the Marital Trust, QTIP Trust and the Estate of Jacquelin K. Stevenson.

(Amended Complaint, R. p. 0091, ¶ 19). The only wrongdoing alleged against Ms. Kerrison was her failure, upon learning of the withdrawals, to tell the Plaintiffs of Thomas and Daniel Stevenson’s actions.

Plaintiffs’ sole surviving claim, while labeled aiding and abetting a breach of fiduciary duty,<sup>3</sup> is actually based on a duty of Lynne Kerrison to disclose information directly to the Plaintiffs. (Amended Complaint, R. pp. 0091, 0092, 0094, 0095, ¶¶ 19, 24, 43, 47, 48, 52). A “nondisclosure is fraudulent when there is a duty to speak.” *Ardis v. Cox*, 314 S.C. 512, 517, 431 S.E.2d 267, 270 (Ct. App. 1993). The essence of the Plaintiffs’ claim against Defendants Lynne Kerrison and Pratt-Thomas Gumb for aiding and abetting breach of fiduciary duty is that they failed to disclose the fraudulent actions

---

<sup>3</sup> Aiding and abetting breach of fiduciary duty is the only remaining claim. This Court affirmed summary judgment dismissing the claims for professional negligence and breach of fiduciary duty.

of Thomas and Daniel Stevenson, and by its very nature this claim is, in effect, a claim of fraud for failure to disclose the fraud of another. Because this is an action arising out of a fraud, in the guise of an action for aiding and abetting a breach of fiduciary duty, it did not survive the death of Jacquelin Stevenson.

In *Brailsford v. Brailsford*, this Court determined that an action by the widow of a trust beneficiary, both individually and in her capacity as personal representative of the estate, against trustees for various instances of fraudulent conduct did not survive the death of her husband. *Brailsford*, 380 S.C. at 449-50, 669 S.E.2d at 345-46. This Court reasoned that the widow's causes of action were "essentially a cause of action for fraud simply disguised under a different title." *Id* The Court relied on the case of *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 564-565, 564 S.E.2d 94, 97 (2002), in which the South Carolina Supreme Court found that when the alleged misconduct amounted to misleading the deceased by either intentional deception or gross negligence, such actions fit within the ambit of fraud or deceptive conduct and, regardless of the label given, did not survive the deceased.

In this case, the claim of aiding and abetting a breach of fiduciary duty is entirely premised on the purported fraud committed by the Trustees; this is not a claim merely supported by evidence of fraudulent conduct. In fact, fraud by the Trustees is an essential element to the claim of aiding and abetting a breach of fiduciary duty.<sup>4</sup> Because the claim for aiding and abetting a breach of fiduciary duty arises by its very nature from the purported fraud of the Trustees, it does not survive Mrs. Stevenson's death.

---

<sup>4</sup> "The elements for a cause of action of aiding and abetting a breach of fiduciary duty are: (1) a breach of a fiduciary duty owed to the plaintiff; (2) the defendant's knowing participation in the breach; and (3) damages." *Vortex Sports & Entm't, Inc. v. Ware*, 378 S.C. 197, 204, 662 S.E.2d 444, 448 (Ct. App. 2008).

The reasoning behind disallowing suits based on theories of fraud to survive an individual is that evidence of the state of mind of the victim is crucial to determining whether a fraud was perpetrated. In *Faircloth v. Finesod*, 938 F.2d 513 (4th Cir. 1991), finding that civil conspiracy claims did not survive the death of the victim, the Fourth Circuit upheld the constitutionality of S.C. Code Ann. § 15-5-90 and the recognized exception for fraud. The Court acknowledged that a rational basis for the fraud exception to the survivability statute is “that fraud is a tort that requires a special quality of proof, and the states of mind of the victim (*e.g.*, whether he knew the statement was false, relied upon it, and was justified in so relying) and the perpetrator are especially vital.” *Id*; see also *Mattison v. Palmetto State Life Ins. Co.*, 197 S.C. 256, 15 S.E.2d 117 (1941); *Ferguson v. Charleston Lincoln Mercury, Inc.* (2002); *Pamplico Bank and Trust Co. v. Prosser*, 259 S.C. 621, 193 S.E.2d 539 (1972); *Cline v. S. Ry. Co.*, 113 S.C. 440, 102 S.E. 641 (1920).

Because the issue of Jacquelin Stevenson’s state of mind, potential consent and ratification and knowledge are crucial to the issue of whether a duty was breached and a fraud committed, either by trustees Thomas and Daniel Stevenson or Defendant Lynne Kerrison, Plaintiffs’ claims did not survive Jacquelin K. Stevenson’s death.

**C. The Court Should Address Respondents’ Argument that Plaintiffs Suffered No Legally Cognizable Damage**

Although not cited by the trial court as a basis for its decision, this Court may affirm the trial court for any reason appearing in the record. Rule 220(c), SCACR. Because Plaintiffs, as individual, contingent, residuary beneficiaries, suffered no recognized damages as they had no enforceable right to inherit, their claims should be dismissed.

Under South Carolina law, trusts or trustees are the devisees of testamentary gifts; “*beneficiaries are not devisees.*” S.C. Code Ann. § 62-1-201(8) (emphasis added). Moreover, the “point in time that a claim for the object of a bequest arises necessarily depends on when the legatee has a legal right to it.” *Church v. McGee*, 391 S.C. 334, 348, 705 S.E.2d 481, 489 (Ct. App. 2011). During Mrs. Stevenson’s lifetime, Plaintiffs, as individuals and trust beneficiaries, held *no legal right* to Mrs. Stevenson’s personal assets or the assets of the trusts. Because all of the alleged improprieties occurred during Mrs. Stevenson’s lifetime, Plaintiffs suffered no damages.

Before Mrs. Stevenson’s death, Plaintiffs had only the inchoate expectation of a future interest in the marital trust, subject to Mrs. Stevenson’s use of the trust assets, power of appointment and testamentary wishes. During her lifetime, Mrs. Stevenson was the sole beneficiary of both trusts, and the entire corpus of both trusts could have been used for her benefit. Neither trust instrument provided a means by which trust assets could have been distributed to the residual beneficiaries during Mrs. Stevenson’s lifetime. (Turner Deposition, Exhibit 5, Will). Plaintiffs held no interest in their mother’s personal assets, and Mrs. Stevenson held the legal right to dispose of those assets. Consequently, while Mrs. Stevenson lived, Plaintiffs, as individuals and beneficiaries, held no legal right to the assets of the trusts or Mrs. Stevenson’s personal assets. Plaintiffs’ rights accrued only after Mrs. Stevenson’s death, after the actions alleged in the complaint.

Plaintiffs attempt to get around their inability to demonstrate individual damages by arguing that Kathleen, as holder of her mother’s Power of Attorney, stands in the shoes of Mrs. Stevenson, whose Estate was purportedly damaged. A Power of Attorney is extinguished at the death of the principal. (S.C. Code Ann. § 62-5-502). Whether


Kathleen could have asserted this claim on her mother's behalf during Mrs. Stevenson's lifetime has no bearing on whether Plaintiffs have suffered individual damages.

Plaintiffs' argument that they are entitled to pursue the claim as successor trustees is equally flawed. Again, the claim for aiding and abetting a breach of fiduciary duty is an individual claim, not a claim on behalf of the Trust. Moreover, any such claim by the Estate or Trust would be barred by the statute of limitations, which this court has already determined began to run in 2001 upon notice to Mrs. Stevenson's attorney.

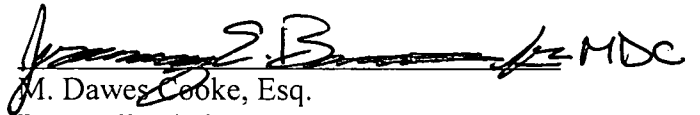
Plaintiffs cannot show that their individual rights were invaded. Plaintiffs do not allege that anything was improperly taken from their personal assets, only that Thomas and Daniel Stevenson "both improperly took money from the Marital Trust, QTIP Trust, and Estate of Jacquelin K. Stevenson." (Complaint, R. p. 0034, ¶ 20). Because Plaintiffs held no right to the assets of either trust while their mother lived, nor any protected expectation in the remainder, and no money was taken from them personally, Plaintiffs, as individuals and trust beneficiaries, suffered no damages, and therefore Defendants are entitled to summary judgment as a matter of law.

### CONCLUSION

For the foregoing reasons, Respondents, Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison, respectfully request that this Court grant their Petition for Rehearing, that it address three arguments overlooked by the Court in its decision.



Frederick K. Sharpless, Esq.  
Sharpless & Stavola, PA  
P. O. Box 22106  
Greensboro, NC 27420  
(336) 333-6384

 MDC

M. Dawes Cooke, Esq.  
Barnwell Whaley Patterson & Helms, LLC  
P. O. Drawer H  
Charleston, SC 29402  
(843) 577-7700

**ATTORNEYS FOR  
PETITIONERS/RESPONDENTS**

October 29, 2015  
Charleston, SC

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
In The Court of Common Pleas

---

The Honorable Roger M. Young  
Case No. 2011-CP-400

---

Appellate Case No. 2013-001893  
South Carolina Court of Appeals Unpublished Opinion No. 2015-UP-491

---

RECEIVED  
OCT 29 2015  
SC Court of Appeals

Jacquelin S. Bennett, Genevieve S. Felder and Kathleen S. Turner, individually, as Co-Trustees and beneficiaries of the Marital Trust and the Qualified Terminable Interest Trust created by the Thomas Stevenson Will, and Jacquelin S. Bennett, and Kathleen S. Turner, as Co-Personal Representatives on behalf of the Estate of Jacquelin K. Stevenson,

Appellants,

v.

T. Heyward Carter, Jr.; Evans, Carter; Kunes & Bennett, P.A.; Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison,

Defendants,

Of Whom

Dixon-Hughes f/k/a Pratt-Thomas Gumb & Co., P.A.; and Lynne L. Kerrison are

Petitioners/Respondents.

---

PROOF OF SERVICE

---

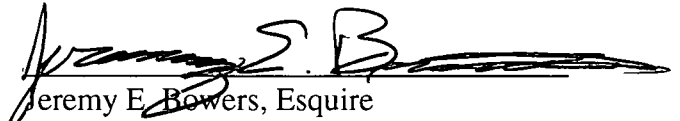
I certify that I have served the Respondents' Petition for Rehearing on Appellants by depositing a copy of same in the United States Mail, postage prepaid, on October 29, 2015, addressed as follows:

Mr. A. Camden Lewis  
Lewis Babcock & Griffin, LLP  
P O Box 11208  
Columbia, SC 29211

Mr. Keith M. Babcock  
Lewis Babcock & Griffin, LLP  
P O Box 11208  
Columbia, SC 29211

Mr. James M. Griffin  
Lewis Babcock & Griffin, LLP  
P O Box 11208  
Columbia, SC 29211

Ms. Ariail Elizabeth King  
Lewis Babcock & Griffin, LLP  
P O Box 11208  
Columbia, SC 29211

  
Jeremy E. Bowers, Esquire  
Barnwell Whaley Patterson & Helms, LLC  
P. O. Drawer H  
Charleston, SC 29402  
(843) 577-7700

**ATTORNEYS FOR  
PETITIONERS/RESPONDENTS**

October 29, 2015  
Charleston, SC