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MAY 16 2012

S.C. SUPREME COURT

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REPLY TO:

Thomas M. Kennaday

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May 15, 2012

The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
P.O. Box 11330
Columbia, SC 29211

Re: Howard Alston Duncan, Jr. and Thomas Duncan v. Rose Ann Voyles and
Mary Liverman
Case No.: 2010-CP-40-00044
In the Matter of Mary Rose Duncan
Case No.: 2010-CP-40-2812
Appellate Case Tracking No.: 2010179346
File No. 9820.101

Dear Mr. Shearouse:

Please be advised that the settlement of the above matter has now been finalized. We respectfully request that this case be dismissed. Enclosed for your confirmation of the settlement is a copy of the signed settlement agreement. Thank you in advance for your time and assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Sincerely,



Thomas M. Kennaday

TMK/ssm

Enclosure

cc: Brian Dumas, Esquire

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Howard Alston Duncan, Jr., and
 Thomas Duncan,
 Plaintiffs,
 v.
 Rose Ann Voyles and Mary Liverman,
 Defendants.

Civil Action No.: 2010-CP-40-00044
 and
 Civil Action No.: 2010-CP-40-02812

RECEIVED

MAY 16 2012

S.C. SUPREME COURT

IN THE MATTER OF :
 THE DECEDENT, Mary Rose Duncan
 Howard Alston Duncan, William
 Thomas Duncan,
 Petitioners,
 v.
 Rose Ann Voyles, Individually and as
 Personal Representative, and Mary
 Liverman,
 Respondents.

**SETTLEMENT AGREEMENT AND
 RELEASE**

This Settlement Agreement and Release (Agreement) is entered into by Howard Alston Duncan, William Thomas Duncan, Rose Ann Voyles, Individually and as Personal Representative of the Estate of Mary Rose Duncan, and Mary Liverman (the Parties) to resolve all outstanding matters that presently exist and all potential claims that may exist or may arise involving the Estate of Mary Rose Duncan and the probate assets and the non-probate assets of Mary Rose Duncan.

WHEREAS, Mary Rose Duncan ("the Decedent") died on May 2, 2007; and

WHEREAS, Rose Ann Voyles is the duly appointed Personal Representative of the Estate of Mary Rose Duncan; and

WHEREAS, the Decedent's Will devises all of her assets equally to her four children, Howard Alston Duncan, William Thomas Duncan, Rose Ann Voyles, and Mary Liverman; and

WHEREAS, the Decedent's probate assets included a 65% interest in property located at 6938 Faust Street, Columbia, SC, TMS 16904-10-11 (the Faust Street Property), household

furnishings and personal effects, and a 100% interest in Pink Hill Associates, an LLC with no known value, which assets have been distributed equally to the Decedent's four children; and

WHEREAS, since the Decedent's death, Rose Ann Voyles has been acting as property manager for the Faust Street Property and since November 2009, Mrs. Voyles has managed the Faust Street Property pursuant to a court order; and

WHEREAS, the Decedent owned a life estate in 1501 Brookhirst Court, Columbia, SC, that ended upon her death; and

WHEREAS, the only other assets owned by the Decedent at her death were a checking account, a savings account, and six certificates of deposit which were listed on the Original Inventory filed with the Probate Court on August 29, 2007, as "Jointly Owned Property (with right of survivorship)"; Mary Liverman and Rose Ann Voyles were listed as the joint owners of three certificates of deposit each and as co-joint owners of the checking and savings accounts;

WHEREAS, Howard Alston Duncan and William Thomas Duncan dispute that the aforementioned checking account, savings account, and certificates of deposit were rightfully jointly owned with right of survivorship and initiated litigation in the Probate Court for Richland County, South Carolina, and in the Court of Common Pleas for the Fifth Judicial Circuit to have the accounts and certificates of deposit retitled and for damages, respectively; and

WHEREAS, the Probate Court action was removed to the Court of Common Pleas and consolidated with the action filed in the Court of Common Pleas under the caption noted above; and

WHEREAS, R. Lawton McIntosh, judge of the Court of Common Pleas, entered a decision in this matter on September 10, 2010, which was appealed to the South Carolina Supreme Court of South Carolina; arguments before the South Carolina Supreme Court were made on January 25, 2012;

WHEREAS, Howard Alston Duncan, William Thomas Duncan, Rose Ann Voyles, ("Voyles"), Mary Liverman ("Liverman") and Rose Ann Voyles as Personal Representative of the Estate of Mary Rose Duncan wish avoid further litigation and resolve all outstanding matters that are presently pending and all potential claims that may exist or may arise involving the Estate of Mary Rose Duncan, the probate assets of Mary Rose Duncan, and the non-probate assets of Mary Rose Duncan, under the following terms and conditions.

NOW THEREFORE, in consideration of the foregoing and of the mutual undertakings set forth herein below, the parties hereto, intending to be legally bound, agree as follows:

1. Voyles and Liverman will execute a limited warranty deed (or deeds) conveying their interests in the Faust Street Property to Howard Alston Duncan and William Thomas Duncan, and will pay all filing and transfer fees associated with the conveyance. The Parties agree that the value of the aggregate interests being convey, being an undivided 32.5% interest in the Faust Street property, is \$50,732.50, which is 32.5% of the current tax assessment value of the Faust Street Property.

2. Should any claims (third party claims or otherwise), judgments, fines, penalties, orders, enforcement efforts, or other costs (including investigative, remedial, removal, or response costs) arise due, in part or otherwise, to any incident, occurrence or condition of the Faust Street Property (including the presence of hazardous substances, contaminants, or pollution as defined under local, state, or federal law) as it existed prior to the transfer of the interests of Voyles and Liverman to Howard Alston Duncan and William Thomas Duncan, the Parties shall share in all such claims or liabilities and the defense (including attorney's fees and other costs), investigation, remediation, removal, or other response efforts undertaken to address such claims or liabilities equally to the extent any of them are personally liable and the liability is not covered by insurance, unless such liability is due to the acts or omissions of one of the Parties.
3. Howard Alston Duncan and William Thomas Duncan, through their attorney, shall dismiss with prejudice the presently pending actions, Civil Action No.: 2010-CP-40-00044 and Civil Action No.: 2010-CP-40-02812 (to the extent 2010 CP-40-02812 was not dismissed by the consolidation) and inform the Probate Court that said actions have been dismissed. Counsel for Plaintiffs will also notify the Supreme Court that their appeal is being withdrawn or dismissed as appropriate due to this settlement.
4. Voyles shall account for all funds received and shall distribute to Howard Alston Duncan and William Thomas Duncan any collected but undistributed rent from the Faust Street Property, including deductions for payments authorized by prior Court Order and/or taxes.
5. Voyles agrees and represents that, upon deeding her interest in the Faust Street Property to Howard Alston Duncan and William Thomas Duncan, she shall discontinue any management activities related to the Faust Street Property and that she will not be entitled to collect any management fee, as previously permitted under court order. Voyles will report to Howard Alston Duncan and William Thomas Duncan any outstanding issues of which she is aware that affect the Faust Street Property.
6. Howard Alston Duncan and William Thomas Duncan waive, release and covenant not to assert, any and all claims, known or unknown, that they may have, or which may arise, against Rose Ann Voyles, either individually or as the Personal Representative of the Estate of Mary Rose Duncan for or relating to any of the probate or non-probate assets of the Decedent, and against Mary Liverman for or relating to any of the probate or non-probate assets of the Decedent.
7. Rose Ann Voyles, individually and as the Personal Representative of the Estate of Mary Rose Duncan, and Mary Liverman waive, release and covenant not to assert, any and all claims, known or unknown, that they may have, or which may arise, against Howard Alston Duncan and William Thomas Duncan for or relating to any of the probate or non-probate assets of Mary Rose Duncan.

8. Voyles and Liverman represent that the Faust Street Property is currently insured by a commercial general liability policy with all owners of the property as insureds and has been so insured at all times since the Deed of Distribution was executed. Voyles and Liverman represent that the Faust Street Property is currently insured under a general liability policy issued by Travelers Insurance Company, policy number I-680-2580B387-PHX-11, having a general aggregate limit of \$2,000,000.00, which policy will remain in effect through the transfer of the interests of Voyles and Liverman in the Faust Street Property to Howard Alston Duncan and William Thomas Duncan. This representation is a material inducement to Howard Alston Duncan and William Thomas Duncan entering this agreement and they would not enter this agreement if the facts were not as so represented.
9. Voyles and Liverman represent that the Faust Street Property is currently occupied by a tenant paying \$2,500 per month without a written lease, that the tenant is not current on the lease payments as reflected in 12D below, that there is no contract with the tenant that would be breached by the Parties or any Party pursuant to entering this agreement, and that Voyles and Liverman have no knowledge that the current tenant intends to discontinue renting the property for \$2,500 per month. These representations are material inducements to Howard Alston Duncan and William Thomas Duncan entering this agreement and they would not enter this agreement if the facts were not as so represented.
10. Voyles and Liverman represent that the interests in the Faust Street Property they are deeding to Howard Alston Duncan and William Thomas Duncan are the complete interests that were released to them in the Deed of Distribution, that they have not sold, transferred, encumbered, or otherwise alienated any or all of their rights to the Faust Street Property other than pursuant to this agreement. This representation is a material inducement to Howard Alston Duncan and William Thomas Duncan entering this agreement and they would not enter this agreement if the facts were not as so represented.
11. The Plaintiffs Howard Alston Duncan and William Thomas Duncan will execute Receipts and Releases for any and all claims against the Estate along with this Agreement to be submitted to Probate Court.
12. Rents and the account for the Faust Street Property shall be shared by the parties through February 29, 2012 with the following provisions:
 - A. Rent per month is \$2500-\$50 management fee to Rose Voyles, making the general share each month, before any other expenses, for each sibling \$398.12 and Ms. Skinner \$857.50. There currently is in the Faust street account at First Citizens the amount of \$5104.33, as November and December rents have been retained with no payments to owners, with January and February 2012 rent in arrears. The tenants have paid the taxes for 2011. Insurance is \$730 for the year, and renews July 2012. Taxes for 2012 are being assessed using

the 2011 tax bill of \$4270.93. Should the tax bill change, Voyles and/or Liverman shall not be responsible for any differential or changes.

- B. From the \$5104.33 in the account, the following will be paid
- (1) Rose Voyles and Mary Liverman will each receive
 - a. 4 months rent share: 4 x 398.12 \$1592.48
 - b. 4 months insurance refund : 4 x 9.89 \$ 39.56
 - c. Reduction of \$115.68 for 2 months taxes \$ 115.68
 - d. Net check for \$1516.36 to Rose Voyles, same to Mary Liverman
 - (2) Elizabeth Skinner will receive 2 months rent total check for \$1715.00
 - (3) Rose Voyles will receive 4 months management fee of \$200.00
 - (4) This leaves a balance in the Faust Account, after payment of the above totaling \$4947.70 of \$156.61 to be divided as:
 - a. Elizabeth Skinner: \$54.81
 - b. Rose Voyles: \$25.45
 - c. Mary Liverman: \$25.45
 - d. Tom Duncan: \$25.45
 - e. Alston Duncan: \$25.45
- C. After these payments are made, there will be no further payments and/or adjustments.
- D. Rent in arrears due by tenant is to be the property of Duncans and Skinner by their proportionate shares. Mary Liverman and Rose Voyles waive any claim on the rent in arrears.

13. The validity, construction, operation and effect of this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of South Carolina, and this Agreement shall be enforceable in the Probate Court of Richland County, South Carolina, and any other court of appropriate jurisdiction.
14. The undersigned authorize their respective counsel to prepare, execute and submit to the Probate Court of Richland County, the Court of Common Pleas of Richland County, and the Supreme Court of South Carolina any and all documents necessary to effectuate the dismissal with prejudice of the pending litigation.
15. This Agreement may be executed in counterparts, each of which shall be an original but all of which shall constitute one and the same Agreement.
16. The parties declare that they have completely and fully read this Agreement, that they understand its terms, that they have each either consulted an attorney or had the opportunity to consult with an attorney about the meaning and effect of execution of this agreement, and that they execute this Agreement voluntarily.

ACCORDINGLY, by their signatures below, the parties hereby execute and enter into

this Agreement as of the date executed for each.

Rose Ann Voyles
Rose Ann Voyles, individually and as Personal
Representative of the Estate of Mary Rose Duncan

Date: 3/19/12

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

The foregoing instrument was acknowledged and signed before me by Rose Ann Voyles, individually and as Personal Representative of the Estate of Mary Rose Duncan, who is personally known to me or who has produced satisfactory identification.

WITNESS my hand and official seal of office this 19 day of MARCH, 2012.

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: My Commission Expires
March 3rd, 2013

Mary Liverman
Mary Liverman

Date: 3/19/12

STATE OF SC

COUNTY OF RICHLAND

The foregoing instrument was acknowledged and signed before me by Mary Liverman, who is personally known to me or who has produced satisfactory identification.

WITNESS my hand and official seal of office this 19 day of MARCH, 2012.

NOTARY PUBLIC FOR SC

My Commission Expires: My Commission Expires
March 3rd, 2013

William Thomas Duncan
William Thomas Duncan

Date: March 16, 2012

STATE OF Georgia

COUNTY OF Gwinnett

The foregoing instrument was acknowledged and signed before me by William Thomas Duncan, who is personally known to me or who has produced satisfactory identification.

WITNESS my hand and official seal of office this 16 day of March, 2012.

NOTARY PUBLIC FOR Judy Stueve

My Commission Expires: 8-14-2014

JUDY STUEVE
NOTARY PUBLIC
Gwinnett County
State of Georgia
My Comm. Expires Aug. 14, 2014

Howard Alston Duncan
Howard Alston Duncan

Date: 4-30-12

STATE OF Louisiana

COUNTY OF Beauregard

The foregoing instrument was acknowledged and signed before me by Howard Alston Duncan, who is personally known to me or who has produced satisfactory identification.

WITNESS my hand and official seal of office this 30 day of April, 2012

NOTARY PUBLIC FOR Angela Kelly #60558

My Commission Expires: @ death