

21776

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY COURT OF COMMON PLEAS

D. GARRISON HILL, CIRCUIT COURT JUDGE
C. A. NO. 2013-CP-23-05389

APPELLATE CASE NO.: 2014-001401

RECEIVED

MAY 07 2015

SC Court of Appeals

In the Matter of James A. Trippe, III Deceased

Gene D. Morin, Conservator for Katelin Trippe, Respondent-Appellant,

v.

James A. Trippe, Jr., individually and as Personal Representative of the Estate of
James A. Trippe, III, Appellant-Respondent.

RECORD ON APPEAL

O. W. Bannister (S.C. Bar No. 00506)
BANNISTER, WYATT & STALVEY, LLC
P.O. Box 10007
Greenville, SC 29603
Ph: 864-298-0084; Fax: 864-298-0146
Attorney for Appellant-Respondent

April 16, 2015

Other Counsel of Record:

Jacqueline H. Patterson
1088 North Church Street
Greenville, SC 29601
Attorney for Respondent-Appellant

Nathaniel C. Farmer

Michael T. Coulter
P. O. Box 6728
Greenville, SC 29606
Attorney for Appellant-Respondent

INDEX

Orders:

1. Probate Order Approving Settlement filed April 27, 2012, including the Mutual Release and Settlement Agreement attached thereto as Exhibit A	1
2. Probate Contempt Order filed June 15, 2012.....	8
3. Order of Continuance filed November 20, 2012	14
4. Probate Order filed December 21, 2012	17
5. Probate Order filed June 25, 2013	23
6. Probate Order denying Appellant's Motion to Reconsider filed September 30, 2013	30
7. Circuit Court Order filed June 4, 2014	37
8. Circuit Court Amended Order filed July 31, 2014	45

Pleadings:

9. Respondent-Appellant's Petition filed June 6, 2011, Greenville County Probate Case No. 2009-ES-23-00707	53
10. Respondent-Appellant's Verified Petition filed February 7, 2013	63
11. Appellant-Respondent's Motion for Extension to File Foreign Deeds and Closing Estate dated April 25, 2013	68
12. Appellant-Respondent's Motion for Reconsideration dated July 8, 2013	72
13. Appellant-Respondent's Grounds for Appeal filed November 15, 2013	75
14. Respondent-Appellant's Motion and Memorandum to Dismiss filed February 4, 2014.....	77
15. Respondent-Appellant's Brief filed February 17, 2014.....	97
16. Respondent-Appellant's Motion to Alter or Amend Judgment filed June 19, 2014	105

Transcripts:

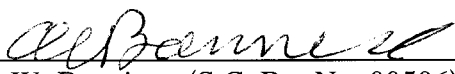
17. Transcript of December 19, 2012	109

18. Transcript of April 24, 2013 hearing	165
19. Transcript of August 21, 2013 hearing	289
20. Transcript of February 18, 2014 hearing	329

Exhibits:

21. Deed of Distribution to Paul Trippe filed May 27, 2011	358
22. Proposal for Distribution to Paul Trippe filed May 27, 2011	360
23. Deed of Distribution dated July 18, 2012	361
24. Letter from Probate Court dated August 3, 2012.....	363
25. Letter from Probate Court dated September 17, 2012	364
26. Respondent-Appellant's Motion for Attorney's Fees and Costs filed January 23, 2013	365
27. Respondent-Appellant's Motion for Attorney's Fees and Costs dated April 24, 2013	375
28. Respondent-Appellant's Motion for Attorney's Fees and Costs filed August 27, 2013	378
29. Respondent-Appellant's Motion for Attorney's Fees and Costs filed February 18, 2014	381

BANNISTER, WYATT & STALVEY, LLC

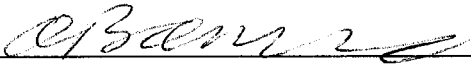

 O. W. Bannister (S.C. Bar No. 00506)
 P.O. Box 10007
 Greenville, SC 29603
 Ph: 864-298-0084; Fax: 864-298-0146
 Attorney for Appellant-Respondent

April 16, 2015

Certificate Of Counsel

The undersigned certifies that this Record on Appeal contains all material prepared to be included by any of the parties and not any other material and, further, complies with Supreme Court Order dated August 13, 2007, regarding personal identifiers and sensitive information.

BANNISTER, WYATT & STALVEY, LLC

A handwritten signature in cursive script, appearing to read "O. W. Bannister", is written over a horizontal line.

O. W. Bannister (SC Bar # 506)

Attorney for Appellant-Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE PROBATE COURT
Case No. 2009-ES-23-00707

IN THE MATTER OF)
JAMES A. TRIPPE, III Deceased)

Gene D. Morin, Temporary Conservator
for Katelin T. [REDACTED])

Petitioner,)

v.)

James Trippe, Jr., individually and as
Personal Representative of the Estate of
James A. Trippe, III,)

Respondent.)

FILED

APR 27 2012

**Greenville County
Probate Court**

**ORDER APPROVING
SETTLEMENT**

This is an action filed by Petitioner seeking an accounting, recovery of Estate assets, and the removal of the Personal Representative of the Estate of James A. Trippe, III, Greenville County Case No. 2009-ES-23-00707 (the "Action"). The allegations of Petitioner are more particularly described in the Petition filed with this Court on June 6, 2011. Respondent has answered the aforesaid Petition, generally denying the allegations contained therein.

Following mediation, the parties have reached an agreement and compromise of all issues raised in this Action, and the parties have reduced their Agreement to writing, a copy of which is attached hereto as Exhibit A. That Agreement was approved by the Court at a hearing on April 20, 2012. The parties agreed that the Settlement Agreement should be made and incorporated into the Order of the Court by reference.

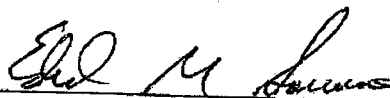
IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the terms of the Settlement Agreement attached hereto are hereby incorporated into and made a part of this Order, and that it completely resolves the issues raised in the petition. The Court retains

1 of 2 *Even*

#1
[Signature]

jurisdiction to enforce compliance with the agreement by appropriate means, including by its inherent contempt powers.

IT IS SO ORDERED.



Edward M. Sauvain
Associate Probate Court Judge

Greenville, South Carolina

Dated: April 27, 2012

EXHIBIT A

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT)

COUNTY OF GREENVILLE)

Case No. 2009-ES-23-00707)

IN THE MATTER OF)
JAMES A. TRIPPE, III Deceased)Gene D. Morin, Temporary Conservator
for Katelin T. [REDACTED])

Petitioner,)

MUTUAL RELEASE AND
SETTLEMENT AGREEMENT

v.)

James Trippe, Jr., individually and as
Personal Representative of the Estate of
James A. Trippe, III,)

Respondent.)

This MUTUAL RELEASE AND SETTLEMENT AGREEMENT (hereinafter "Settlement Agreement") is executed by and among Gene D. Morin, Temporary Conservator for Katelin T. [REDACTED] ("Petitioner"), James Trippe, Jr., individually ("Respondent Trippe") and as Personal Representative of the Estate of James A. Trippe, III ("Respondent PR"), James Trippe, IV ("Jamie"), and JAT, Inc. ("JAT") and all persons acting by, through, under, or in concert with any of them (all collectively, the "Parties").

WHEREAS, the Parties have agreed upon a compromise settlement and now wish to forever resolve, settle, compromise, and end any and all claims arising from or related to distributions made or to be made to or for the benefit of Katelin T. [REDACTED] from the assets of the Estate of James A. Trippe, III (the "Estate") or that they otherwise may have against one another in the above-captioned action;

WHEREAS, the Parties agree that, to the extent, if any, that the distribution of Estate assets made or to be made hereunder to or for the benefit of Katelin T. [REDACTED] is contrary to the intestacy laws of the State of South Carolina, this Settlement Agreement shall be deemed an Agreement Among Successors to Decedent as authorized by South Carolina Code Ann. §§ 62-3-912 (2012) and/or 62-3-1101 (2012); and

WHEREAS, James A. Trippe, III (the "Decedent") died intestate on March 26, 2009, and his estate is being probated in the Probate Court for Greenville County, South Carolina, as Case No. 2009-ES-23-00707; and

#3
[Signature]

WHEREAS, on or about April 16, 2009 James A. Trippe, Jr. was appointed as Personal Representative of Decedent's Estate; and

WHEREAS, Katelin T. [REDACTED] ("Katelin") and Jamie constitute the Decedent's intestate heirs pursuant to S.C. Code Ann. §§ 62-2-102 and 62-2-103; and

WHEREAS, Katelin is a minor child, and by Order of the Court dated March 1, 2011, Case No. 2010GC2300131, Gene D. Morin was appointed temporary Conservator to represent the best interests of Katelin with regard to Estate matters; and

WHEREAS, Decedent was also survived by his father (Respondent Trippe) and his brother, Paul Trippe ("Paul") who, by law, are not heirs of Decedent's Estate; and

WHEREAS, on June 6, 2011, Petitioner filed a Petition in this matter alleging the following causes of action against Respondent Trippe and Respondent PR: (i) Breach of Fiduciary Duty, (ii) Removal of the Personal Representative, (iii) an Accounting, and (iv) a Demand for Bond; and

WHEREAS, Respondent Trippe and Respondent PR filed an Answer in this matter, generally denying the allegations of the Petition; and

WHEREAS, the Parties wish to resolve fully, finally and irrevocably any and all claims made in the above-captioned action by entering into this Agreement upon the terms and conditions set forth below; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and the exchange of other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the Parties hereto agree to the following terms of settlement in full satisfaction of all claims against one another:

1. **Recitals.** The recitals are incorporated herein as if fully set forth.
2. **Cash Payments to Petitioner.** Respondent PR, Respondent Trippe, Jamie and/or JAT will pay to Petitioner the following sums of money:

- (i) ONE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 (\$175,000.00) DOLLARS to Petitioner on or before 5:00PM on April 25, 2012;
- (ii) An additional FIFTY THOUSAND AND NO/100 (\$50,000.00) DOLLARS to Petitioner on or before December 31, 2013;
- (iii) An additional FIFTY THOUSAND AND NO/100 (\$50,000.00) DOLLARS to Petitioner on or before December 31, 2014; and
- (iv) An additional TWENTY-FIVE THOUSAND AND NO/100 (\$25,000.00) DOLLARS to Petitioner on or before December 31, 2015.

#4
[Signature]

The payment in paragraph (i) above shall be delivered to the law offices of Patterson & Associates, P.A. All remaining payments shall be made to Petitioner at such address as provided by Petitioner. The payments set forth in paragraphs (ii), (iii) and (iv) above shall be secured by stock in JAT, and said stock shall at all times represent not less than fifty percent (50%) of the total shares issued by JAT.

3. **1955 Chevy Bel Air.** Within thirty (30) days following the execution of this Settlement Agreement, Respondent PR shall distribute to Petitioner the 1955 Chevy Bel Air (the "Chevy") as listed on Schedule F.3. of the Second Supplemental Inventory and Appraisal dated December 9, 2011. Respondent PR shall perform all acts and execute all documents necessary to transfer the Chevy to Petitioner, including but not limited to delivering possession and title to Petitioner, free and clear of all liens and other encumbrances.

4. **Bahamas Lots.** Within sixty (60) days following the execution of this Agreement, Respondent PR shall transfer to Petitioner the two (2) lots located in the Bahamas (the "Lots") and identified on Schedule A.1. of the Second Supplemental Inventory and Appraisal dated December 9, 2011. The Lots shall be transferred free and clear of all liens, mortgages or other encumbrances. In connection herewith, Respondent PR shall perform all acts and execute all documents required by the Greenville County Probate Court to transfer the Lots to Petitioner.

5. **425 Styles Road.** Within thirty (30) days following the execution of this Agreement, Respondent PR shall transfer to Petitioner the Decedent's interest in the real property identified as 425 Styles Road, Taylors South Carolina and listed on Schedule A.2. of the Second Supplemental Inventory and Appraisal dated December 9, 2011. This transfer shall be made, subject to any mortgages, liens and other encumbrances of record.

6. **Titling of Assets.** All assets to be transferred to Petitioner under this Settlement Agreement shall be titled as follows: Gene D. Morin as Conservator for Katelin T. [REDACTED] a minor child.

7. **Full Cooperation.** All Parties will cooperate in the timely execution of all documents incidental and related to the obligations set forth herein, the conclusion of this action and the closing of Decedent's Estate.

8. **Dismissal of the Underlying Lawsuit.** Upon execution of this Settlement Agreement, the Parties agree to direct their respective counsel to file a Consent Order dismissing the underlying lawsuit, and any and all claims that have been asserted therein.

9. **Authority.** Each party represents and warrants that, as of the date of the execution of this Settlement Agreement, he/she/it has the right and authority to execute this Settlement Agreement, and each signatory represents that he or she is fully authorized to execute this Settlement Agreement on behalf of, the party for whom he or she signs.

10. **Time.** Time is of the essence in this Settlement Agreement. Reference to days in this Settlement Agreement, unless otherwise indicated, means consecutive calendar days including weekends and holidays. In computing any period of time prescribed or allowed by this

#5
RW

Agreement which begins to run on the date of execution or any other specific date, the date of execution or other specific date is not to be included in computing said time. The last day of the period so computed is to be counted, unless it is a Saturday or Sunday or a state or federal holiday, in which event the period runs until the end of the next day, which is neither a Saturday, Sunday or such holiday.

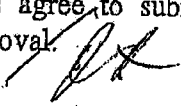
11. **Entire Agreement.** The Parties further represent and acknowledge that this Settlement Agreement constitutes the entire agreement between the Parties. Any oral or written representations, prior agreements, or understandings not reflected in this Settlement Agreement shall have no force or effect, and are superseded by this Settlement Agreement.

12. **Severability.** The terms of this Settlement Agreement, including paragraph subparts, are severable, and if any part or subpart is found to be unenforceable, the other terms shall remain in full force and effect and are valid and enforceable. Likewise, the Parties expressly recognize that the obligations set forth in this Settlement Agreement are independent of one another, in that a breach of one provision does not extinguish any duties or rights set forth in other provisions of this Settlement Agreement.

13. **Interpretation.** The Parties agree that this Settlement Agreement shall be interpreted according to South Carolina law. Further, this Settlement Agreement is the result of negotiations among the Parties, each of which has participated in the drafting hereof, with the aid and advice of their attorneys. This Settlement Agreement shall be interpreted in accordance with the plain meaning of its terms and shall not be strictly construed for or against any of the Parties hereto. The Parties agree that this Settlement Agreement shall be construed as though each party to this Agreement participated equally in the preparation and drafting of each provision of this Settlement Agreement.

14. **Attorneys' Fees.** If an action is commenced to enforce any provision of this Settlement Agreement, the prevailing party as determined by a final court judgment shall be entitled to recover from the other party such reasonable attorneys' fees and costs incurred in the action as the court may award.

15. **Modification.** This Settlement Agreement shall not be modified or amended except by an instrument in writing signed by the Parties.

16. **Approval.** The parties agree to submit this Settlement Agreement to the Greenville County Probate Court for approval. 

IN WITNESS WHEREOF the Parties have caused this Settlement Agreement to be signed. By signing this Settlement Agreement, the Parties warrant that they have read and understand each provision of this Settlement Agreement, that they knowingly and voluntarily agree to and have signed the Settlement Agreement, that in so doing they are not relying upon any inducements, representations, agreements, or understandings other than as are set forth herein, and that they are acting with full advice of, and explanation by, their respective legal counsel.

The Parties recognize and agree that this Settlement Agreement may be signed and executed in one or more parts or counterparts. Each counterpart, including a signature page executed by each party, shall be an original counterpart of this Settlement Agreement, but all such counterparts shall constitute one instrument.

IN WITNESS HEREOF:

[Signature]
M. D. [Signature]

[Signature]
James Trippe, Jr., individually

[Signature]
M. D. [Signature]

[Signature]
James Trippe, Jr., as Personal
Representative for the Estate of
James A. Trippe, III

[Signature]
M. D. [Signature]

[Signature]
James Trippe, IV
[Signature]

JAT, INC.

[Signature]
M. D. [Signature]

By: [Signature]
Its: President

[Signature]
[Signature]

[Signature]
Gene D. Morin, Temporary Conservator
for Katelin T. [Redacted]

I ATTEST A TRUE COPY

7 [Signature]
Sheryll L. Smith
Clerk, Probate Court
Greenville County, SC

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF GREENVILLE)

Case No. 2009-ES-23-00707

IN THE MATTER OF)
JAMES A. TRIPPE, III Deceased)Gene D. Morin, Temporary Conservator
for Katelin T. [REDACTED])

Petitioner,)

v.)

James Trippe, Jr., individually and as
Personal Representative of the Estate of
James A. Trippe, III,)

Respondent.)

CONTEMPT ORDER**FILED**

JUN 15 2012

GREENVILLE COUNTY
PROBATE COURT

This matter is before the Court upon the Verified Petition of Gene D. Morin as Conservator for Katelin T. [REDACTED] ("Petitioner") filed May 1, 2012, seeking the issuance of a Rule and Order to Show Cause requiring (i) James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III, (ii) James Trippe, IV and (iii) Paul Trippe as President of JAT, Inc. (collectively, "Respondents"¹) to show cause, if any, why they should not be held in contempt for failing to pay Petitioner \$175,000.00 as required by a Settlement Agreement entered into by the parties and incorporated into an Order of this Court dated April 27, 2012. Based upon the Verified Petition, the Court issued the requested Order and Rule to Show Cause on May 1, 2012.

¹ In the action filed by Petitioner on June 6, 2011, James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III, was the only named Respondent. However, James Trippe, IV and Paul Trippe as President of JAT, Inc. voluntarily executed the Settlement Agreement, and for purposes of this Contempt Order, shall be identified as Respondents herein.

A hearing was set in this matter for June 12, 2012 at 2:00PM. All interested parties were properly served, and none entered any pleadings responsive to the Verified Petition. Present at the hearing were (i) Petitioner, (ii) Jacqueline H. Patterson, attorney for Petitioner, (iii) O. W. Bannister, attorney for James Trippe, IV, and (iv) W. Todd Nichols, attorney for James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III. James Trippe, Jr., James Trippe, IV and Paul Trippe did not appear although having received proper notice of the hearing.

Based upon the evidence and testimony presented, I hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Jurisdiction and venue are proper in this Court.
2. In settlement of the claims asserted by Petitioner in his Petition filed June 6, 2011, Petitioner entered into a Mutual Release and Settlement Agreement ("Settlement Agreement") with (i) James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III, (ii) James Trippe, IV and (iii) Paul Trippe as President of JAT, Inc.
3. On April 20, 2012, a hearing was held seeking Court approval of the Settlement Agreement. At such time, the parties consented to incorporate the Settlement Agreement into an Order of this Court. The Order Approving Settlement was executed by the Court and filed on April 27, 2012 (the "Order").
4. Paragraph 2 of the Settlement Agreement states in pertinent part that "Respondent PR, Respondent Trippe, Jamie and/or JAT will pay to Petitioner the following sums of money:

(i) ONE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 (\$175,000.00) DOLLARS to Petitioner on or before 5:00PM on April 25, 2012." No contingencies were placed upon payment of this amount.

5. As of the date of the Rule to Show Cause hearing, Respondents have made no payments, including any partial payments, to Petitioner in satisfaction of their obligations under the Settlement Agreement.

6. I find that no adequate excuse has been advanced by counsel for the Respondent, Personal Representative, for his failure to appear at this hearing.

7. Respondents presented no evidence that they have made any efforts to pay any or all of the payment due to Petitioner.

8. I find that there are sufficient assets in the Estate to pay Petitioner. Notably, JAT, Inc. ("JAT"), an asset which is 100% owned by the Estate, is currently in operation, deriving income and paying salaries.

9. Counsel for Petitioner further noted that the Personal Representative has failed to convey to Petitioner the property identified as 425 Styles Road, Taylors, South Carolina ("Styles Road Property") within the time periods set forth in Paragraph 5 of the Settlement Agreement. Counsel indicated that this could be accomplished without delay.

10. Furthermore, Paragraph 14 of the Settlement Agreement provides that "[i]f an action is commenced to enforce any provision of this Settlement Agreement, the prevailing party as determined by a final court judgment shall be entitled to recover from the other party such reasonable attorneys' fees and costs incurred in the action as the court may award."

2013
HH

#3
P

11. The Order provides, in pertinent part, that the "Court retains jurisdiction to enforce compliance with the agreement by appropriate means, including by its inherent contempt powers."

CONCLUSIONS OF LAW

"Contempt results from the willful disobedience of an order of the court." *Miller v. Miller*, 375 S.C. 443 (2007). (citations omitted) "The power to punish for contempt is inherent in all courts." *Id.* "It is within the [Court's] discretion to punish by fine or imprisonment every act of contempt before the court." *Ex parte Cannon*, 385 S.C. 643 (2009). The standard of proof for civil contempt is clear and convincing evidence. *Poston v. Poston*, 331 S.C. 106 (1998). Once the moving party shows noncompliance with the Court's Order, the burden shifts to the offender to establish his defense and inability to comply. *Brasington v. Shannon*, 288 S.C. 183 (1986); *Pratt v. South Carolina Dept. of Social Services*, 283 S.C. 550 (Ct. App. 1984).

To date, more than forty-five (45) days after payment of \$175,000.00 became due pursuant to the Settlement Agreement, the first payment remains unpaid. Respondents have presented no evidence to show that they have made any efforts to pay, in whole or in part. In *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596 (Ct. App. 2002), the Court upheld a finding of contempt which was predicated upon a violation of a settlement agreement approved by a Court where it was determined that the contemnor made no legitimate efforts to comply with settlement agreement, even though the contemnor admittedly had the power to comply at least in part. Similar facts apply here. There is sufficient evidence to show that payment could have been made to Petitioner.

I find that Petitioner has met its burden of proof. No good cause or justification for nonpayment has been presented by Respondents, no contingencies to payment were set forth in the Settlement Agreement to allow for a delay of payment and Respondents did not appear to offer testimony in defense of the nonpayment. Further, Respondents have shown no efforts to pay something to Petitioner toward the amount due to the Petitioner.

Therefore, I find Respondents in willful contempt of this Court's Order dated April 27, 2012; and, as such, I sentence the Personal Representative, James Trippe, Jr. to 60 days in the Greenville County Detention Center suspended upon his payment of \$175,000.00 to the Petitioner plus post-judgment rate of 7.25% from April 25, 2012 until payment is made, and attorney's fees and costs in the amount of \$3,216.70.

Should (i) Respondents fail to pay Petitioner the sum of \$175,000.00 plus interest, costs and attorney's fees by June 20, 2012, a bench warrant will issue for his arrest upon which he shall be taken to the Greenville County Detention Center to serve sixty (60) days in jail or until such time as he has satisfied the terms of this Order with regard to the aforesaid payments. Upon payment, he shall be released from the above sentence for civil contempt of the above referenced Order.

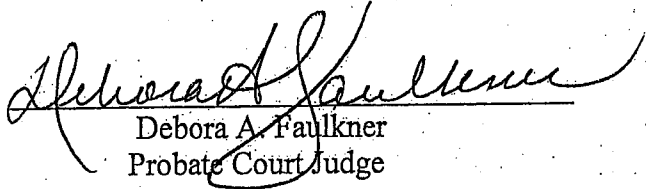
Furthermore, I find that the Personal Representative has not provided the conveyance to Petitioner of the Decedent's interest in the Styles Road Property. I order that a proper conveyance of this property be delivered to Petitioner on or before June 20, 2012.

As to the property in the Bahamas and taking into consideration the difficulties which might arise in transferring property in a foreign jurisdiction, the two (2) lots located in the Bahamas ("Lots") which are to be conveyed to the Petitioner pursuant to Paragraph 4 of the Settlement Agreement, shall be conveyed as soon as possible.

THEREFORE IT IS ORDERED:

1. James Trippe, Jr. is hereby sentenced to 60 days in the Greenville County Detention Center for civil contempt suspended upon his payment of amounts set forth above on or before June 20, 2012. Failure to make said payment shall result in the issuance of a bench warrant for his arrest and incarceration for 60 days or until such time as said payments are made, whichever shall occur first.
2. The deed relating to the Styles property shall be delivered to Petitioner on or before June 20, 2012 together with all information regarding the real property in the Bahamas. The deed for the Bahamas property shall be delivered as soon thereafter as possible.

IT IS SO ORDERED.


 Debora A. Faulkner
 Probate Court Judge

Greenville, South Carolina

June 15th, 2012

I ATTEST A TRUE COPY

 Cheryl D. Smith
 Clerk, Probate Court
 Greenville County, SC

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF GREENVILLE)

Case No. 2009 ES-23- 00707

IN THE MATTER OF)

JAMES A. TRIPPE, III Deceased)

Gene D. Morin, Conservator for)

Katelin Trippe,)

Petitioner,)

ORDER OF CONTINUANCE

v.)

James Trippe, Jr, individually and)

as Personal Representative of the)

Estate of James A. Trippe, III,)

Respondent)

GREENVILLE COUNTY
 PROBATE COURT
 2012 NOV 20 PM 1 40

This matter came before me on November 19, 2012 at 10:00 for a final hearing on the above captioned case. One the primary issues remaining are the extent of the responsibility of the estate in transferring real estate in the Bahamas to the heirs.

The record indicates that the Petitioner is represented by Attorney Jackie Patterson; Michael Coulter is the attorney for James Trippe, Jr. as Personal Representative of the Estate of James A. Trippe, III, and O.W. Bannister represents James Tripp, IV, individually, and has represented Paul Trippe, President JAT, Inc.

The estate is an intestate estate with the statutory heirs being Katelin [REDACTED], a minor, who is appearing through her Conservator, Gene Morin, and James A. Tripp IV.

Ms. Patterson and Mr. Bannister met in chambers to discuss pre-trial matters. Mr. Bannister advised that Mr. Coulter would not be attending and that he was asked to represent the estate. Ms. Patterson objected since Mr. Bannister would have a conflict of interest. I advised the attorneys that the case would have to be continued due to Mr. Bannister having a conflict of interest which could not be cured by waivers from all the estate heirs, i.e. Katelin [REDACTED]. She is the one bringing the case. I used the court time allotted for the hearing to draft this Order.

AS
 R

#1

1

Michael Coulter has been the attorney for James A. Trippe, Jr. in his capacity as Personal Representative since April, 2009. As such his role to assist the PR in gathering all the estate assets, protect the assets, pay the estate debts, make sure the heirs receive their proper inheritance and comply with the rules of the Probate Court.

Mr. Coulter received adequate notice of today's hearing (at least 20 days prior). He failed to file a motion to substitute counsel or otherwise take any steps to show common courtesy to the Court or to opposing counsel.

In June, 2012, a contempt action was brought by Katelin [REDACTED] through her Conservator. All parties received notice of the hearing. Mr. Coulter appeared for Trippe, Jr. as Personal Representative (Trippe, Jr did not appear), Nichols appeared for Tripp, Jr. individually, (again Trippe, Jr did not appear), Bannister appeared for Trippe, IV (Trippe, IV did not appear). Paul Trippe received notice but did not appear but was represented on the record by Mr. Bannister.

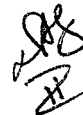
Today, Mr. Coulter did not appear but did see fit to send the court a message through Mr. Bannister, that Mr. Bannister would now be representing the estate. He failed to give any advance notice of any kind to the Court or to opposing counsel.

It is obvious that Mr. Bannister has a conflict of interest having represented individuals with interests diametrically opposed to Katelin [REDACTED]. Mr. Bannister cannot now use the knowledge he gained from that representation to affect or to appear to affect Katelin [REDACTED]'s distributions from this estate. As an heir, she has a right to a Personal Representative and an estate attorney (both of whom receive compensation from the estate) whose concern is only with the proper administration of the estate and meeting the fiduciary obligations thereto, see the SC Probate Code.

The failure of Mr. Coulter to appear without proper notice to the court wasted valuable docket time to the detriment of others who need their cases heard, it wasted the time of the court's staff who worked with the attorneys trying to accommodate their schedules, hearing, it wasted the time of the litigants, witnesses, attorneys and the Court Reporter. The appearance of the Court Reporter must be paid from the operating account of the Probate Court funded by tax dollars. In addition, the failure to appear caused the clients of Mr. Bannister and Ms. Patterson to incur unnecessary attorneys' fees/costs, and it has caused an unnecessary delay of this case and a further delay in the closing of the estate.

Therefore, it is ordered:

1. The matter shall be rescheduled as soon as possible; the usual twenty day notice will not be required.
2. Attorney Michael Coulter shall reimburse the County of Greenville all costs associated with the appearance of the Court Reporter provided by Judy Comp, Inc. He will make a check payable to the Greenville County Treasurer and deliver

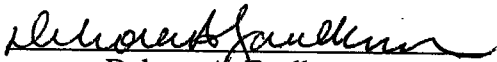


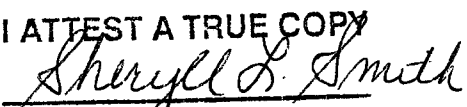
#2


it to the court within 10 days of receipt of the bill. Any further failure to appear will be met with sanctions.

3. Any further failure to appear will be met with sanctions.

November 20, 2012


Debora A. Faulkner
Greenville County Probate Judge

3 I ATTEST A TRUE COPY

Clerk, Probate Court
Greenville County, SC

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT)

COUNTY OF GREENVILLE)

Case No. 2009-ES-23-00707)

IN THE MATTER OF)
JAMES A. TRIPPE, III Deceased)Gene D. Morin, Conservator)
for Katelin T. [REDACTED])

Petitioner,)

v.)

James Trippe, Jr.,)
Personal Representative of the Estate of)
James A. Trippe, III,)Respondent.)
_____)

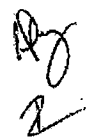
ORDER

FILED
DEC 21 2012
GREENVILLE COUNTY
PROBATE COURT

Hearing Date:	December 19, 2012
Presiding Judge:	Honorable Debora A. Faulkner
Petitioner's Attorneys:	Jacqueline H. Patterson and Nathaniel C. Farmer
Respondent's Attorney:	Michael Coulter
Attorney for James Trippe, IV:	O. W. Bannister
Court Reporter:	Bonnie Walker

This matter is before the Court upon the Summons and Petition of Gene D. Morin as Conservator for Katelin T. [REDACTED] ("Petitioner") filed October 4, 2012. Petitioner seeks an Order of this Court pursuant to S.C. Code Ann. §62-3-1001 compelling James A. Trippe, Jr., as Personal Representative of the Estate of James A. Trippe, III ("Decedent") to perform his duties in administering the Decedent's Estate as required by this Court, the laws of this State and the Settlement Agreement (hereinafter defined).

A hearing was held in this matter on December 19, 2012, at 2:00 P.M. Present at the hearing were (i) Petitioner, (ii) Jacqueline H. Patterson and Nathaniel C. Farmer, attorneys for




Petitioner, (iii) James A. Trippe, Jr. (hereinafter, the "Personal Representative"), (iv) Michael Coulter, attorney for the Personal Representative and (v) O. W. Bannister, attorney for James Trippe, IV.

Based upon the evidence and testimony presented, I hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Jurisdiction and venue are proper as Decedent's Estate is being administered in this Court.
2. Decedent died on March 26, 2009. The Personal Representative was appointed on or about April 16, 2009.
3. The Personal Representative identified two (2) lots located in the Bahamas (the "Lots") as assets of Decedent's Estate. These Lots were listed as Estate assets on the original Inventory and Appraisement filed by the Personal Representative on July 15, 2009, and on the amended and supplemental Inventory and Appraisements dated May 27, 2011, and December 9, 2011, respectively.
4. On June 6, 2011, Petitioner brought an action against the Personal Representative seeking, among other things, removal of the Personal Representative for violation of fiduciary duties. In settlement of the claims asserted in the Petition, Petitioner entered into a Mutual Release and Settlement Agreement ("Settlement Agreement") with (i) James A. Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III, (ii) James Trippe, IV, and (iii) Paul Trippe as President of JAT, Inc.
5. By consent of the parties to that action, the Settlement Agreement was incorporated by reference into an Order of this Court dated April 27, 2012 (the "Order").

6. Paragraph 4 of the Settlement Agreement provides, in pertinent part, the following:

Bahamas Lots. Within sixty (60) days following the execution of this Agreement, Respondent PR shall transfer to Petitioner the two (2) lots located in the Bahamas (the "Lots") and identified on Schedule A.1. of the Second Supplemental Inventory and Appraisal dated December 9, 2011. The Lots shall be transferred free and clear of all liens, mortgages or other encumbrances. In connection herewith, Respondent PR shall perform all acts and execute all documents required by the Greenville County Probate Court to transfer the Lots to Petitioner. (Emphasis added)

7. Prior to entry of the Order, this Court had informed the Personal Representative and his counsel that a copy of recorded Deeds of Distribution must be filed with this Court prior to closing the Estate. This information was provided to the Personal Representative and/or his counsel by letters dated (i) December 23, 2009, (ii) February 8, 2010, (iii) June 4, 2010, (iv) August 13, 2010, (v) August 27, 2010, (vi) September 10, 2010, (vii) November 5, 2010, and (viii) May 3, 2011. Therefore, at the time the Personal Representative executed the Settlement Agreement, he was on notice that this Court required a recorded copy of the deed transferring the Lots.

8. Subsequent to the entry of the Order, this Court, by letters dated August 3, 2012, and September 17, 2012, again informed the Personal Representative that copies of the recorded deeds of distribution for the Bahamas Lots must be filed with the Court prior to closing Decedent's Estate.

9. The September 17, 2012, letter from the Court further stated in pertinent part that the requirements for closing the Estate were due by October 4, 2012. No further extensions for filing the documents necessary for closing Decedent's Estate have been granted.

10. To date, the Personal Representative has failed to file a recorded Deed of Distribution with this Court as required by the August 3, 2012, and September 17, 2012, letters

#3

of this Court evidencing transfer of the Lots. I find that, on July 18, 2012, the Personal Representative ineffectively attempted to convey the Lots by a South Carolina Deed of Distribution. Consequently, I find that the Personal Representative has not properly and effectively executed and recorded a deed transferring the Lots to Petitioner.

11. Paragraph 4 of the Settlement Agreement required the Personal Representative to "perform all acts and execute all documents required by the Greenville County Probate Court to transfer the Lots to Petitioner." For this reason, I find that the Personal Representative has breached the terms of Paragraph 4 of the Settlement Agreement, and, consequently, has violated this Court's Order dated April 27, 2012.

12. The Personal Representative has failed to file the documents necessary for closing Decedent's Estate, and the obligations set forth in the Court's letter dated August 3, 2012, remain past due.

CONCLUSIONS OF LAW

Pursuant to S.C. Code Ann. §62-3-1001, Petitioner has brought a claim seeking to compel the Personal Representative to perform his duties as required by the laws of this State and the Order of this Court. S.C. Code Ann. §62-3-1001(a) (2012) provides, in pertinent part, that:

[w]ithin one year after the date of the first publication of notice to creditors. . . , a personal representative must file with the court: . . . (3) an application for settlement of the estate to consider the final account or approve an accounting distribution and adjudicate the final settlement and distribution of the estate.

To date, more than three and one-half (3½) years after his appointment, the Personal Representative has failed to file with this Court (i) a Final Accounting, (ii) an Application for Settlement, (iii) Receipt, Releases and Waivers from Estate beneficiaries and (iv) a recorded Deed of Distribution evidencing transfer of the Bahamas Lots. Closing of this Estate is long past

due, and the Personal Representative has failed to timely perform his duties as required by S.C. Code Ann. §62-3-1001.

“A personal representative is a fiduciary who shall observe the standards of care applicable to trustees as described by Section 62-7-804. A personal representative has a duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code, and as **expeditiously and efficiently** as is consistent with the best interests of the estate. He shall use the authority conferred upon him by this code, the terms of the will, and any order in proceedings to which he is party for the **best interests of successors to the estate.**” (Emphasis added) S.C. Code Ann. § 62-3-703(a) (2012). With regard to real property, “a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate.” S.C. Code Ann. § 62-3-703(a) (2012).

Based upon the South Carolina Probate Code and the Order of this Court, it is the responsibility of the Personal Representative to hold the Lots in trust for the benefit of Petitioner and to effectively transfer the Lots to Petitioner in proper form, free and clear of all liens and encumbrances. The Deed of Distribution signed by the Personal Representative on July 18, 2012, is not effective to transfer title of the Lots to Petitioner. The Personal Representative’s failure to effectively transfer the Lots to Petitioner in proper form, free and clear of all liens and encumbrances, is a breach of his duties under Paragraph 4 of the Settlement Agreement, and is consequently a violation of this Court’s Order.

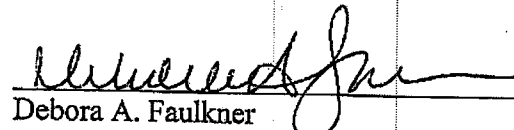
To effectively convey title of the Lots to Petitioner, the Personal Representative must comply with Bahamian law. The Estate, by and through the Personal Representative, shall be responsible for paying all taxes, liens or other encumbrances affecting the Lots prior to the

transfer. Once a deed of conveyance is properly recorded in the Bahamas, a copy of the recorded deed must then be filed with this Court.

The Personal Representative must file all documents necessary to close this Estate, including but not limited to a recorded copy of the Bahamas deed, no later than February 1, 2013.

Payment of all attorney's fees and costs owed by the Estate are held in abeyance.

IT IS SO ORDERED.


Debora A. Faulkner
Probate Court Judge

Greenville, South Carolina
Dec. 21, 2012

6

I ATTEST A TRUE COPY


Clerk, Probate Court
Greenville County, SC

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT)

COUNTY OF GREENVILLE)

Case No. 2009-ES-23-00707)

IN THE MATTER OF)
JAMES A. TRIPPE, III Deceased)Gene D. Morin, Conservator
for Katelin T. [REDACTED])

Petitioner,)

ORDER

v.)

James Trippe, Jr., individually and as
Personal Representative of the Estate of
James A. Trippe, III,)

Respondent.)

FILED
JUN 25 2013
GREENVILLE COUNTY
PROBATE COURT

Hearing Date:

April 24, 2013

Presiding Judge:

Honorable Debora A. Faulkner

Petitioner's Attorneys:

Jacqueline H. Patterson

Respondent's Attorney:

Michael T. Coulter

Attorney for James Trippe, IV:

O. W. Bannister, Jr.

This matter is before the Court upon the Verified Petition of Gene D. Morin as Conservator for Katelin T. [REDACTED] ("Petitioner") filed February 7, 2013, seeking the issuance of a Rule and Order to Show Cause requiring James Trippe, Jr., as Personal Representative of the Estate of James A. Trippe, III (hereinafter, the "Personal Representative") to show cause why he should not be held in contempt for failing to (i) transfer two lots located in the Bahamas to Petitioner as agreed upon by the parties and set forth in the Settlement Agreement and (ii) close Decedent's Estate in the manner required by this Court's Orders dated April 27, 2012, June 15, 2012, and December 21, 2012. Based upon the Verified Petition, the Court issued the requested Order and Rule to Show Cause on February 7, 2013.

DAS
Z#1
m

A hearing was set in this matter for April 23, 2013, at 9:00 a.m. and was rescheduled with the consent of all parties for April 24, 2013, at 1:00 p.m. All interested parties were properly served, and no party entered a responsive pleading to the Verified Petition. Present at the hearing were (i) Petitioner, (ii) Jacqueline H. Patterson, attorney for Petitioner, (iii) James A. Trippe, Jr., the Personal Representative, (iv) Michael T. Coulter, attorney for the Personal Representative, and (v) O. W. Bannister, Jr., attorney for James Trippe, IV.

Based upon the evidence and testimony presented and the records of this Court, I hereby make the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Jurisdiction and venue are proper as Decedent's Estate is being administered in this Court.

2. Decedent died on March 26, 2009. The Personal Representative was appointed on or about April 16, 2009.

3. The Personal Representative identified two (2) lots located in the Bahamas (the "Bahamas Lots") as assets of Decedent's Estate. These Bahamas Lots were listed as Estate assets on the original Inventory and Appraisement filed by the Personal Representative on July 15, 2009, and on the amended and supplemental Inventory and Appraisements dated May 27, 2011, and December 9, 2011, respectively.

4. On June 6, 2011, Petitioner brought an action against the Personal Representative seeking, among other things, removal of the Personal Representative for violation of fiduciary duties. The action was settled in mediation on March 26, 2012, and a Mutual Release and Settlement Agreement ("Settlement Agreement") was executed by the parties.

#2

5. By consent of the parties, the Settlement Agreement was incorporated by reference into an Order of this Court dated April 27, 2012 (the "April 2012 Order").

6. Paragraph 4 of the Settlement Agreement provides, in pertinent part, the following:

Bahamas Lots. Within sixty (60) days following the execution of this Agreement, Respondent PR shall transfer to Petitioner the two (2) lots located in the Bahamas (the "Lots") and identified on Schedule A.1. of the Second Supplemental Inventory and Appraisal dated December 9, 2011. The Lots shall be transferred free and clear of all liens, mortgages or other encumbrances. In connection herewith, **Respondent PR shall perform all acts and execute all documents required by the Greenville County Probate Court to transfer the Lots to Petitioner.** (Emphasis added)

7. Paragraph 14 of the Settlement Agreement provides, in pertinent part, the following:

Attorneys' Fees. If an action is commenced to enforce any provision of this Settlement Agreement, the prevailing party as determined by a final court judgment shall be entitled to recover from the other party such reasonable attorneys' fees and costs incurred in the action as the court may award.

8. Prior to entry of the April 2012 Order, this Court provided written notice to the Personal Representative and his counsel that a copy of recorded Deeds of Distribution were required to be filed with this Court prior to closing the Estate. This information was provided to the Personal Representative and/or his counsel by letters dated (i) December 23, 2009, (ii) February 8, 2010, (iii) June 4, 2010, (iv) August 13, 2010, (v) August 27, 2010, (vi) September 10, 2010, (vii) November 5, 2010, and (viii) May 3, 2011. Therefore, at the time the Personal Representative executed the Settlement Agreement, he was on notice that this Court required a recorded copy of a deed transferring the Bahamas Lots.

9. On or about May 1, 2012, Petitioner initiated an action against the Personal Representative seeking a finding of contempt against the Personal Representative for his failure to comply with the terms of the Settlement Agreement.

#3

10. On June 15, 2012, this Court entered a finding of contempt against the Personal Representative for his failure, among other things, to make payments to Petitioner as required by the Settlement Agreement (the "June 2012 Order"). With regard to the Bahamas Lots, the June 2012 Order states in pertinent part:

As to the property in the Bahamas and taking into consideration the difficulties which might arise in transferring property in a foreign jurisdiction, the two (2) lots located in the Bahamas ("Lots") which are to be conveyed to the Petitioner pursuant to Paragraph 4 of the Settlement Agreement, shall be conveyed as soon as possible. (Emphasis added)

11. By letters dated August 3, 2012, and September 17, 2012, this Court again informed the Personal Representative that copies of the recorded deeds of distribution for the Bahamas Lots must be filed with the Court prior to closing Decedent's Estate. The September 17, 2012, letter stated that the requirements for closing the Estate were due by October 4, 2012, and that no further extensions would be granted.

12. Having failed to receive a proper recorded deed for the Bahamas Lots from the Personal Representative, on October 4, 2012, Petitioner instituted another action against the Personal Representative for failure to convey the Bahamas Lots in accordance with the Settlement Agreement and the April 2012 and June 2012 Orders of this Court.

13. On December 21, 2012, this Court issued an Order (the "December 2012 Order") finding that the Personal Representative had breached the terms of Paragraph 4 of the Settlement Agreement, and, consequently, had violated the Court's Order dated April 27, 2012. The December 2012 Order further states:

To effectively convey title of the Lots to Petitioner, the Personal Representative must comply with Bahamian law. The Estate, by and through the Personal Representative, shall be responsible for paying all taxes, liens or other encumbrances affecting the Lots prior to the transfer. Once a deed of conveyance is properly recorded in the Bahamas, a copy of the recorded deed must then be filed with this Court.

#4


The Personal Representative must file all documents necessary to close this Estate, including but not limited to a recorded copy of the Bahamas deed, no later than February 1, 2013.

14. To date, the Personal Representative has not conveyed the Bahamas Lots to Petitioner and has not filed the documents necessary for closing Decedent's Estate. As such, he is in violation of the December 2012 Order.

15. On February 7, 2013, Petitioner filed a Verified Petition seeking the Personal Representative to appear and show cause why he should not be held in contempt for failing to transfer the Bahamas Lots.

16. Despite having agreed to convey the property in March of 2012 and despite having three Court Orders directing the Personal Representative to convey the Bahamas Lots, it was not until February, 2013, that the Personal Representative took the initiative to identify counsel in the Bahamas and begin the process of conveying the Bahamas Lots. Further, the Personal Representative did not hire counsel until March, 2013, after Petitioner had filed the present action.

CONCLUSIONS OF LAW

"Contempt results from the willful disobedience of an order of the court." *Miller v. Miller*, 375 S.C. 443 (2007). (citations omitted) "The power to punish for contempt is inherent in all courts." *Id.* "It is within the [Court's] discretion to punish by fine or imprisonment every act of contempt before the court." *Ex parte Cannon*, 385 S.C. 643 (2009). The standard of proof for civil contempt is clear and convincing evidence. *Poston v. Poston*, 331 S.C. 106 (1998). Once the moving party shows noncompliance with the Court's Order, the burden shifts to the offender to establish his defense and inability to comply. *Brasington v. Shannon*, 288 S.C. 183 (1986); *Pratt v. South Carolina Dept. of Social Services*, 283 S.C. 550 (Ct. App. 1984). A finding of

#5

contempt may be predicated upon a violation of a settlement agreement approved by a Court where it was determined that the offender made no legitimate efforts to comply with settlement agreement. *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596 (Ct. App. 2002).

Here, Petitioner has met its burden by showing that the Personal Representative has failed to comply with three Orders of this Court. The April 2012 Order incorporated the Settlement Agreement, and pursuant to Paragraph 4 of the Settlement Agreement, the Personal Representative was required to convey the Bahamas Lots to Petitioner no later than May, 2012. Understanding the difficulties of transferring foreign properties, this Court extended the time for transfer by stating in the June 2012 Order that the Bahamas Lots were to be "conveyed as soon as possible." In the December 2012 Order, this Court provided the Personal Representative with a deadline of February 1, 2013, to comply with transferring the Bahamas Lots.

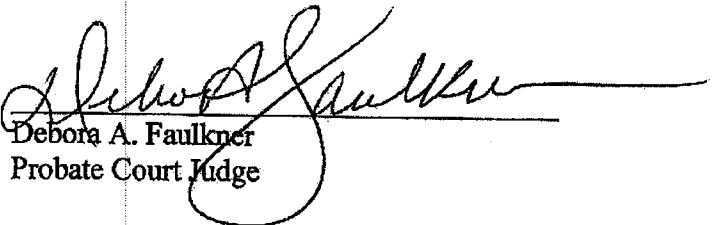
Despite the grace periods provided to the Personal Representative, the Personal Representative has demonstrated a lack of good faith and a willful disregard for this Court's Orders as evidenced by, among other things, his failure to retain Bahamian counsel until March, 2013. The record supports by clear and convincing evidence a finding of contempt.

In addition to contempt, Petitioner requested reimbursement of its attorney's fees for having to enforce the Settlement Agreement and the Orders of this Court. It is well settled in South Carolina that attorney's fees are recoverable if authorized by contract or statute. *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). Here, Paragraph 14 of the Settlement Agreement specifically authorizes the prevailing party to recover attorney's fees when an action is commenced to enforce the terms of the Settlement Agreement. Based upon the agreement between the parties, I find that Petitioner, as the prevailing party in seeking to enforce Paragraph 4 of the Settlement Agreement, is entitled to recover its attorney's fees.

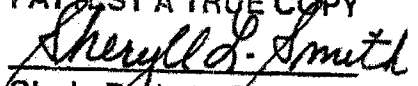
DO
#6
[Signature]

Based upon the foregoing finding, I hereby sentence the Personal Representative to ninety (90) days incarceration which may be suspended upon (i) proper conveyance of the Bahamas Lots to Petitioner on or before July 12, 2013, plus payment by the Personal Representative of all attorney's fees and costs submitted by Petitioner, or (ii) payment of the sum of Twenty-five Thousand (\$25,000.00) Dollars in certified funds to Petitioner (the reported value of the Bahamas Lots on the Inventory and Appraisement which Petitioner has agreed to accept in lieu of the real property) on or before July 12, 2013, plus payment by the Personal Representative of all attorney's fees and costs submitted by Petitioner. Post-judgment interest on all sums due by July 12, 2013, shall begin to accrue on July 13, 2013. Should the Personal Representative fail to comply with (i) or (ii) above on or before July 12, 2013, a Bench Warrant shall be issued for his arrest.

IT IS SO ORDERED.


 Debora A. Faulkner
 Probate Court Judge

Greenville, South Carolina
June 25, 2013

#7 I ATTEST A TRUE COPY

 Clerk, Probate Court
 Greenville County, SC

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT)

COUNTY OF GREENVILLE)

Case No. 2009-ES-23-00707)

IN THE MATTER OF)
JAMES A. TRIPPE, III Deceased)Gene D. Morin, Conservator)
for Katelin T. [REDACTED])

Petitioner,)

ORDER

v.)

James Trippe, Jr., individually and as)
Personal Representative of the Estate of)
James A. Trippe, III,)

Respondent.)

FILED

SEP 30 2013

GREENVILLE COUNTY
PROBATE COURT

Hearing Date: August 21, 2013
 Presiding Judge: Honorable Debora A. Faulkner
 Petitioner's Attorney: Jacqueline H. Patterson
 Respondent's Attorney: Michael Coulter
 Attorney for James Trippe, IV: O. W. Bannister

A Motion to Reconsider ("Motion") filed on July 8, 2013, by O.W. Bannister is before the Court seeking reconsideration of the Court's Order filed June 25, 2013 (hereinafter, the "June 2013 Order"). Although Respondent, James Trippe, Jr. ("Respondent" or "Personal Representative"), individually and as Personal Representative of the Estate of James A. Trippe, III, has been and continues to be represented by Attorney Michael Coulter, Attorney O.W. Bannister (counsel for James Trippe, IV) filed the Motion on behalf of Respondent.

Pursuant to his Motion, Mr. Bannister seeks reconsideration of the Court's Order on the following grounds:

- (i) Respondent believed that he had effectively transferred the two Bahamas lots through the execution of a South Carolina deed of distribution, and it was "[n]ot

until the Court ruled the Personal Representative had to bear the costs of opening an ancillary estate in the Bahamas” that the Personal Representative believed he had to do so;

- (ii) Respondent has filed a motion with this Court to extend the time for getting the Deed of Distribution recorded in the Bahamas;
- (iii) Respondent cannot close the estate until the Deed of Distribution is honored in the Bahamas; and
- (iv) The Probate Court did not make findings in awarding Petitioner its attorney’s fees.

At the request of Mr. Bannister, a motion hearing was set in this matter for August 21, 2013. Present at the hearing were (i) Petitioner Gene D. Morin as Conservator for Katelin T. [REDACTED] (“Petitioner”), (ii) Jacqueline H. Patterson, attorney for Petitioner, (iii) Michael Coulter, attorney for Respondent, (iv) O. W. Bannister, attorney for James Trippe, IV and (v) Greg Ross, Co-guardian for Katelin Trippe.

Based upon the evidence, testimony, and records before this Court and the arguments presented by counsel, the Motion for Reconsideration filed by Mr. Bannister is hereby DENIED for the reasons set forth below.

A. Mr. Bannister does not represent Respondent and his Motion is improper.

The Motion was filed in this matter by Attorney O. W. Bannister. Mr. Bannister represents James Trippe, IV, such representation being duly noted by the Orders of this Court dated (i) June 15, 2012, (ii) November 20, 2012, (iii) December 21, 2012 and (iv) June 25, 2013.

Over the objection of Petitioner and his counsel, Mr. Bannister has on numerous occasions attempted to assume the role as attorney for the Personal Representative despite a clear



conflict of interest. In November, 2012, Respondent's attorney, Mr. Coulter, failed to appear for a hearing but requested that Mr. Bannister represent the Personal Representative at the hearing.

In response thereto, this Court stated:

It is obvious that Mr. Bannister has a conflict of interest having represented individuals with interests diametrically opposed to Katelin T. [REDACTED]. Mr. Bannister cannot now use the knowledge he gained from that representation to affect or to appear to affect Katelin T. [REDACTED] distribution from this estate. As an heir, she has a right to a personal representative and an estate attorney (both of whom receive compensation from the estate) whose concern is only with the proper administration of the estate and meeting the fiduciary obligations thereto, see the SC Probate Code.

Mr. Bannister cannot now, in his Motion, represent to the Court that he is the attorney for the Personal Representative (see page 3 of the Motion) in contravention of the foregoing Order filed November 20, 2012. The conflict of interest for Mr. Bannister still exists, and Petitioner has not waived this conflict.

B. The Personal Representative has disregarded the Court's Orders and Instructions.

As this Court noted in its June 2013 Order, the Personal Representative has shown a conscious disregard toward the Orders and letters of this Court. Mr. Bannister again argues that the Personal Representative did not know he had to file a deed of distribution in the Bahamas until the Court ordered him to do so in December, 2012. This argument, however, is contrary to the evidence and findings of the Court. Prior to the December, 2012, Order, the Court provided at least ten written notices to the Personal Representative and/or his counsel stating that a copy of recorded Deeds of Distribution were required to be filed with this Court prior to closing the Estate.

In the Motion, Mr. Bannister argues that Respondent has done all that he is able to do in transferring the Bahamas lots. In support thereof, Mr. Bannister has attached a Motion for Extension (filed April 29, 2013) and correspondence from Bahamian counsel (dated April 25,



2013). Such attached documents are all dated after the April 24, 2013, Rule to Show Cause hearing. The Motion attempts to mislead the Court by using actions taken post-hearing as a justification for the Court to reconsider its June 2013 Order.

In the December, 2012, Order, the Court ordered the Personal Representative to transfer the Bahamas lots and close the Estate no later than February 1, 2013. Despite such Order, the Personal Representative did not retain Bahamian counsel until March, 2013. As noted in the June 2013 Order, a finding of contempt may be predicated upon a violation of a settlement agreement approved by a Court where it was determined that the offender made no legitimate efforts to comply with the settlement agreement. *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596 (Ct. App. 2002). Here, it is clear that the Personal Representative made no legitimate effort to comply with the Court's instructions and Orders until after the February 1, 2013, deadline had passed, and Petitioner had filed his Verified Petition on February 7, 2013.

At the hearing, Petitioner met its burden by showing that the Personal Representative has failed to comply with three (3) Orders of this Court. At such time, Respondent failed to provide any defense as to why he did not comply or even attempt to comply with this Court's Orders prior to the February 1, 2013, deadline set by the Court. For this reason, the Court upholds its finding of contempt.

C. Reasonableness of Petitioner's Attorney's Fee.

In the Motion, Mr. Bannister cites *Baron Data System, Inc. v. Loter*, 297 S.C. 382, 277 S.E.2d 296 (S.C. 1989) in arguing that the "Probate Court erred in making no findings as required in any award of attorney fees." This Court's June 2013 Order required Respondent to pay all of Petitioner's attorney's fees. In making this ruling, the Court had analyzed the factors set forth in *Baron* and found that the evidence in the record fully supports the reasonableness of



the attorney's fees requested by Petitioner as shown by the Affidavit of Fees filed by Petitioner's counsel on or about January 25, 2013 (two affidavits), and April 24, 2013.

The factors which were considered by this Court in rendering such decision were: (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. In examining these factors, it is clear that the fees incurred by Petitioner are very reasonable. This is a very contentious case which has extended over several years and which involves unusual legal issues regarding foreign property. Much time and labor has been devoted by Petitioner's counsel in enforcing the Settlement Agreement and the Orders of this Court and in defending against the positions taken by Attorneys Bannister and Coulter for Respondent's failure to act. Patterson & Associates, P.A., is respected in this community and has litigated other cases in this Court. Contingency of compensation is not applicable. The rates charged by Petitioner's counsel are consistent with those charged by other attorneys practicing in this Court. Petitioner's counsel has obtained the result for which they petitioned.

At the hearing, Petitioner's counsel informed the Court that she would be providing an affidavit opining to the reasonableness of such fees. However, having heard the testimony of counsel and having examined the factors to be considered, I find that such affidavit is not necessary. For the reasons set forth in the June 2013 Order, Petitioner is entitled to recover the attorney's fees and costs in the amount of \$12,920.53 as shown on the affidavits of counsel filed on or about January 25, 2013, and April 24, 2013.

Petitioner has incurred additional attorney's fees since the filing of such affidavits. Subsequent to the hearing, Petitioner's counsel filed another Affidavit of Fees. Because of (i) the



nature of the Motion, (ii) the positions taken by Respondent and counsel throughout this proceeding, and (iii) the factors set forth above, and upon review of the Affidavit of Jacqueline H. Patterson, I hereby grant to Petitioner additional attorney's fees and costs in the amount of \$6,159.18.

CONCLUSION

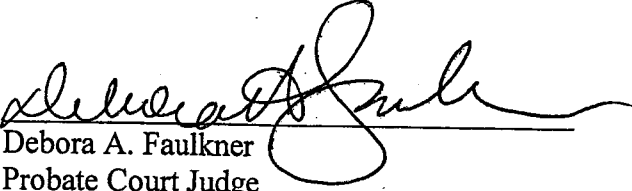
Based upon the foregoing, it is ORDERED, ADJUDGED and DECREED as follows:

1. The Motion to Reconsider filed by Mr. Bannister is hereby DENIED.
2. Having failed to (i) properly convey the Bahamas lots to Petitioner on or before July 12, 2013, and pay all attorney's fees and costs submitted by Petitioner, or, in the alternative (ii) pay Twenty-five Thousand (\$25,000.00) Dollars in certified funds to Petitioner and pay all attorney's fees and costs submitted by Petitioner on or before July 12, 2013, Respondent is hereby sentenced to ninety (90) days incarceration. A Bench Warrant is hereby being issued for his arrest.
3. In accordance with the June 2013 Order, post-judgment interest on all sums which were due by July 12, 2013, began to accrue on July 13, 2013, and shall continue to accrue until paid in full.
4. In accordance with the June 2013 Order, Petitioner is entitled to recover from Respondent its attorney's fees and costs incurred on or before April 24, 2013, said attorney's fees and costs being in the amount of \$12,920.53. Post-judgment interest on this amount shall accrue in accordance with the preceding paragraph.
5. Additionally, Petitioner is entitled to recover from Respondent its attorney's fees and costs incurred on or after April 24, 2013, said attorney's fees and costs being in the amount



of \$6,159.18. Post-judgment interest on this amount shall begin to accrue thirty (30) days following the date of this Order.

IT IS SO ORDERED.


Debora A. Faulkner
Probate Court Judge

Greenville, South Carolina
September 30, 2013

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 FILED CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL D. WICKENS, JIMMER

IN THE CIRCUIT COURT
 THIRTEENTH JUDICIAL CIRCUIT

IN THE MATTER OF 2014 JUN 4 PM 2 13
 JAMES A. TRIPPE, III Deceased

APPEAL FROM THE
 GREENVILLE COUNTY
 PROBATE COURT

Gene D. Morin, Conservator
 for Katelin [REDACTED]

C.A. No. 2013-CP-23-05389

Respondent,

v.

James Trippe, Jr., individually and as
 Personal Representative of the Estate of
 James A. Trippe, III,

Appellant.

ORDER

I. INTRODUCTION

James Trippe, Jr., individually and as Personal Representative ("PR") of the Estate of James A. Trippe, III appeals an Order of the Probate Court holding him in civil contempt and awarding attorneys fees to Gene D. Morin, Conservator for Katelin [REDACTED] ("Morin"). Morin moves to Dismiss the Appeal.

The Court heard oral argument on February 18, 2014. The Order of the Probate Court is hereby affirmed in part, for the reasons that follow.

II. FACTUAL / PROCEDURAL BACKGROUND

James A. Trippe, III ("Decedent") died intestate on March 26, 2009. On or about April 16, 2009, his father, James Trippe, Jr., was appointed Personal Representative. The heirs of Decedent's Estate are his two children, James Trippe, IV ("James IV") and Katelin [REDACTED] ("Katelin"). Because Katelin is a minor child, Mr. Morin was appointed her conservator.

LT

The Estate consists of hundreds of thousands of dollars in assets, including real property located in the Bahamas valued at \$25,000.00. The original deadline for distributing Decedent's assets and closing the Estate was April 16, 2010. On June 6, 2011, Morin petitioned to remove Mr. Trippe, Jr. as Personal Representative on the grounds that he had acted wrongfully in his dealings with Katelin by, among other things, failing to distribute the Estate in a timely manner and by proposing to distribute the Estate contrary to law.

PR and Morin reached a settlement of the allegations set forth in the petition, and the settlement was formalized through the execution of a Mutual Release and Settlement Agreement ("Settlement Agreement"), which was incorporated into an Order of the Probate Court dated April 27, 2012. Paragraph 4 of the Settlement Agreement states as follows:

Bahamas Lots. Within sixty (60) days following the execution of this Agreement, Respondent PR shall transfer to Petitioner the two (2) lots located in the Bahamas (the "Lots") and identified on Schedule A.1. of the Second Supplemental Inventory and Appraisal dated December 9, 2011. The Lots shall be transferred free and clear of all liens, mortgages or other encumbrances. In connection herewith, Respondent PR shall perform all acts and execute all documents required by the Greenville County Probate Court to transfer the Lots to Petitioner. (Emphasis added)

By Order dated June 15, 2012, PR was held in contempt of Court for failing to make a required payment to Morin under a separate provision of the Settlement Agreement. As part of this Order, the Probate Court extended the time for transferring the Bahamas Lots, requiring them to be "conveyed as soon as possible." Specifically, the Ordering clause decreed that "[t]he deed for the Bahama property shall be delivered as soon... as possible." *Id.* at 6. In July 2012, PR's counsel delivered a Deed of Distribution for the Bahama lots to Morin's counsel.

On October 4, 2012, Morin filed a second contempt action. By Order dated December 21, 2012, PR was held in contempt of Court for failing to transfer the Bahamas Lots. The Court

found that PR and his counsel had been advised by letters from the Probate Court that they must furnish recorded deeds of distribution. The Court provided PR a grace period to transfer the Bahamas Lots, ordering it be completed by February 1, 2013.

On February 7, 2013, Morin filed a third contempt action against PR for failing to timely transfer the Bahamas Lots. By Order dated June 25, 2013, the Probate Court found PR to be in contempt of Court. On July 8, 2013, Mr. Bannister filed a Motion to Reconsider on behalf of PR, which the Probate Court denied on September 30, 2013. On or about October 4, 2013, Mr. Coulter filed a Notice of Appeal on behalf of PR. Morin seeks dismissal of the Appeal, claiming it was untimely.

III. STANDARD OF REVIEW

A finding of contempt must be affirmed unless it represents an abuse of discretion. There are many definitions of what constitutes an "abuse of discretion"; most contain unhelpful circular references to a "lack of evidentiary support" or an "error of law." The standard gives considerable deference to the trial judge, who occupies a superior position to gauge the issues. Mere disagreement with the ruling is not enough. Discretion is abused when the decision exceeds the bounds of reason or the contours of the law, and leaves the reviewing Court with the firm belief that error occurred. The standard therefore tolerates reasonable disagreement, yet serves as a "check on judgment which strays too far from the mark." See Evans v. Eaton Corp. Long Term Disability Plan, 514 F.3d 315, 322 (4th Cir. 2008).

An award of attorneys fees is also reviewed under an abuse of discretion standard, Blumberg v. Nealco, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993), and will be affirmed if supported by any competent evidence. Baron Data Sys. v. Loter, 297 S.C. 382, 384, 377 S.E.2d 296, 296 (1989).

IV. LAW / ANALYSIS

A. Morin's Motion to Dismiss Appeal

Morin contends that because the December 21, 2012 Order of the Probate Court disqualified Mr. Bannister from representing PR, his July 8, 2013 Motion to Reconsider filed on PR's behalf was ineffective to toll the deadline to appeal the September 30, 2013 Order. Merely stating this argument exposes its weakness, for clearly the Probate Court ruled on the merits of the Motion to Reconsider and did not rule it was improperly filed. The Probate Court's disqualification of Mr. Bannister cannot affect the jurisdiction of this Court to hear this Appeal. Indeed, as the Probate Court understood, it did not affect that Court's jurisdiction to hear the Motion to Reconsider. The Motion to Reconsider was filed on behalf of a party, and the previous disqualification of that party's attorney does not render the filing of the Motion a nullity. If that were so then anytime a Court disqualified a lawyer, the client would be placed in the untenable position of having to scramble to find new counsel in the short time available to move to reconsider or appeal. And the lawyer—who may have been improperly disqualified by the Court's order—would in effect be prohibited from further protecting his client's interest at a crucial juncture in the litigation. Moreover, such an emasculating rule would render the disqualification order itself effectively immune from review. Appeal deadlines, being strictly jurisdictional, cannot be extended or enlarged. No authority has been presented that holds a notice of appeal is void because the lawyer who perfected an intervening Motion to Reconsider had been disqualified by the trial Court order appealed from. Consequently, this Appeal (which was filed by Mr. Coulter) was timely and Morin's Motion to Dismiss is denied.

LH

B. Finding of Contempt

A party is in contempt when it willfully disregards or disobeys a clear Court order. Curlee v. Howle, 277 S.C. 377, 287 S.E.2d 915 (1982). A willful act is one done voluntarily and intentionally, with the specific intent to do something the law forbids, or the specific intent to fail to do something the law requires to be done.

Civil contempt must be proven by clear and convincing evidence. The party seeking a contempt ruling bears the burden of proving a prima facie case for contempt; the burden then shifts to defendant to establish any defense, including inability to comply. The contempt power should be invoked cautiously and sparingly.

Morin contends that PR's failure to transfer the Bahamas Lots violated three Orders of the Probate Court. While certain issues in administering this Estate may have been complicated, the issue concerning the Bahamas property was never difficult. Before the fall of 2012, the Personal Representative had a good faith belief that his July 2012 delivery of the Deed of Distribution discharged his duties under the Settlement Agreement to transfer the Bahamas lots. The Personal Representative's counsel, Mr. Bannister, repeatedly communicated this belief to Ms. Patterson, even citing the case law he was justifiably relying on. See September 10, 2012 letter from O.W. Bannister, Jr. to Jacqueline H. Patterson. To be sure, there are letters from the Clerk of the Probate Court stating that the Court required recorded deeds of distribution. But, before December 21, 2012, the controlling document arguably remained the Court Order that approved the Settlement Agreement, which did not expressly require or even reference recording.

There is sufficient evidence, however, to support finding the Personal Representative in willful contempt of the December 21, 2012 Order. The Personal Representative did not contact

Bahamian counsel until January 30, 2013, when the Court had established a February 1, 2013 deadline to complete recording. Even if, as the PR contends, this deadline was unrealistic given Bahamian procedure (a reality Morin's counsel evidently understood), there is clear and convincing evidence that the PR failed to timely comply with the clear order to get the process moving.

In sum, it appears the PR initially believed he had complied with Paragraph 4 by filing and delivering Deeds of Distribution. This belief became unreasonable after the December 21, 2012 Order, which clarified that conveyance meant recording the appropriate deed pursuant to Bahamian law. This Court agrees with both the Probate Court and Morin that, after the December 21, 2012 Order, the issue became simply whether the PR had complied with this clear mandate. As noted above, the PR willfully failed to comply with this straightforward order, providing clear and convincing evidence to uphold the Probate Court's June 25, 2013 and September 30, 2013 findings of contempt.

C. Attorney's Fees

Paragraph 14 of the Settlement Agreement provides as follows:

Attorneys' Fees. If an action is commenced to enforce any provision of this Settlement Agreement, the prevailing party as determined by a final Court judgment shall be entitled to recover from the other party such reasonable attorneys' fees and costs incurred in the action as the Court may award.

After analysis of the Baron factors, the Probate Court awarded attorney's fees to Morin in the amount of \$19,079.71. See September 30, 2013 Order. For the same reason there is little difficulty in affirming the Probate Court's ruling for contempt, this Court has considerable difficulty understanding the amount of attorneys fees incurred. Morin and his counsel persistently pushed the Personal Representative regarding the lot transfer. This zealotness, though, has crept into the relentless pursuit of a fee from the Estate.



Several aspects of the attorneys fees are troubling. First, the Court is unable to determine what a large portion of the fees is even related to, as the record contains some 34.65 hours (or \$6,169.75) of attorney time where the descriptions of the services rendered has been redacted. While the redactions served to shield privileged information, it is impossible to fairly review the amount without access to this material information, which represents nearly one-third (1/3) of the time spent.

Second, as noted above the contempt hinged on the discrete issue of who had the responsibility to record the deed in the Bahamas. It appears PR's counsel spent several thousand dollars of attorney time researching Bahamian legal requirements for recording a deed as part of the ancillary administration of a foreign estate, including \$1,500.00 wired on December 11, 2012 to retain a Bahamian lawyer to opine on the necessary procedure. This was remarkably thorough, but thoroughly misguided. No one was disputing the mechanics of Bahamas real estate law; the concrete issue was whose responsibility it was to set those mechanics in motion. Consequently, the hiring of the Bahamas lawyer to advise as to a collateral matter benefitted neither the Estate nor Katelin.

That the mushrooming fee was out of bounds became evident when Morin announced he was claiming \$8,562.25 (to date) to defend this appeal, although the appeal had only been pending a few months. The combined length of the parties' appeal briefs is less than twenty (20) pages. The appeal hearing lasted approximately forty-five (45) minutes. The issues were not complicated.

Morin thus seeks a total of \$27,641.96 in attorneys fees and costs. This Court has not lost sight that this claimed amount exceeds the value of the very land that is the subject of this

dispute.¹ The Probate Court was understandably exasperated by the administration of this Estate, and the PR's perceived unreasonable actions in this and other matters. This frustration, however well-founded, does not warrant such an overreaching fee. A reasonable award of fees and costs for Morin's counsel is \$4,500.00. This amount is a fair, market-rate fee for the work reasonably necessary to bring PR back to Court after the December 20, 2012 Order, and for defense of this appeal. Because there was no basis to find PR in willful contempt before the December 20, 2012 Order, Morin should not have received fees for efforts expended before this date. See Cannon v. Georgia Attorney General's Office, 397 S.C. 541, 548-550, 725 S.E.2d 698 (2012)(reducing attorneys fees award in conjunction with contempt where portion of fees were incurred before date of order Plaintiff was accused of violating).

V. CONCLUSION

1. Morin's Motion to Dismiss the Appeal is DENIED.
2. The June 25, 2013 and September 30, 2013 Orders of the Probate Court are AFFIRMED in part, except as to the amount of attorneys fees awarded to Morin.
3. Morin's counsel is entitled to an award of costs and reasonable attorneys fees in the amount of \$4,500.00 for their efforts, including defending this Appeal.

IT IS SO ORDERED.

D. Garrison Hill

D. Garrison Hill
Circuit Judge

June 4, 2014

¹ The Record does not disclose the amount of fees the Conservator has billed related to this matter.

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL D. WICKENS, MER

IN THE CIRCUIT COURT
 THIRTEENTH JUDICIAL CIRCUIT

IN THE MATTER OF 2014 JUL 31 PM 12 28
 JAMES A. TRIPPE, III Deceased

Gene D. Morin, Conservator
 for Katelin [REDACTED]

Respondent,

v.

James Trippe, Jr., individually and as
 Personal Representative of the Estate of
 James A. Trippe, III,

Appellant.

APPEAL FROM THE
 GREENVILLE COUNTY
 PROBATE COURT

C.A. No. 2013-CP-23-05389

AMENDED ORDER

I. INTRODUCTION

James Trippe, Jr., individually and as Personal Representative ("PR") of the Estate of James A. Trippe, III appeals an Order of the Probate Court holding him in civil contempt and awarding attorneys fees to Gene D. Morin, Conservator for Katelin [REDACTED] ("Morin"). Morin moves to Dismiss the Appeal.

The Court heard oral argument on February 18, 2014. The Court filed a written decision on June 4, 2014. Morin moved to alter or amend. This Amended Order constitutes the Court's ruling on Morin's motion and shall be substituted for the June 4 Order. The Order of the Probate Court is hereby affirmed in part, for the reasons that follow.

II. FACTUAL / PROCEDURAL BACKGROUND

James A. Trippe, III ("Decedent") died intestate on March 26, 2009. On or about April 16, 2009, his father, James Trippe, Jr., was appointed Personal Representative. The heirs of

Decedent's Estate are his two children, James Trippe, IV ("James IV") and Katelin [REDACTED] ("Katelin"). Because Katelin is a minor child, Mr. Morin was appointed her conservator.

The Estate consists of hundreds of thousands of dollars in assets, including real property located in the Bahamas valued at \$25,000.00. The original deadline for distributing Decedent's assets and closing the Estate was April 16, 2010. On June 6, 2011, Morin petitioned to remove Mr. Trippe, Jr. as Personal Representative on the grounds that he had acted wrongfully in his dealings with Katelin by, among other things, failing to distribute the Estate in a timely manner and by proposing to distribute the Estate contrary to law.

PR and Morin reached a settlement of the allegations set forth in the petition, and the settlement was formalized through the execution of a Mutual Release and Settlement Agreement ("Settlement Agreement"), which was incorporated into an Order of the Probate Court dated April 27, 2012. Paragraph 4 of the Settlement Agreement states as follows:

Bahamas Lots. Within sixty (60) days following the execution of this Agreement, Respondent PR shall transfer to Petitioner the two (2) lots located in the Bahamas (the "Lots") and identified on Schedule A.1. of the Second Supplemental Inventory and Appraisement dated December 9, 2011. The Lots shall be transferred free and clear of all liens, mortgages or other encumbrances. In connection herewith, **Respondent PR shall perform all acts and execute all documents required by the Greenville County Probate Court to transfer the Lots to Petitioner.** (Emphasis added)

By Order dated June 15, 2012, PR was held in contempt of Court for failing to make a required payment to Morin under a separate provision of the Settlement Agreement. As part of this Order, the Probate Court extended the time for transferring the Bahamas Lots, requiring them to be "conveyed as soon as possible." Specifically, the Ordering clause decreed that "[t]he deed for the Bahama property shall be delivered as soon... as possible." *Id.* at 6. In July 2012, PR's counsel delivered a Deed of Distribution for the Bahama lots to Morin's counsel.

On October 4, 2012, Morin filed a second contempt action. By Order dated December 21, 2012, PR was held in contempt of Court for failing to transfer the Bahamas Lots. The Court found that PR and his counsel had been advised by letters from the Probate Court that they must furnish recorded deeds of distribution. The Court provided PR a grace period to transfer the Bahamas Lots, ordering it be completed by February 1, 2013.

On February 7, 2013, Morin filed a third contempt action against PR for failing to timely transfer the Bahamas Lots. By Order dated June 25, 2013, the Probate Court found PR to be in contempt of Court. On July 8, 2013, Mr. Bannister filed a Motion to Reconsider on behalf of PR, which the Probate Court denied on September 30, 2013. On or about October 4, 2013, Mr. Coulter filed a Notice of Appeal on behalf of PR. Morin seeks dismissal of the Appeal, claiming it was untimely.

III. STANDARD OF REVIEW

A finding of contempt must be affirmed unless it represents an abuse of discretion. There are many definitions of what constitutes an "abuse of discretion"; most contain unhelpful circular references to a "lack of evidentiary support" or an "error of law." The standard gives considerable deference to the trial judge, who occupies a superior position to gauge the issues. Mere disagreement with the ruling is not enough. Discretion is abused when the decision exceeds the bounds of reason or the contours of the law, and leaves the reviewing Court with the firm belief that error occurred. The standard therefore tolerates reasonable disagreement, yet serves as a "check on judgment which strays too far from the mark." See Evans v. Eaton Corp. Long Term Disability Plan, 514 F.3d 315, 322 (4th Cir. 2008).

An award of attorneys fees is also reviewed under an abuse of discretion standard, Blumberg v. Nealco, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993), and will be affirmed if

supported by any competent evidence. Baron Data Sys. v. Loter, 297 S.C. 382, 384, 377 S.E.2d 296, 296 (1989).

IV. LAW / ANALYSIS

A. Morin's Motion to Dismiss Appeal

Morin contends that because the December 21, 2012 Order of the Probate Court disqualified Mr. Bannister from representing PR, his July 8, 2013 Motion to Reconsider filed on PR's behalf was ineffective to toll the deadline to appeal the September 30, 2013 Order. Merely stating this argument exposes its weakness, for clearly the Probate Court ruled on the merits of the Motion to Reconsider and did not rule it was improperly filed. The Probate Court's disqualification of Mr. Bannister cannot affect the jurisdiction of this Court to hear this Appeal. Indeed, as the Probate Court understood, it did not affect that Court's jurisdiction to hear the Motion to Reconsider. The Motion to Reconsider was filed on behalf of a party, and the previous disqualification of that party's attorney does not render the filing of the Motion a nullity. If that were so then anytime a Court disqualified a lawyer, the client would be placed in the untenable position of having to scramble to find new counsel in the short time available to move to reconsider or appeal. And the lawyer—who may have been improperly disqualified by the Court's order—would in effect be prohibited from further protecting his client's interest at a crucial juncture in the litigation. Moreover, such an emasculating rule would render the disqualification order itself effectively immune from review. Appeal deadlines, being strictly jurisdictional, cannot be extended or enlarged. No authority has been presented that holds a notice of appeal is void because the lawyer who perfected an intervening Motion to Reconsider had been disqualified by the trial Court order appealed from. Consequently, this Appeal (which was filed by Mr. Coulter) was timely and Morin's Motion to Dismiss is denied.



B. Finding of Contempt

A party is in contempt when it willfully disregards or disobeys a clear Court order. Curlee v. Howle, 277 S.C. 377, 287 S.E.2d 915 (1982). A willful act is one done voluntarily and intentionally, with the specific intent to do something the law forbids, or the specific intent to fail to do something the law requires to be done. Civil contempt must be proven by clear and convincing evidence. Poston v. Poston, 331 S.C. 106, 502 S.E.2d 86 (1998). The party seeking a contempt ruling bears the burden of proving a prima facie case for contempt; the burden then shifts to defendant to establish any defense, including inability to comply. The contempt power should be invoked cautiously and sparingly.

Morin contends that PR's failure to transfer the Bahamas Lots violated three Orders of the Probate Court. While certain issues in administering this Estate may have been complicated, the issue concerning the Bahamas property was never difficult. Before the fall of 2012, the Personal Representative had a good faith belief that his July 2012 delivery of the Deed of Distribution discharged his duties under the Settlement Agreement to transfer the Bahamas lots. The Personal Representative's counsel, Mr. Bannister, repeatedly communicated this belief to Ms. Patterson, even citing the case law he was justifiably relying on. See September 10, 2012 letter from O.W. Bannister, Jr. to Jacqueline H. Patterson (Resp. Ex. 20 from April 25, 2013 hearing). To be sure, there are letters from the Clerk of the Probate Court stating that the Court required recorded deeds of distribution. But, before December 21, 2012, the controlling document arguably remained the Court Order that approved the Settlement Agreement, which did not expressly require or even reference recording.

There is sufficient evidence, however, to support finding the Personal Representative in willful contempt of the December 21, 2012 Order. The Personal Representative did not contact



Bahamian counsel until January 30, 2013, when the Court had established a February 1, 2013 deadline to complete recording. Even if, as the PR contends, this deadline was unrealistic given Bahamian procedure (a reality Morin's counsel evidently understood), there is clear and convincing evidence that the PR failed to timely comply with the clear order to get the process moving.

In sum, it appears the PR initially believed he had complied with Paragraph 4 by filing and delivering Deeds of Distribution. This belief became unreasonable after the December 21, 2012 Order, which clarified that conveyance meant recording the appropriate deed pursuant to Bahamian law. This Court agrees with both the Probate Court and Morin that, after the December 21, 2012 Order, the issue became simply whether the PR had complied with this clear mandate. As noted above, the PR willfully failed to comply with this straightforward order, providing clear and convincing evidence to uphold the Probate Court's June 25, 2013 and September 30, 2013 findings of contempt.

C. Attorney's Fees

Paragraph 14 of the Settlement Agreement provides as follows:

Attorneys' Fees. If an action is commenced to enforce any provision of this Settlement Agreement, the prevailing party as determined by a final Court judgment shall be entitled to recover from the other party such reasonable attorneys' fees and costs incurred in the action as the Court may award.

After analysis of the Baron factors, the Probate Court awarded attorney's fees to Morin in the amount of \$19,079.71. See September 30, 2013 Order. For the same reason there is little difficulty in affirming the Probate Court's ruling for contempt, this Court has considerable difficulty understanding the amount of attorneys fees incurred. Morin and his counsel persistently pushed the Personal Representative regarding the lot transfer. This zealotness, though, has crept into the relentless pursuit of a fee from the Estate.

As noted above the contempt hinged on the discrete issue of who had the responsibility to record the deed in the Bahamas. It appears Morin's counsel spent several thousand dollars of attorney time researching Bahamian legal requirements for recording a deed as part of the ancillary administration of a foreign estate, including \$1,500.00 wired on December 11, 2012 to retain a Bahamian lawyer to opine on the necessary procedure. This was remarkably thorough, but thoroughly misguided. No one was disputing the mechanics of Bahamas real estate law; the concrete issue was whose responsibility it was to set those mechanics in motion. Consequently, the hiring of the Bahamas lawyer to advise as to a collateral matter benefitted neither the Estate nor Katelin.

That the mushrooming fee was out of bounds became evident when Morin announced he was claiming \$8,562.25 (to date) to defend this appeal, although the appeal had only been pending a few months. The combined length of the parties' briefs and memoranda regarding the Motion to Dismiss is less than 25 pages.¹ The appeal hearing lasted approximately 45 minutes. The issues were not complicated.

Morin thus seeks a total of \$27,641.96 in attorneys fees and costs. This Court has not lost sight that this claimed amount exceeds the value of the very land that is the subject of this dispute.² The Probate Court was understandably exasperated by the administration of this Estate, and the PR's perceived unreasonable actions in this and other matters. This frustration, however

¹ After Morin had moved to reconsider the June 4, 2014 Order, his counsel wrote an unsolicited letter to Ms. Weston J. White, the Court's law clerk, stating in part as follows: "Enclosed please find an unsigned copy of an Appellant Brief which we received today from the office of O.W. Bannister. Please confirm that this Brief has been provided to the Court, and please advise as to the date of submission." The Court can only surmise that Morin wished to supplement the record with this brief. The Court had never received it, and consequently did not rely on it. Why Morin would want to ensure the Court knew about a brief filed by his opponent is a curiosity, unless it was meant to show how difficult and contested the appeal was. Yet it appears Morin's counsel admits above that he had never seen the brief, as he had to obtain a copy from Mr. Bannister's office months after the hearing. At any rate, the salient point is that the issues on appeal were routine and straightforward, and Morin's outlandish fee request proves there was more harness than horse.

² The Record does not disclose the amount of fees Conservator Morin has billed related to this matter.

well-founded, does not warrant such an overreaching fee. A reasonable award of fees and costs for Morin's counsel is \$4,500.00. This amount is a fair, market-rate fee for the work reasonably necessary to bring PR back to Court after the December 20, 2012 Order, and for defense of this appeal. Because there was no basis to find PR in willful contempt before the December 20, 2012 Order, Morin should not have received fees for efforts expended before this date. See Cannon v. Georgia Attorney General's Office, 397 S.C. 541, 548-550, 725 S.E.2d 698 (2012) (reducing attorneys fees award in conjunction with contempt where portion of fees were incurred before date of order Plaintiff was accused of violating).

V. CONCLUSION

1. Morin's Motion to Dismiss the Appeal is DENIED.
2. The June 25, 2013 and September 30, 2013 Orders of the Probate Court are AFFIRMED in part, except as to the amount of attorneys fees awarded to Morin.
3. Morin's counsel is entitled to an award of costs and reasonable attorneys fees in the amount of \$4,500.00 for their efforts, including defending this Appeal.
4. This Amended Order replaces and shall be substituted for the June 4, 2014 Order.

IT IS SO ORDERED.



D. Garrison Hill
Circuit Judge

July 29, 2014

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT)

COUNTY OF GREENVILLE)

Case No. 2009-ES-23-00707

IN THE MATTER OF:
JAMES A. TRIPPE, III, Deceased

Gene D. Morin, Temporary Conservator
for Katelin [REDACTED]

Petitioner,

v.

James Trippe, Jr., individually and as
Personal Representative of the Estate of
James A. Trippe, III,

Respondent.

PETITION

FILED
JUN 06 2011
Greenville County
Probate Court

Petitioner would respectfully show unto the Court as follows:

1. Jurisdiction is proper in this Court as this Court has jurisdiction over probate estates.
2. Venue for this action is proper in Greenville County as the Estate of James Trippe, III ("Decedent") is being administered in Greenville County.
3. Decedent died intestate on March 26, 2009.
4. Upon information and belief, Respondent James A. Trippe, Jr. ("Respondent" or "Personal Representative") is a resident of Greenville County, has reached the age of majority and was appointed as Personal Representative of the Decedent's Estate on April 16, 2009. Respondent is the father of the Decedent.

5. Petitioner Gene D. Morin ("Petitioner") is the Court-appointed temporary Conservator for Katelin T [REDACTED] pursuant to an Order of the Honorable Edward M. Sauvain dated March 1, 2011, Case No. 2010GC2300131.

6. Katelin T [REDACTED] is a minor child, and she is the daughter of Decedent and Elaine Trippe.

7. Elaine Trippe is the former spouse of Decedent. She and Decedent were divorced prior to Decedent's death.

8. Pursuant to an Order of the Greenville County Family Court, Elaine Trippe had custody of Katelin T [REDACTED]. However, upon information and belief, the Greenville County Family Court has awarded temporary custody of Katelin T [REDACTED] to Greg and Beth Ross, Katelin T [REDACTED] maternal Aunt.

9. Upon information and belief, James A. Trippe, IV is the son of Decedent, is a resident of Greenville County, has reached the age of majority and is competent.

10. Katelin T [REDACTED] and James A. Trippe, IV constitute the Decedent's intestate heirs pursuant to S.C. Code Ann. §§ 62-2-102 and 62-2-103.

11. Decedent was survived by his brother, Paul Trippe, who, upon information and belief, is a resident of Greenville County. Paul Trippe is not an heir of Decedent's Estate.

12. On April 16, 2009, this Court appointed Respondent to serve as Personal Representative of the Decedent's Estate.

13. On July 15, 2009, Respondent filed an original Inventory and Appraisement listing the net value of the Estate as \$652,628.67.

14. By letters dated December 23, 2009 and February 8, 2010, the Personal Representative was placed on notice by this Court that the deadline for closing the Estate was April 16, 2010.

15. On April 13, 2010, Respondent requested a one hundred twenty (120) day extension to complete the filing of the Accounting and Proposal for Distribution. The only explanation given for this extension request was that they were "[s]till trying to reach an agreement". The Court denied this request due to Respondent's failure to file an Interim Accounting.

16. On May 14, 2010, this Court informed Respondent's counsel that an Interim Accounting must be filed by May 20, 2010.

17. One month after this deadline, on June 22, 2010, Respondent filed an Interim Accounting with this Court, and the Court granted an extension until August 11, 2010 to file the Final Accounting and close the Estate.

18. The Personal Representative failed to close the Estate by the August 11, 2010 deadline.

19. Approximately three months later and after numerous demands from this Court, on November 8, 2010, the Personal Representative filed an Interim Accounting and requested another one hundred twenty (120) day extension to complete the Final Accounting and Proposal for Distribution.

20. This Court granted the Personal Representative until March 8, 2011 to close the Estate; however, the Personal Representative again failed to close the Estate by the Court's deadline.

21. On May 12, 2011, this Court notified Respondent that he was delinquent in closing the Estate and informed Respondent that the Estate documents had to be filed no later than May 27, 2011.

22. On May 27, 2011, the Personal Representative filed the following documents with the Court: (i) Amended Inventory and Appraisement; (ii) Interim Accounting; (iii) Proposals for Distribution to James A. Trippe, IV, Katelin T [REDACTED] (sic) and Paul Trippe (sic); (iv) Deeds of Distribution to James A. Trippe, IV, Katelin T [REDACTED] and Paul Trippe; and (v) a Petition for Settlement.

23. Petitioner would allege and show that the documents filed by Respondent on May 27, 2011 contained the following errors:

- Respondent has proposed to distribute assets to Paul Trippe who does not qualify as an heir of Decedent's Estate pursuant to S.C. Code Ann. §§ 62-2-102 and 62-2-103.

- Respondent has proposed to distribute Decedent's Estate in unequal shares, with Katelin T [REDACTED] receiving a smaller share than James A. Trippe, IV. Based upon the Proposals for Distribution filed with the Court and the values listed on the Amended Inventory and Appraisement, Petitioner would show the following:

Proposed Distribution to James A. Trippe, IV

2004 Boston Whaler with trailer and two Merc 225 XL motors (\$70,000.00 – 63,178.61)	\$6,821.39
Rolex Watch	\$14,600.00
Personal gun collection	\$1,125.00
Furniture, clothing, household property	\$2,395.00
5163 Locust Hill Road, Taylors, SC 29687 mobile home and land	\$40,000.00
Lot in Bahamas (EIS SEC 1 B67 L5)	\$12,600.00
25% of home and lot located at 425 Styles Road, Taylors, SC 29687 ((\$56,000.00-51,710.29) / 2)	\$2,144.86
250 shares of JAT, Inc.	\$115,168.75

50% of cash in acct#0005124432660 of BB&T Bank	\$ <u>TBD</u>
Total:	\$194,855.00

<u><i>Proposed Distribution to Katelin</i></u> [REDACTED]	
2003 Polaris Four-Wheeler ATV	\$500.00
1955 Chevrolet Bel Air	\$37,000.00
Lot in Bahamas (EIS SEC 1 B67 L4)	\$12,600.00
25% of home and lot located at 425 Styles Road, Taylors, SC 29687	\$2,144.86
250 shares of JAT, Inc.	\$115,168.75
50% of cash in acct#0005124432660 of BB&T Bank	\$ <u>TBD</u>
Total:	\$167,413.61

<u><i>Proposed Distribution to Paul Trippe</i></u>	
500 shares of JAT, Inc.	\$230,337.50
Total:	\$230,337.50

- The Personal Representative has removed assets and reduced values of Estate assets which were listed on the original Inventory and Appraisal without providing any basis for these changes.
- The Personal Representative has failed to propose a distribution for certain assets listed on the Amended Inventory and Appraisal.
- As shown on the Petition for Settlement, the Personal Representative has failed to file income tax returns for the Estate, and upon information and belief, J.A.T., Inc. is an operating corporation but no income or loss has been reported.
- The Personal Representative is attempting to transfer real property located in the Bahamas but has failed to provide documentation evidencing the transfer of real property in that jurisdiction.

24. Since March 1, 2011, the Personal Representative has not, at any time, contacted Petitioner regarding the filing of any extensions, the distribution of Estate assets or the delinquencies in the administration of the Estate.

25. On or about May 6, 2011, Petitioner contacted the Personal Representative's counsel, Michael Coulter, regarding the status of the Estate and the distribution of Estate assets, and, at Petitioner's request, Petitioner met with Mr. Coulter and the Personal Representative on May 12, 2011 regarding this Estate.

26. On May 15, 2011, Petitioner met with Katelin T [REDACTED] and her temporary guardians, Greg and Beth Ross. At this meeting, Petitioner was informed of the following:

(a) Katelin T [REDACTED] has been requested to sign a document transferring her interest in the stock which she is inheriting from Decedent's Estate.

(b) Katelin T [REDACTED] has been provided a list of Estate assets and a proposed distribution of those assets.

(c) Katelin T [REDACTED] has received cash proceeds directly from J.A.T., Inc. which is an asset of the Estate.

27. Based upon the foregoing, Petitioner would allege and show that Respondent has had an additional twelve (12) months to close this Estate, and that despite this additional time, he has failed to properly account for assets and income of the Estate, and has failed to administer and close this Estate in accordance with the South Carolina Probate Code.

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

28. Petitioner incorporates by reference all previous and subsequent allegations consistent herewith.

29. As Personal Representative of Decedent's Estate, Respondent stands in a fiduciary relationship to Katelin T [REDACTED]

30. The Personal Representative has breached his fiduciary duty to deal fairly with Katelin T [REDACTED] by acting wrongfully, unreasonably, in bad faith and contrary to its fiduciary duties in the following respects:

- (a) Respondent has failed to administer the Estate in accordance with the South Carolina Probate Code.
- (b) Respondent has failed to administer the Estate in a timely manner.
- (c) Respondent has failed to account for all Estate assets, including but not limited to income derived from Estate assets.
- (d) Respondent has proposed to distribute Estate assets contrary to South Carolina's intestacy laws.
- (e) Respondent has proposed to distribute Estate assets in unequal shares.
- (f) Prior to the appointment of a conservator, Respondent attempted to deal directly with Katelin T [REDACTED], a minor child, in regards to Estate matters (i) by requesting her to sign legal documents; (ii) by distributing cash proceeds from the corporation directly to her, and (iii) by seeking her approval of proposed distributions.
- (g) Upon information and belief, assets of the Estate have been damaged, lost or taken without proper authority due to the maladministration of Respondent.
- (h) Respondent has failed to perform an ancillary probate of real property located in foreign jurisdictions.
- (i) Respondent has failed to communicate with Petitioner and keep him informed regarding the status of the Estate.

- (j) Respondent retained Michael Coulter to serve as the attorney for the Estate, and upon information and belief, Mr. Coulter has in the past and/or now represents either or both J.A.T., Inc. and Respondent in non-Estate matters. In the event that Mr. Coulter has had any of the above attorney-client relationships, the Petitioner would show that Mr. Coulter has a conflict of interest.

31. As a direct and proximate result of Respondent's breach of its fiduciary obligations, Petitioner, on behalf of Katelin T. [REDACTED] has experienced loss and injury in an amount to be determined.

FOR A SECOND CAUSE OF ACTION

(Removal of Personal Representative pursuant to S.C. Code Ann. § 62-3-611)

32. Petitioner herein incorporates by reference all previous and subsequent allegations consistent herewith.

33. Petitioner requests the removal of Respondent as Personal Representative of the Decedent's Estate.

34. Petitioner would allege and show that removal is in the best interests of the Estate.

35. For the reasons set forth in Paragraph 30 above, Petitioner would show that Respondent has failed to perform his duties and obligations inherent in his position as Personal Representative.

36. Respondent is incapable of discharging the duties of the office of Personal Representative.

37. Petitioner requests the removal of Respondent as Personal Representative of Decedent's Estate.

38. Petitioner further requests the simultaneous appointment of Stephanie Rosso to serve as personal representative of Decedent's Estate.

FOR A THIRD CAUSE OF ACTION
(Accounting)

39. Petitioner herein incorporates by reference all previous and subsequent allegations consistent herewith.

40. Due to the aforesaid breach of duties by Respondent, Petitioner is entitled to a detailed accounting from Decedent's date of death forward in the ordinary and customary format used in the Probate Court. Specifically, Petitioner requests a copy of all tax returns, bank statements, cancelled checks, invoices, and receipts of the Estate together with all financial records of J.A.T., Inc., including but not limited to contracts, payroll records, distribution records and tax returns, if any.

FOR A FOURTH CAUSE OF ACTION
(Demand for Bond)

41. Petitioner herein incorporates by reference all previous and subsequent allegations consistent herewith.

42. Petitioner hereby demands that bond be required of the Personal Representative until the Personal Representative has been removed as Personal Representative of Decedent's Estate and has accounted for all Estate assets, receipts and disbursements.

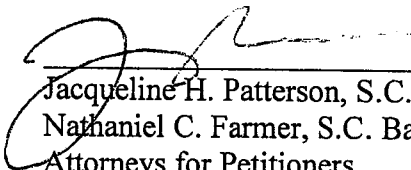
WHEREFORE, the Petitioner respectfully requests the following relief:

- (i) An Order of this Court removing Respondent as Personal Representative of the Decedent's Estate with the simultaneous appointment of Stephanie Rosso as successor personal representative;

- (ii) An Order of this Court directing that Respondent account for all Estate assets, receipts and disbursements, including but not limited to the assets of J.A.T., Inc.;
- (iii) An Order of this Court requiring Respondent to post bond until he has accounted for all Estate assets and is removed as Personal Representative;
- (iv) For actual damages incurred;
- (v) For interest, costs and attorney's fees; and
- (vi) For such other and further relief as the Court deems just and proper.

Respectfully submitted,

PATTERSON & ASSOCIATES, P.A.



Jacqueline H. Patterson, S.C. Bar #12090

Nathaniel C. Farmer, S.C. Bar # 75976

Attorneys for Petitioners

1088 North Church Street

Greenville, SC 29601

(864) 329-0548

nfarmer@pattlawfirm.com

Greenville, SC
June 2, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE PROBATE COURT

Case No. 2009-ES-23-00707

IN THE MATTER OF:
JAMES A. TRIPPE, III, Deceased

Gene D. Morin, Conservator for Katelin)
██████████)

Petitioner,)

v.)

James Trippe, Jr., individually and as)
Personal Representative of the Estate of)
James A. Trippe, III,)

Respondent.)

FILED
FEB - 7 2013
GREENVILLE COUNTY
PROBATE COURT

VERIFIED PETITION

Petitioner Gene D. Morin, Conservator for Katelin ██████████ ("Petitioner"), does hereby petition this Court to require James Trippe, Jr. (hereinafter, the "Personal Representative"), as Personal Representative of the Estate of James A. Trippe, III, to appear and show cause, if any he can, why he should not be held in contempt of court for failure to comply with this Court's Order dated Decedent 21, 2012. In connection therewith, Petitioner would show unto the Court as follows:

1. Jurisdiction and venue are proper as the Estate of James A. Trippe, III ("Decedent") is being administered in this Court.

2. On June 6, 2011, Petitioner brought an action against the Personal Representative seeking, among other things, removal of the Personal Representative for violation of fiduciary duties. In settlement of the claims asserted in the Petition, Petitioner entered into a Mutual Release and Settlement Agreement ("Settlement Agreement") with (i) James Trippe, Jr.,

individually and as Personal Representative of the Estate of James A. Trippe, III, (ii) James Trippe, IV and (iii) Paul Trippe as President of JAT, Inc.

3. By consent of the parties to that action, the Settlement Agreement was incorporated by reference into an Order of this Court dated April 27, 2012.

4. Paragraph 4 of the Settlement Agreement provides:

Bahamas Lots. Within sixty (60) days following the execution of this Agreement, Respondent PR shall transfer to Petitioner the two (2) lots located in the Bahamas (the "Lots") and identified on Schedule A.1. of the Second Supplemental Inventory and Appraisal dated December 9, 2011. The Lots shall be transferred free and clear of all liens, mortgages or other encumbrances. In connection herewith, Respondent PR shall perform all acts and execute all documents required by the Greenville County Probate Court to transfer the Lots to Petitioner. (Emphasis added)

5. By failing to transfer the Bahamas Lots to Petitioner, the Personal Representative breached the terms of Paragraph 4 of the Settlement Agreement, and, consequently, violated this Court's Order dated April 27, 2012.

6. On October 4, 2012, Petitioner filed a Petition seeking an Order of this Court pursuant to S.C. Code Ann. § 62-3-1001 compelling the Personal Representative to perform his duties in administering the Decedent's Estate as required by this Court, the laws of this State and the Settlement Agreement, including but not limited to the transfer of the Bahamas Lots.

7. By Order dated December 21, 2012, this Court ordered the Personal Representative to file all documents necessary to close Decedent's Estate no later than February 1, 2013.

8. Additionally, with regard to the transfer of the Bahamas Lots, the Court ordered the Personal Representative to pay all taxes, liens or other encumbrances affecting the Bahamas Lots prior to the transfer to Petitioner.

9. The Personal Representative has failed to comply with this Court's Order dated December 21, 2012 (i) by failing to timely and effectively transfer the Bahamas Lots to Petitioner, free and clear of all taxes, liens and other encumbrances and (ii) by failing to file all documents necessary to close this Estate, including but not limited to a recorded copy of the Bahamas deed, on or before February 1, 2013.

10. Petitioner is informed and believes that it is entitled to recover interest, costs and attorney's fees based upon Paragraph 14 of the Settlement Agreement and other applicable law.

WHEREFORE, Petitioner prays unto this Honorable Court as follows:

1) that an Order and Rule to Show Cause be issued, requiring James Trippe, Jr., as Personal Representative of the Estate of James A. Trippe, III, to show cause, if any, why he should not be held in contempt for (i) failing to timely and effectively transfer the Bahamas Lots to Petitioner, free and clear of all taxes, liens and other encumbrances and (ii) failing to file all documents necessary to close this Estate, including but not limited to a recorded copy of the Bahamas deed, on or before February 1, 2013;

2) that appropriate sanctions be imposed against James Trippe, Jr., as Personal Representative of the Estate of James A. Trippe, III, for any willful failure and refusal to abide by this Court's Order dated December 21, 2012;

3) that the Bahamas Lots be transferred to Petitioner, free and clear of all taxes, liens and other encumbrances;

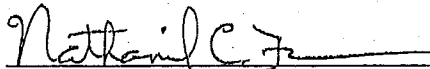
4) that the Personal Representative promptly file all documents necessary to close this Estate;

5) that Petitioner be awarded interest, costs and attorney's fees; and

6) for such other and further relief as this Court deems just and proper.

Respectfully submitted,

PATTERSON & ASSOCIATES, P.A.

A handwritten signature in dark ink, appearing to read "Nathaniel C. Farmer", is written over a horizontal line.

Jacqueline H. Patterson, S.C. Bar #12090

Nathaniel C. Farmer, S.C. Bar # 75976

Attorneys for Petitioner

1088 North Church Street

Greenville, SC 29601

(864) 329-0548

nfarmer@pattlawfirm.com

Greenville, SC
February 5, 2013

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT)

COUNTY OF GREENVILLE)

Case No. 2009-ES-23-00707)

IN THE MATTER OF)
JAMES A. TRIPPE, III Deceased)Gene D. Morin, Conservator
for Katelin [REDACTED])

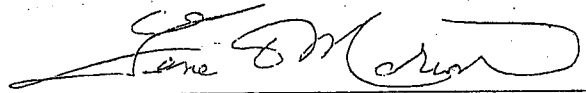
Petitioner,)

VERIFICATION)

v.)

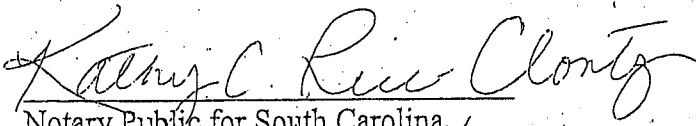
James Trippe, Jr., individually and as
Personal Representative of the Estate of
James A. Trippe, III,)Respondent.)
_____)

PERSONALLY appeared before me Gene D. Morin, Conservator for Katelin [REDACTED], who, after being duly sworn, deposes and states that he has read the attached Petition, and the allegations contained therein are true and accurate except those alleged upon information and belief, and as to those allegations, he believes them to be true.



Gene D. Morin, Conservator
for Katelin Trippe

SWORN TO AND SUBSCRIBED BEFORE ME

This 14th day of February, 2013


Notary Public for South Carolina

My Commission Expires: 3/8/2014

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE MATTER OF
James A. Trippe, III, Deceased

Gene D. Morin, Conservator for
Katelin [REDACTED],

Petitioner,

vs.

James Trippe, Jr., Personal Representative
of the Estate of James A. Trippe, III,

Respondent.

IN THE PROBATE COURT

2009-ES-23-00707

**MOTION FOR EXTENSION
TO FILE FOREIGN DEEDS
AND CLOSING ESTATE**

PLEASE TAKE NOTICE that the undersigned James Trippe, Jr., as the Personal Representative of the above-entitled estate, will move before this Court within ten (10) days from the date of notice hereof, or at such time as the Court may set, for an Order extending the time from February 1, 2013 until February 1, 2014 to supply recorded deeds of two Bahamian lots.

Grounds for the said motion are as follows:

1. The Personal Representative has personally paid for and hired an attorney in the Bahamas by the name of Arthur Seligman, to effectuate the preparation and recording of the Deed transferring the interest of his deceased son to Gene Morin, Conservator for Katelin [REDACTED]
2. Attorney Seligman advises once the necessary paperwork is concluded, he will have to perform a title search made against the deceased's name, and the same will necessitate a title search company.

3. Once the documents are submitted to the Bahamian courts for approval, it could take up to nine (9) months for the courts there to act and grant the necessary authority to complete the transaction.

Email communications from the Personal Representative to the Bahamian attorney and return email is attached hereto and incorporated herein by reference.

WHEREFORE, the Personal Representatives prays this Court extend the time for completing the transaction until February 1, 2014, including completion and furnishing recorded titles and to close said estate.

Respectfully submitted,

BANNISTER & WYATT, LLC



O. W. Bannister (S.C. Bar No. 00506)

401 Pettigru Street (29601)

P O. Box 10007

Greenville, SC 29603

Ph: 864-298-0084

Fax: 864-298-0146

ATTORNEY FOR JAMES TRIPPE, JR.
PERSONAL REPRESENTATIVE OF THE
ESTATE OF JAMES A. TRIPPE, III

April 25, 2013

Jan Brown

From: Arthur Seligman <aseligman@lennoxpaton.com>
Sent: Thursday, April 25, 2013 11:24 AM
To: Jan Brown
Subject: RE: James Trippe Estate

Good morning Jan,

Once I have been supplied with all paperwork in support (e.g. Power of Attorney and Affidavit of Law), I will have everything from your end.

But before I can complete my paperwork I will need information on the Bahamian properties.

In relation to these properties I understand that neither your firm nor the Conservator's law firm have copies of the title deeds (The tax receipts are not sufficient for the purposes of the property descriptions I will have to provide to the authorities).

In this regard I will have to do a title search against the deceased's name and obtain the details- I will be seeking a quote from a title search company and I will seek Mr. Bannister's approval as to the cost.

There is no prescribed time for Probates to be considered by the authorities and it could take anywhere from 4 to 9 months for the Grant to come through once all the paperwork has been submitted.

Regards

Arthur Seligman (Asst. Shawntal Miller)

LennoxPaton

Bayside Executive Park Building No. 3

West Bay Street & Blake Road

P.O. Box N-4875

Nassau, The Bahamas

Nassau, The Bahamas

Telephone: (242) 502.5000

Facsimile: (242) 322.1813

Email: aseligman@lennoxpaton.com

<http://www.lennoxpaton.com>

This message is intended only for the use of the person or entity to which it is addressed and may contain confidential and privileged information. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, forwarding, reproduction or use of the information contained in this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by return e-mail or telephone (242) 502.5000 and delete the original message from your system. Thank you for your cooperation.

From: Jan Brown [<mailto:jbrown@bannisterwyatt.com>]
Sent: Thursday, April 25, 2013 8:46 AM
To: Arthur Seligman
Subject: James Trippe Estate

Good morning Mr. Seligman,

Mr. Bannister would like an estimate of how long this process is going to take.

Please advise.

Sincerely,

Jan B. Brown
Intake Specialist
Bannister & Wyatt, LLC
401 Pettigru Street, Greenville, SC 29601
P. O. Box 10007, Greenville, SC 29603
(864) 298-0084; (864) 298-0146 Fax
jbrown@bannisterwyatt.com
www.bannisterwyatt.com

LEGAL DISCLAIMER The information transmitted is intended solely for the individual or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of or taking action in reliance upon this information by persons or entities other than the intended recipient is strictly prohibited. If you have received this correspondence in error, please contact the sender and delete the material from any computer.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE MATTER OF
James A. Trippe, III, Deceased

Gene D. Morin, Conservator for
Katelin ~~_____~~,

Petitioner,

vs.

James Trippe, Jr., Personal Representative
of the Estate of James A. Trippe, III,

Respondent.

IN THE PROBATE COURT

C. A. No.: 2009-ES-23-00707

MOTION FOR RECONSIDERATION

TO: JACQUELINE H. PATTERSON, ESQ., ATTORNEY FOR THE PETITIONER:

YOU WILL PLEASE TAKE NOTICE, that the Respondent will move, at a time and place to be decided by the Probate Court of Greenville County, to reconsider its Order dated June 25, 2013, filed on June 25, 2013, and served upon counsel for Respondent by mail. Grounds for the said Motion are as follows:

1. The Court overlooked or ignored that a legitimate issue was raised over the meaning of the Settlement Agreement language which provide, "Respondent PR shall perform all acts and execute all documents required by the Greenville County Probate Court to transfer the lots to Petitioner," (Paragraph 4, Settlement Agreement, approved by Court Order dated April 27, 2012). Specifically, the Personal Representative's counsel delivered a Deed of Distribution of the Bahamian lots to the Petitioner's attorney on July 20, 2012.

Respondent relied on S.C. Code §62-3-907(B) which provides, in part, "... the personal representative's execution of a deed of distribution of real property constitutes a release of the personal representative's power over the title to the real property..." and in part (C), "...the personal representative's execution of a deed of distribution of the real property constitutes a transfer of the title to the real property from the personal representative to the distribute, as well as a release of the personal representative's power over the title to the real property, equivalent to that of an absolute owner...". See Osterneck v. Osterneck, 347 S.C. 573, 649 S.E.2d (Ct. App. 2007).

Not until the Court ruled the Personal Representative had to bear the costs of opening an ancillary estate in the Bahamas and having the transfer of the South Carolina Probate Court Deed of Distribution recorded in the Bahamas did the Personal Representative believe he had the requirement to do so.

2. The Personal Representative contacted and hired an attorney at his own personal expense to open the ancillary estate in the Bahamas to record the Deed of Distribution in the proper form in the Bahamas once the Probate Court interpreted the Agreement to require him to do so.

Based on a communication from the Bahamian attorney hired to open the ancillary estate, the Personal Representative moved the Court to extend the time for getting the Deed of Distribution recorded in the Bahamas (Attachment I).

The Probate Court has not ruled on the motion. The motion demonstrates the Personal Representative has done all he can do to get the ancillary estate opened in the Bahamas and get the transfer recorded but he is at the mercy of the Bahamian court system.

3. The Court overlooked and ignored the fact that the Personal Representative cannot close the estate until the Deed of Distribution is honored by the Bahamian court system. In other words, the Personal Representative has done all he can at this point based on the Probate Court ruling that the estate must obtain the recording of the Bahamian lots in the Bahamas.

4. The Probate Court erred in making no findings as required in any award of attorney fees. Baron Data System, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (S.C. 1989).

WHEREFORE, the Respondent prays that the Court reconsider its Order of June 25, 2013.

Respectfully submitted,

BANNISTER & WYATT, LLC



O. W. Bannister (S.C. Bar No. 00506)

401 Pettigru Street (29601)

P O. Box 10007

Greenville, SC 29603

Ph: 864-298-0084; Fax: 864-298-0146

ATTORNEY FOR JAMES TRIPPE, JR.

PERSONAL REPRESENTATIVE OF THE

ESTATE OF JAMES A. TRIPPE, III

July 8, 2013

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE MATTER OF

James A. Trippe, III, Deceased

Gene D. Morin, Conservator for
Katelin [REDACTED]

Respondent,

vs.

James Trippe, Jr., individually, and as Personal
Representative of the Estate of James A.
Trippe, III,

Appellant.

IN THE CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT

APPEAL FROM THE
GREENVILLE COUNTY PROBATE
COURT

C. A. No.: 2009-ES-23-00707

GROUND FOR APPEAL

2013 NOV 15 PM 2:34

Greenville County
Probate Court

The Probate Court erred in holding James Trippe, Jr., personal representative of the estate of his son, James A. Trippe, III, in willful contempt for failure to obtain and file in the Greenville County Probate Court deeds of transfer of two lots in the Bahamas through ancillary proceedings that in country because the record reflects the personal representative:

- a) Had a good faith belief he did not have the responsibility of opening an ancillary estate in the Bahamas for the purpose of having the transfer pursuant to Bahamian law and issued a Deed of Distribution pursuant to South Carolina law;
- b) Once ordered by the Probate Court to obtain Bahamian deeds transferring the deceased's interest in the Bahamian lots, he sought out an attorney in the Bahamas at his own expense to obtain the transfer and kept the Probate Court advised of the difficulty in doing so because the Bahamian deeds to his deceased son were never located and the Bahamians do not have a system of land titles comparable to the system in the United States or South Carolina;
- c) The personal representative kept the Probate Court advised of the various documents needed to open an ancillary estate in the Bahamas and furnished these documents to the Bahamian attorney within days of any request;
- d) The Probate Court set an arbitrary date for the Bahamian deeds to be filed without regard for the difficulty of the task;

- e) The Probate Court denied a request for an extension of time to obtain the Bahamian deeds; and
- f) The Probate Court ignored the fact that obtaining the Bahamian deeds depended on the Bahamian attorneys and the Bahamian courts which move at their own speed and not at the speed needed by the personal representative.
- g) A finding of willful contempt and the sentencing of an 85 year old man with an invalid wife to a jail term or pay the value of the lots is an abuse of discretion.
- h) An award of attorney fees by the Probate Court was an abuse of discretion because the personal representative was pursuing the transfer of his deceased son's interest in the Bahamian lots with all due diligence and at his own expense and the time spent by the attorney pursuing the Rule to Show Cause was excessive, unnecessary, and mainly for the purpose of enhancing her own claim.

CLARKSON, WALSH, TERRELL & COULTER

Michael T. Coulter (S.C. Bar No. 15177)

P.O. Box 6728

Greenville, SC 29606

Ph: 864-232-4400; Fax: 864-235-4399

ATTORNEY FOR APPELLANT

November 15, 2013

Other Counsel of Record:

Jacqueline H. Patterson
1088 North Church Street
Greenville, SC 29601
Attorney for Respondent

O. W. Bannister, Jr
P.O. Box 10007
Greenville, SC 29601
Attorney for James Trippe, Jr.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED) IN THE CIRCUIT COURT
CLERK OF COURT) THIRTEENTH JUDICIAL CIRCUIT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

IN THE MATTER OF
JAMES A. TRIPPE, III Deceased

2014 FEB 4 PM 2:10)
APPEAL FROM THE
GREENVILLE COUNTY
PROBATE COURT

Gene D. Morin, Conservator
for Katelin [REDACTED]

Case No. 2013-CP-23-05389

Respondent,

v.

MOTION AND
MEMORANDUM TO DISMISS

James Trippe, Jr., individually and as
Personal Representative of the Estate of
James A. Trippe, III,

Appellant.

Respondent, Gene D. Morin, Conservator for Katelin [REDACTED] ("Respondent"), submits the following Motion to Dismiss and Memorandum pursuant to Rule 240, SCACR:

STATEMENT OF ISSUE BEFORE THE COURT

Appellant James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III ("Appellant"), has appealed the Orders of the Greenville County Probate Court dated June 25, 2013 and September 30, 2013, seeking reversal of a finding holding Appellant in contempt of Court for failing to comply with the Orders of the Probate Court dated (i) April 27, 2012, (ii) June 15, 2012 and (iii) December 21, 2012.

Respondent hereby moves to dismiss the Appeal on the grounds that Appellant failed to timely file his Notice of Appeal. Appellant cannot rely upon a defective post-trial motion to toll the statute of limitations. The post-trial motion upon which Appellant relies was filed on behalf of the Appellant by attorney O.W. Bannister who had been repeatedly instructed by Probate Court Judge, Debora Faulkner, that Mr. Bannister could not represent Appellant.

FACTUAL BACKGROUND RELEVANT TO MOTION

1. Decedent James A. Trippe, III ("Decedent") died intestate on March 26, 2009. On or about April 16, 2009, Appellant was appointed as Personal Representative of Decedent's Estate.

2. The heirs of Decedent's Estate are his two children, James Trippe, IV ("James IV") and Katelin [REDACTED] ("Katelin"). Because Katelin is a minor child, Respondent was appointed by the Court to act on Katelin's behalf.

3. On June 6, 2011, Respondent petitioned to remove Appellant as Personal Representative because Appellant had acted wrongfully, unreasonably and in bad faith in his dealings with Katelin by, among other things, failing to distribute the Estate in a timely manner¹ and by proposing to distribute the Estate contrary to law and in unequal shares with Katelin receiving less than her rightful inheritance.

4. Appellant and Respondent reached a settlement of the allegations set forth in the petition, and the settlement was formalized through the execution of a Mutual Release and Settlement Agreement ("Settlement Agreement")². The Settlement Agreement was incorporated into an Order of the Court dated April 27, 2012.

5. By Orders dated June 15, 2012 and December 21, 2012, Appellant was held in contempt of court for violating the terms of the Settlement Agreement incorporated into the Court's April 27, 2012 Order.

6. On February 7, 2013, Respondent filed a third contempt action against Appellant. This action was filed because Appellant had failed to timely transfer the Bahamas Lots ("Lots")

¹ The original deadline for distributing Decedent's assets and closing the Estate was April 16, 2010. Respondent filed his Petition on June 6, 2011. Upon information and belief, Appellant has been granted 17 extensions and has missed 21 deadlines during the administration of this Estate.

² Although not parties to the action, James IV and JAT, Inc. were signatories to the Settlement Agreement because they obtained certain rights and obligations under the Settlement Agreement. However, neither James IV nor JAT, Inc. have any rights or obligations relating to issues raised in this Appeal.

as required by the Settlement Agreement and numerous Court Orders. James IV and JAT, Inc. were not parties to this contempt action because they had no obligations to transfer these Lots. Therefore, no affirmative relief was sought against them.

7. By Order dated June 25, 2013, the Probate Court found Appellant to be in contempt of court because he had failed to make legitimate efforts to comply with the Settlement Agreement and Court Orders³ by transferring the Lots. The Court sentenced Appellant to ninety (90) days incarceration which could be suspended if Appellant transferred the Lots by July 12, 2013, or if the Lots could not be transferred by the deadline to pay the value of the Lots as set forth on the Inventory and Appraisal filed by Appellant. In addition, Appellant was ordered to pay all of Respondent's attorney's fees.

8. Pursuant to S.C. Code Ann. § 62-1-308 (2013), in order to effectively preserve the right to appeal the June 25, 2013 Order, Appellant, by and through his counsel of record, had to appeal or file an appropriate post-trial motion on or about July 8, 2013.

9. As evidenced by the Orders of the Court dated (i) June 15, 2012⁴, (ii) November 20, 2012, (iii) December 21, 2012, (iv) June 25, 2013 and (v) September 30, 2013. Appellant has been and continues to be represented by Attorney Michael Coulter.

10. Attorney O.W. Bannister represents James IV, not Appellant, such representation being duly noted by the Orders of this Court dated (i) June 15, 2012, (ii) November 20, 2012, (iii) December 21, 2012, (iv) June 25, 2013 and (v) September 30, 2013.

11. Over the objections of Respondent and his counsel, Attorney Bannister has on numerous occasions attempted to assume the role as counsel for Appellant (the Estate). The

³ By Order dated December 21, 2012, Appellant was to transfer the Bahamas Lots to Respondent on or before February 1, 2013. As found by the Court, Appellant did not retain Bahamian counsel until March 2013.

⁴ W. Todd Nichols of Clarkson Walsh Terrell & Coulter (Attorney Coulter's firm) appeared on behalf of Appellant at the hearing on June 12, 2012.

Probate Court addressed this issue in its November 20, 2012 Order. At that time, Appellant's attorney, Mr. Coulter, failed to appear for a hearing but requested that Mr. Bannister represent Appellant at the hearing. In response thereto, the Probate Court stated:

It is obvious that Mr. Bannister has a conflict of interest having represented individuals with interests diametrically opposed to Katelin [REDACTED]. Mr. Bannister cannot now use the knowledge he gained from that representation to affect or to appear to affect Katelin [REDACTED] distribution from this estate. As an heir, she has a right to a personal representative and an estate attorney (both of whom receive compensation from the estate) whose concern is only with the proper administration of the estate and meeting the fiduciary obligations thereto, see the SC Probate Code.

12. Although the Court had informed Attorney Bannister that he could not represent the Appellant Estate, after entry of the June 25, 2013 Order, Attorney Bannister, attempting to act on behalf of Appellant, filed a Motion to Reconsider ("Motion") on July 8, 2013 (upon information and belief, the last day the statute of limitations would have allowed for such filing).

13. In the Motion, Attorney Bannister labeled himself as "Attorney for James Trippe, Jr., Personal Representative of the Estate of James A. Trippe, III."

14. A hearing was held on Attorney Bannister's defective Motion on August 21, 2013. Among other reasons, Attorney Bannister's Motion was denied on the grounds that he did not represent Appellant. At the hearing, the Court again admonished Attorney Bannister for filing on behalf of a party he did not represent and had a direct conflict in representing (see transcript attached hereto as Exhibit A⁵).

15. Because a defective post-trial motion is insufficient to toll the statute of limitations for filing a notice of appeal (see arguments below), the notice of appeal filed by Appellant on or about October 4, 2013 was untimely, and therefore, this matter is improperly before this court.

⁵ See Page 12, lines 8-14; Page 13, lines 19-24; Page 30, lines 1-7; Page 39, lines 5-8.

LEGAL ARGUMENT AND AUTHORITIES

For the reasons hereinafter set forth, this Court should dismiss the Appeal on the grounds that Appellant failed to file a Notice of Appeal in a timely manner. Respondent would further show that it is entitled to recover its attorney's fees and costs.

A. Appellant failed to timely file his Notice of Appeal.

The central question presented in this Appeal is whether a non-party's filing of a motion to reconsider is sufficient to toll the statute of limitations for the parties in the case.

It is well-settled in South Carolina that an improper or defective post-trial motion does not toll the statute of limitations for filing a notice of appeal. *See, e.g., Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct. App. 2002); *Quality Trailer Products, Inc. v. CSL Equipment Co., Inc.*, 349 S.C. 216, 562 S.E.2d 615 (2002). Because Attorney Bannister did not represent Appellant, did not intervene in this action, and his client was not harmed as a result of the Court's June 25, 2013 Order, his Motion was defective. As such, the Notice of Appeal filed by Appellant's counsel (Attorney Coulter) on October 4, 2013 was untimely.

1. Pursuant to Court Order, Attorney Bannister could not represent Appellant and therefore, the Motion was improper.

Attorney Bannister's Motion can be construed as being filed on behalf of Appellant or on behalf of his client, James IV. In construing the Motion, it is important to note that Attorney Bannister signed the Motion on behalf of the Appellant/Estate. However, the law of this case, as stated in the Probate Court's Order dated November 20, 2012 (cited above), is that Attorney Bannister does not and cannot represent the Appellant/Estate because of a conflict of interest. *Charleston Lumber Co. v. Miller Hous. Corp.*, 338 S.C. 171, 174-75, 525 S.E.2d 869, 871 (S.C. 2000) (An unchallenged ruling is the law of the case.). Attorney Bannister did not appeal the

November 20, 2012 Order; and as such, the law of this case is that Attorney Bannister represented James IV, and not the Appellant.

Because Attorney Bannister filed on behalf of the Estate, the Motion is in direct contravention to a Court Order and is therefore improper.

2. James IV does not have standing to file the Motion, and therefore, the Motion was improper.

If we assume *arguendo* that Attorney Bannister represented James IV in filing his Motion (which is contrary to the plain and ordinary language set forth on the Motion), then the Motion could only be proper if James IV had standing. The South Carolina Supreme Court addressed a similar issue in *Ex parte South Carolina Dept. of Motor Vehicles*, 390 S.C. 457, 702 S.E.2d 568 (2010). In that case, the South Carolina Department of Motor Vehicles (SCDMV) appealed an order of the circuit court. Although not a party to the underlying action, SCDMV filed two motions to reconsider under Rule 59. The circuit court denied both motions on the grounds that SCDMV had not intervened and thus lacked standing to file the motions. The South Carolina Supreme Court upheld the decision of the trial court by dismissing the appeal. In its decision, the Supreme Court stated as follows:

A well-known rule of appellate procedure is that only an aggrieved party may appeal. Rule 201(b), SCACR; *see also Condon v. State*, 354 S.C. 634, 642, 583 S.E.2d 430, 434 (2003) (“[T]he Attorney General is required, like everyone else, to formally intervene and become a named party before he can file an appeal.”). Having failed to intervene as a party, SCDMV’s appeal is dismissed.

Foreign jurisdictions support the decision of the South Carolina Supreme Court found in *Ex parte South Carolina Dept. of Motor Vehicles*. According to 4 C.J.S. *Appeal and Error* § 242, the general rule regarding a non-party’s right to appeal a judgment is stated as follows:

Generally, the only persons who may appeal include a party to the action or proceeding below, or to the judgment or order, a legal representative of a party, or a person having privity of estate, title, or an interest that appears from the record.

The general rule that only parties or privies may appeal applies in appeals to review the judgment of an intermediate appellate court. A nonparty may not appeal on behalf of a party. (Emphasis added)

With limited exceptions which are not applicable to this case, courts in the United States have held that intervention by the non-party is required. *Marino v. Ortiz*, 108 S.Ct. 586, 587, 484 U.S. 301, 303, 98 L.Ed.2d 629 (1988), rehearing denied, 108 S.Ct. 1064, 484 U.S. 1082, 98 L.Ed.2d 1026 (1988) ("The rule that only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment, is well-settled."); *U.S. v. LTV Corp.*, 746 F.2d 51 (C.A.D.C. 1984) (A nonparty who had participated in proceedings under the Antitrust Procedures and Penalties Act by commenting on a proposed consent decree could not appeal the judgment that entered the decree. The Appellant had not sought intervention prior to the judgment, and had not sought to intervene for purposes of appeal. The general rule is that one who is not party to a record judgment cannot appeal.) *Lefkowitz v. Wagner*, 395 F.3d 773, 782 (C.A.7th, 2005), certiorari denied 126 S.Ct. 333, __ U.S. __, 163 L.Ed.2d 46 (One of the appellants "was not a party in the district court and has not moved for intervention, so it is not a party in this court either. Its appeal is dismissed.")

Both an appeal and a post-trial motion require standing. In *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S.Ct. 2130, (1992), the United States Supreme Court provided a three-part test to establish standing:

(1) A party must have suffered an "injury in fact" - an invasion of a legally-protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'"

(2) There must be a causal connection between the injury and the conduct complained of - the injury has to be "fairly . . . trace[able] to the challenged action of the

defendant, and not . . . th[e] result [of] the independent action of some third party not before the court."

(3) It must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Id. at 560-61 (internal citations omitted).

In this case, James IV did not have standing to file a Motion to Reconsider, and therefore Attorney Bannister's Motion was improper. The following facts support Respondent's position:

1. James IV was not a party to the contempt action filed by Respondent seeking to require Appellant, the Estate, to comply with the Settlement Agreement by transferring the Lots.
2. No affirmative relief was sought against James IV.
3. James IV suffered no "injury in fact" nor has he, in the Motion or otherwise, alleged that he has suffered any injury.
4. James IV's counsel participated in the Probate Court proceedings but chose not to intervene.

Appellant's counsel cannot now "tag-team" with James IV's counsel to extend the statute of limitations. Appellant has his own counsel, and Appellant's counsel did not request reconsideration. For this reason, the statute of limitations for filing the notice of appeal was not tolled, and the filing of such Notice of Appeal as required by S.C. Code Ann. § 62-1-308 (2013) was untimely. This Appeal can only be seen as a way to delay the required distributions under the Settlement Agreement with which the Appellant has still today not complied.

B. Right to Recover Attorney's Fee.

It is well settled in South Carolina that attorney's fees are recoverable if authorized by contract or statute. *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). In this case, Paragraph 14 of the Settlement Agreement provides as follows:

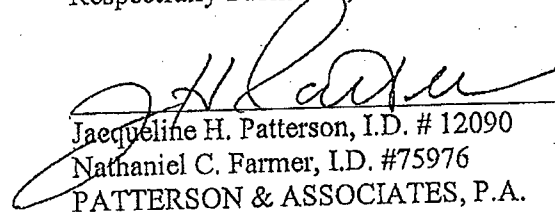
Attorneys' Fees. If an action is commenced to enforce any provision of this Settlement Agreement, the prevailing party as determined by a final court judgment shall be entitled to recover from the other party such reasonable attorneys' fees and costs incurred in the action as the court may award.

Because Appellant failed to comply with the terms of the Settlement Agreement, Respondent sought to enforce the terms thereof. The Probate Court found Appellant to be in violation of the Settlement Agreement, and the defense of this appeal by Respondent is simply a continuation of Respondent's attempts to enforce the same. As such, Respondent is entitled to recover attorney's fees as set forth in Settlement Agreement in defending this Appeal.

CONCLUSION

Based upon the foregoing, the Appeal filed by Appellant should be dismissed, and Respondent should be awarded interest, costs and attorney's fees.

Respectfully Submitted,


 Jacqueline H. Patterson, I.D. # 12090
 Nathaniel C. Farmer, I.D. #75976
 PATTERSON & ASSOCIATES, P.A.
 1088 N. Church Street
 Greenville, SC 29601
 (864) 370-4159
Attorneys for Respondent

February 4, 2014
 Greenville, South Carolina

Exhibit A

In the Matter of: James Trippe, III

Multi-Page™

Probate Court 8/21/13
Case Number: 2009ES2300707

Page 1	Page 3
1 STATE OF SOUTH CAROLINA)	1 INDEX OF EXHIBITS
2) IN THE PROBATE COURT	2 PAGE
3 COUNTY OF GREENVILLE)	3 THERE WERE NO EXHIBITS INTRODUCED.
4 IN THE MATTER OF:	4 - - - - -
5 JAMES A. TRIPPE, III, Deceased	5 (In the following transcript, a dash [--]
6 CASE NUMBER:	6 is used to indicate an unintentional or
7 2009ES2300707.	7 purposeful interruption in a sentence, or to
8 GENE D. MORIN, Conservator for Kateliff [REDACTED]	8 indicate halting speech or an unfinished
9 Petitioner.	9 sentence in dialogue.)
10 JAMES TRIPPE, JR./PR.	10 - - - - -
11 Respondent.	11
12 - - - - -	12
13 Probate hearing taken in the aforementioned	13
14 matter was heard before the Honorable Judge	14
15 Debora A. Faulkner, taken before Donna B.	15
16 Friddle, Court Reporter and Notary Public,	16
17 at Probate Court, Greenville County Square,	17
18 301 University Ridge, Greenville, South	18
19 Carolina, on the 21st day of August, 2013,	19
20 commencing at the hour of 4:06 oclock, p.m.	20
21 - - - - -	21
22	22
23	23
24	24
25	25
Page 2	Page 4
1 APPEARANCES:	1 THE COURT:
2 JACQUELINE H. PATTERSON, Esquire	2 Were on the record here in the Estate
3 NATHAN FARMER, Esquire (Not Present)	3 of James A. Trippe, III, deceased,
4 Patterson & Coker, P.A.	4 09707. This matter here is the -- this
5 1088 North Church Street	5 is a Motion for Reconsideration. This
6 Greenville, South Carolina 29601	6 if filed on behalf of the estate, Mr.
7 Attorneys for Petitioner.	7 Coulter?
8 MICHAEL COULTER, Esquire	8 MR. COULTER:
9 Clarkson, Walsh, Terrell & Coulter, P.A.	9 Mr. Bannister did file it on behalf of,
10 1164 A Woodruff Road (29607)	10 I believe, the Personal Representative.
11 Post Office Box 5728	11 THE COURT:
12 Greenville, South Carolina 29606	12 How is that --
13	13 MR. COULTER:
14 O. W. BANNISTER, Esquire	14 Who was found in contempt. Correct?
15 Bannister & Wyatt, LLC	15 THE COURT:
16 401 Pettigrew Street	16 Well, I have you as representing the
17 Greenville, South Carolina 29601	17 estate, and weve already made a ruling
18 Attorneys for Respondent.	18 about conflict of interest. So are you
19 ALSO PRESENT: Greg Ross.	19 here to argue on behalf of the estate?
20 - - - - -	20 MR. COULTER:
21 INDEX OF EXAMINATION	21 Judge, that will be fine.
22 PAGE	22 THE COURT:
23 COLLOQUY BETWEEN THE COURT AND	23 Okay. Ill be glad to hear from you.
24 COUNSEL	24 MR. COULTER:
25 - - - - -	25 Judge, as I think you recall from the

Probate Court 8/21/13
Case Number: 2009ES2300707

Multi-Page™

In the Matter of: James Trippe, III

Page 5 1 previous hearing I believe that the 2 ruling for the contempt had to do with 3 the issue of the transfer of the 4 Bahamian properties and how quickly 5 they were actually presented in terms 6 of to the beneficiary in the case. 7 THE COURT: 8 Uh-huh. 9 MR. COULTER: 10 All right. And, as I understand it, as 11 you may recall the first issue that we 12 had was whether or not Mr. Trippe had 13 failed to contact the people in the 14 Bahamas about having the title 15 transferred. And initially he did not 16 do that other than to provide a Deed of 17 Distribution to the beneficiary as it 18 was his belief that that was sufficient 19 in terms of his responsibility as the 20 PR. That was the initial delay in 21 actually having the transfer was his 22 belief that doing the Deed of 23 Distribution was sufficient. There was 24 a hearing on that, and Your Honor ruled 25 that that wasnt sufficient, and so	Page 7 1 to do something the law requires to be 2 done, thats to say with bad purpose 3 either to disobey or disregard the law. 4 And so I guess my point being, Judge, I 5 dont believe the initial delay, based 6 on his belief that the Deed of 7 Distribution was sufficient is willful. 8 And the fact that the titles have not 9 transferred aren't completely his 10 responsibility or his fault because the 11 information necessary to transfer had 12 not yet been provided to him. So I 13 would argue to you, Judge, thats not 14 willful. And so my point is, I believe 15 everything he had done in regards to 16 this distribution was not willful, may 17 have been mistaken, but certainly not 18 willful. And Im not even certain at 19 this point whether he has received 20 necessary information from the 21 Conservator, which he certainly did not 22 have, and was admitted on the stand at 23 the time of the previous contempt 24 hearing. So thats why we would ask 25 The Court to consider it because I
Page 6 1 after that had happened he then took 2 the position to contact the attorneys 3 in the Bahamas, do what needed to be 4 done, or start moving towards that 5 direction, and lo and behold we find 6 out when we had the hearing for the 7 initial contempt is that the 8 Conservator had indicated that he had 9 not provided everything necessary to 10 actually make the transfer. So my 11 point, Judge, is that my client, Mr. 12 Trippe, first was delayed because of 13 his belief, mistaken belief, that the 14 Distribution Deed was sufficient; and, 15 secondly, that he didnt have all the 16 information necessary to transfer. And 17 The Court, despite that, held him in 18 contempt. And what I respectfully 19 point out to The Court is that -- and 20 Im sure The Court is aware -- for 21 contempt its a willful act for the 22 purposes of contempt. Theres one done 23 voluntarily and intentionally with 24 specific intent to do something the law 25 forbids, or the specific intent to fail	Page 8 1 dont believe Mr. Trippe has done 2 anything willful in the case. He is 3 trying to get the estate of his 4 deceased son closed. He is using money 5 out of his own pocket to try to get 6 that done, and now The Court has 7 ordered him to pay more money based on 8 a belief that he was acting willfully, 9 which I submit to you just wasnt the 10 case. 11 THE COURT: 12 Any other grounds that you are wanting 13 to bring forth on your -- 14 MR. COULTER: 15 Your Honor, I think thats it. 16 THE COURT: 17 Okay. 18 MR. COULTER: 19 Thank you. 20 THE COURT: 21 Ms. Patterson. 22 MS. PATTERSON: 23 If it please The Court, Your Honor. We 24 have argued this point over, and over, 25 and over again, and to be very clear so

Page 9 1 that everybody understands, this Court 2 provided ten letters prior to your 3 ruling in December requesting that the 4 Personal Representative provide a 5 recorded Deed of Distribution. The 6 December ruling was not -- did not come 7 out of left field. They knew, and they 8 were told over and over that we want a 9 recorded Deed of Distribution. This 10 Court provided it to him ten different 11 writings. So for them to say that it 12 was not willful, Im not sure if I 13 understand that. Secondly, the 14 information that they requested that 15 the Conservator provide to the attorney 16 in the Bahamas was not required of my 17 Conservator until the end of the 18 probate process and was made very clear 19 to us. However, we provided that 20 information as soon as possible. When 21 we provided our information, which was 22 necessary to close the estate probate 23 in the Bahamas, the Personal 24 Representative still had not provided 25 theirs. In fact, you will see that in	Page 11 1 record. At the same time we have 2 served discovery, which is not 3 answered, was not given to us prior to 4 the hearing so that we could bring 5 forth that evidence of what had 6 occurred between Bahamian counsel and 7 the Personal Representative. On April 8 29th then Mr. Bannister, after our 9 hearing, filed a Motion for an 10 extension based on the information 11 after retaining counsel in the Bahamas. 12 So from the time of your Order to 13 February 1st when you asked them to 14 have this completed, we have no 15 evidence that anything was done until 16 we filed our Rule. We feel like your 17 Order fully satisfies what were asking 18 for, which is either our lots, or the 19 value of our lots, which we have waited 20 for for a year and a half now after our 21 settlement agreement, and we would like 22 this Court to grant us the attorneys 23 fees, which we do feel meet the Baron 24 standard of reasonableness, and that 25 there is no rule that they have to be
Page 10 1 their filing in their Motion to 2 Reconsider there is a letter from Mr. 3 Bannisters office to the attorney in 4 the Bahamas, and he is once again 5 saying, Once Ive been supplied all 6 the paperwork and support. That is 7 dated April 25th. The timeline here is 8 that you requested on December 21st 9 that the lots be transferred by 10 February 1st. We had no filing, no 11 information from the Personal 12 Representative. February 1st comes. 13 On February 7th we file with The Court, 14 another Rule to Show Cause. The 15 Bahamas attorney was not hired until 16 March of 2013, well after you had 17 requested that the Bahamas lots be 18 transferred. There was no movement. 19 We received no information. They made 20 absolutely no attempt. The hearing was 21 scheduled on the 24th, and then on the 22 25th theres an E-mail from Mr. 23 Bannister to the Bahamian attorney 24 asking for what is the length of the 25 process of the probate. That is in the	Page 12 1 set out in a Court Order, and we would 2 like The Court to Order a postjudgment 3 interest. 4 THE COURT: 5 Is that not in the Order? 6 MS. PATTERSON: 7 It is, Your Honor. 8 THE COURT: 9 Okay. All right. Okay. Mr. 10 Bannister, are you still representing 11 James, IV? Thats what Ive got in my 12 file. It seems like youre doing a lot 13 of estate work on the side, but Ive 14 got you down as James, IV. 15 MR. BANNISTER: 16 All right. 17 THE COURT: 18 And thats how Ive got the court 19 records have you down as attorney for 20 James, IV, which I think -- is that the 21 brother of Katelin? 22 MS. PATTERSON: 23 Thats Katelins brother. 24 THE COURT: 25 Okay. Okay.

Probate Court 8/21/13
Case Number: 2009ES2300707

Multi-Page™

In the Matter of: James Trippe, III

Page 13 1 MR. BANNISTER: 2 Your Honor, as I have stated before I 3 have represented Mr. Trippe, who is the 4 Personal Representative for a lot of 5 stuff prior to the death of his son, 6 who I also represented, so I am trying 7 to help Mr. Trippe, who is the Personal 8 Representative get the estate closed. 9 THE COURT: 10 Well, tell me this, and maybe Im 11 missing something. Youve been 12 practicing law a long time, but maybe 13 Im missing it. I know we had this 14 issue come up before about having a 15 conflict, and I issued an Order, and I 16 said, you know, Mr. Coulter is going to 17 do the estate. Mr. Bannister has got 18 -- you know, hes representing other 19 members of the family. But yet, I get 20 Motions that I just discovered are 21 signed by you as attorney for him as 22 PR, and obviously youre helping out 23 when theres an obvious conflict of 24 interest. What am I missing? 25 MR. BANNISTER:	Page 15 1 interest and her inheritance, and not 2 see how you can get out of doing it, or 3 delay it, or increase all these fees. 4 Shes a child, and was a child of this 5 decedent, and I understand, I think, as 6 I recall, I think theres something in 7 here you may have represented the 8 deceased against her mother in a 9 divorce, and maybe theres ill will 10 against the mother, and Katelins 11 having to pay the price. I dont know. 12 But this child needs her inheritance, 13 and theres no way that all of this is 14 complying with the fiduciary duty that 15 a Personal Representative has in 16 probate law to maximize the assets, 17 maximize the inheritance, keep the 18 overhead low, and do it in a timely 19 fashion. Its just -- its always been 20 like this the whole way, and its -- I 21 dont understand it, and I dont 22 understand how you cant see how Mr. 23 Trippe, Jr. has taken an adversarial 24 position against Katelin, it seems. 25 MR. BANNISTER:
Page 14 1 Theres no conflict of interest between 2 Mr. Trippe, who is the Personal 3 Representative, and his son. 4 THE COURT: 5 But Katelin. Katelin -- 6 MR. BANNISTER: 7 I dont represent Katelin. 8 THE COURT: 9 No. But Katelin is an heir to this 10 estate, and the Personal Representative 11 is not supposed to do anything that 12 would diminish her inheritance or delay 13 her inheritance. He is supposed to be 14 trying to find out ways to maximize her 15 inheritance, and, instead, hes delayed 16 it over the course of this thing. 17 There was a Deed of Distribution he 18 filed, as I recall, giving shares to 19 Paul, and Paul wasnt even an heir. 20 Hes gotten into a -- there was a 21 dispute about what went to James, IV 22 and Katelin, which is a clear 23 violation, I mean, or conflict right 24 there. Katelin has a right to have a 25 PR who is looking out to maximize her	Page 16 1 Well, Judge, let me -- what youre 2 asking me about -- 3 THE COURT: 4 I mean, I dont get it. 5 MR. BANNISTER: 6 Okay. There was an agreement made that 7 Judge Sauvain approved. Part of that 8 agreement was is that they would 9 transfer these lots in the Bahamas. 10 That was part of the settlement 11 agreement. 12 THE COURT: 13 Yes. That was in April, I think, of 14 2012. 15 MR. BANNISTER: 16 Correct. And there were other things 17 that had to be transferred. 18 THE COURT: 19 Right. 20 MR. BANNISTER: 21 Those are just administerial things, 22 Judge, for lack of a better word 23 getting it done. For example, the 24 transfer of the vehicle. Youve got to 25 get the title. The title has to be

Page 17

1 executed. It has to be sent over. The
2 car has to be delivered.
3 THE COURT:
4 Right. But the --
5 MR. BANNISTER:
6 Theres no conflict there to see to
7 tell Mr. Trippe, Mr. Trippe, get the
8 title. Sign it. Here is where you
9 sign it.
10 THE COURT: ...
11 But didnt they have to file a contempt
12 action right after that and had to come
13 back here to make him give a payment to
14 Katelin that he agreed to pay?
15 MR. BANNISTER:
16 They did. And --
17 THE COURT:
18 And transfer Styles property that he
19 agreed to do.
20 MR. BANNISTER:
21 And there were funds that they had to
22 pay the estate.
23 THE COURT:
24 That he agreed to pay.
25 MR. BANNISTER:

Page 18

1 Thats right. He had to borrow the
2 money.
3 THE COURT:
4 Well, he should have known that before
5 he agreed to it.
6 MR. BANNISTER:
7 He did. He just didnt know how
8 difficult it was going to be to borrow
9 the money.
10 THE COURT:
11 Well, he should have known that.
12 MR. BANNISTER:
13 Well --
14 THE COURT:
15 It was a Court Order.
16 MR. BANNISTER:
17 If -- if --
18 THE COURT:
19 So a child who is relying on that
20 agreement had to spend money on have a
21 Conservator to force him to come in to
22 pay what he said he would pay in an
23 agreement and what The Court said he
24 would pay. How is that in her
25 interest?

Page 19

1 MR. BANNISTER:
2 Well, you make an assumption that I
3 maybe dont actually agree with you. I
4 do not believe Mr. Trippe was aware of
5 how difficult it was going to be to
6 borrow the money.
7 THE COURT:
8 He had a duty to be aware. Whether or
9 not he was is irrelevant.
10 MR. BANNISTER:
11 Well, Judge --
12 THE COURT:
13 He is the fiduciary, and he had
14 lawyers, and hes supposed to know what
15 hes doing. He signed on to this.
16 MR. BANNISTER:
17 When you borrow money from a third
18 party, you are dealing with somebody
19 who is outside of Mr. Trippes ability
20 to control. All during the process of
21 borrowing the money for Mr. Trippes
22 sake we tried to keep the Conservator
23 in the loop as to how difficult it was
24 being and what the timing was. Finally
25 it got done, and the money was paid.

Page 20

1 THE COURT:
2 But he didnt even transfer the real
3 estate though. The Styles property.
4 Forget the Bahamas. He didnt even do
5 that.
6 MR. BANNISTER:
7 Yes, he did.
8 THE COURT:
9 After the contempt action he did.
10 MR. BANNISTER:
11 Well, thats been done. Thats --
12 THE COURT:
13 But my point to you is you said, I
14 dont see how theres a conflict. He
15 has a fiduciary duty to make sure that
16 Katelin gets whats supposed to be
17 hers. There was an agreement. Hes
18 not supposed to be coming up with
19 excuses. Okay, so he cant get the
20 money. He can do the transfer of the
21 Styles property. You know, theres no
22 reason for -- he is supposed to be
23 anxious for her to get her share, not
24 trying to delay it. So that was a
25 contempt action number one. And then

Probate Court 8/21/13
Case Number: 2009ES2300707

Multi-Page™

In the Matter of: James Trippe, III

Page 21

Page 23

1 -- I dont know how many there have
2 been. I know that the last one was
3 two. There may be more. I dont know.

4 MR. BANNISTER:

5 Judge, how would it be a conflict for
6 me to assist Mr. Trippe in
7 accomplishing what The Court has
8 ordered him to do?

9 THE COURT:

10 Because -- it is a conflict, Mr.
11 Bannister, because Katelin is a
12 beneficiary of this estate, and she has
13 a right to have a Personal
14 Representative protect her interests
15 and not use information that he may
16 have against her. And if youre
17 representing him, and youve
18 represented his son, the decedents
19 son, who is obviously not the son of
20 Katelins mother, who has a
21 distribution which was contested;
22 youve also represented Paul, who Mr.
23 Coulters office filed the Deed of
24 Distribution trying to get him 500
25 shares of J.A.T., and hes not even an

1 MR. BANNISTER:

2 For distribution?

3 THE COURT:

4 For Notices, Certificates of Service,
5 and such as that.

6 MR. BANNISTER:

7 I dont believe I got involved until
8 after that had taken place.

9 THE COURT:

10 Okay. So youve never represented Paul
11 then?

12 MR. BANNISTER:

13 I didnt say that.

14 THE COURT:

15 Okay.

16 MR. BANNISTER:

17 What I said was at the time that you
18 cited there was some stock transferred
19 to Paul I was not involved.

20 THE COURT:

21 Well, that came from Mr. Coulters
22 office.

23 MR. BANNISTER:

24 Well, I know that. Thats through Mr.
25 Coulters place, not mine.

Page 22

Page 24

1 heir to this estate. I dont know what
2 information you may have known from the
3 divorce that may have given you special
4 knowledge, but none of that -- none of
5 the times have you-all been here have
6 you-all said or we ended this with
7 Lets get Katelin -- what can we do
8 for Katelin today as her PR? Thats
9 never been the attitude. Its always
10 been, We cant do this. We cant do
11 that. They want this, but we cant do
12 that. He didnt know he was supposed
13 to do that. I know he agreed to it,
14 but he didnt know, he didnt
15 understand. All that, and here we
16 are, what is this, 2013, four years
17 later.

18 MR. BANNISTER:

19 Judge, I was not involved with anybody
20 at the time that the original
21 distribution of stock to Paul was made.
22 I was not involved in that.

23 THE COURT:

24 Well, there are Notices in here that
25 were sent to you as his attorney.

1 THE COURT:

2 Right. But Im just saying youve
3 represented the PRs brother. Youve
4 represented the PRs other biological
5 son -- I mean, the decedents
6 biological son who has an interest
7 adverse to Katelin. Youve represented
8 the decedent in a divorce against
9 Katelins mother. And Ive already
10 made a finding in some Order that I
11 found there was a conflict, so -- but
12 yet, youre still involved. So I guess
13 -- I dont know if Mr. Coulter -- Ive
14 gotten -- I dont know. Every document
15 its like musical chairs here, and I
16 dont know if you-all are trying to
17 game it, or what are you-all trying to
18 do with this thing. We just need to
19 get this estate closed, property
20 transferred, money paid, and Im just
21 really confused on if this is a
22 strategy or what, because it just
23 doesnt make sense to me. I was just
24 looking at it today. We have given you
25 guys 17 extensions, 17, and youve

Page 25 1 missed 21 deadlines since this thing 2 was opened. And one of the 3 continuances that we had was because 4 Mr. Coulter didnt show up one day, 5 and, you know, you tried to help him 6 out, and take it over, and I wouldnt 7 let you because I said youve got a 8 conflict. How is that being a good 9 fiduciary for this child? Its 10 ridiculous. 11 MR. BANNISTER: 12 Judge, I wish there was some way to 13 wave a magic wand and get an ancillary 14 proceeding in the Bahamas to register 15 these deeds in the Conservators name 16 for Katelin, but I will be honest with 17 you, I dont know any way to do it or 18 to assist anybody else to do it. 19 THE COURT: 20 Pay her \$25,000. Thats the other 21 option. Thats what your guy said 22 those lots were worth. Pay her. Let 23 him worry about the transfer, and I 24 wont be involved with that. He wont 25 have to answer to me. It will -- it	Page 27 1 going to have to do it. He didnt 2 think he was the one who was going to 3 have to do it, but you ruled in 4 December that he had to do it, and you 5 told him to do it by February. 6 THE COURT: 7 Its basic probate. And I mean, he 8 entered into this agreement in March of 9 2012. He didnt hire a lawyer to do 10 anything about this transfer till March 11 of 2013. 12 MR. BANNISTER: 13 That is because, Judge, he did not -- 14 once the Deed of Distribution was sent 15 he thought he had complied with the 16 agreement made by -- 17 THE COURT: 18 Mr. Bannister, people come in here all 19 the time thinking they know the law. 20 Thinking, Oh, well I thought I did. 21 If I took that every time, I never 22 would close an estate. He has a duty 23 when he signed on to know what the law 24 is. He cant just agree to do 25 something and then come in later,
Page 26 1 will be whoever else gets it. 2 MR. BANNISTER: 3 Well, Your Honor, thats not my 4 decision to make. Its not mine. 5 THE COURT: 6 Well, its a Court Order. I mean, and 7 I know youre going to appeal it, but, 8 I mean, the Order said do it, I gave 9 him till July, or pay her the value of 10 that, of her inheritance, and then your 11 client, or whoever is going to get this 12 property, they can work that out after 13 we close the estate, and, you know -- 14 MR. BANNISTER: 15 Judge, I believe the agreement that was 16 worked out was that she would get these 17 two lots. Thats the Court Order 18 thats present now. That he was to 19 transfer these two lots. Well, I take 20 that back. He was to transfer the lots 21 to the Guardian, which he tried to do, 22 if you recall. He gave a Deed of 23 Distribution and said, Okay. There 24 was never an argument that what had to 25 be done. It was a question of who was	Page 28 1 Well, I thought the law was this, or 2 I thought I could do that. He has to 3 do his due diligence, and to say that 4 now, I ruled on that a long time ago. 5 He should have known that when he 6 entered into the agreement. He had 7 from March of 2012 to -- okay. Weve 8 got to transfer this property. Okay. 9 Thats probate. Weve got to do an 10 ancillary proceeding in the Bahamas. 11 Weve got to make sure the property 12 gets transferred in the Bahamas. He 13 could have had that done, you know. 14 That would have been a year till March 15 the 3rd of 2013, but he never did, and 16 we kept having extensions after 17 extensions. We had one Mr. Coulter 18 would rise and say, Well, were just 19 having a time -- if youll just give us 20 90 more days, we will have this 21 finished. And that was one of his 22 requests. Ive got a letter in my 23 file, Ninety days we will have this 24 wrapped up, and well have the property 25 done. That went by, came and went.

Probate Court 8/21/13
Case Number: 2009ES2300707

Multi-Page™

In the Matter of: James Trippe, III

Page 29 1 The next time we've got several more. 2 Yeah, we're going to get this wrapped 3 up. We think we've got it done. And 4 then the next thing I'm seeing is a 5 contempt. I don't -- I don't get it. 6 It doesn't make sense. Good lawyers 7 don't practice that way. I don't get 8 it, Bill. I mean I just don't get it. 9 MR. BANNISTER: 10 Well, just make allowances for us being 11 bad lawyers, but, Judge, I will tell -- 12 THE COURT: 13 No, you're not bad lawyers. That's why 14 I don't understand. 15 MR. BANNISTER: 16 I will tell you I have done all I can 17 do to get the lawyer in the Bahamas to 18 get on the stick and get this done, 19 including have Mr. Trippe pay him. 20 I've harassed him. And as a matter of 21 fact, every communication I've had with 22 him I've tried to keep Ms. Patterson 23 aware of what was going on as -- as 24 well as I think I sent them to you. 25 THE COURT:	Page 31 1 do estates more complicated than this 2 all the time. I have property that's 3 in Japan and all these other places. 4 Lawyers seem to do ancillary estates. 5 They are not a problem. And so I don't 6 get this. Surely you all don't have an 7 animus against a child. She is a 8 child. Surely this isn't a 9 continuation of a divorce bad feeling 10 MR. BANNISTER: 11 I can assure -- 12 THE COURT: 13 -- coming from your PR because none of 14 this makes sense to me. 15 MR. BANNISTER: 16 Well, I can assure you, Judge, that he 17 does not have -- Mr. Trippe has no 18 animus toward his granddaughter. None. 19 THE COURT: 20 Well, the way he's handling this estate 21 is not helping that child and is 22 causing her to not get the benefit of 23 her inheritance, and is causing her 24 Conservator to rack up fees for no good 25 reason, no good reason. I mean, I just
Page 30 1 It's just a very curious estate. It is 2 an estate that is -- it had -- it is an 3 epic failure in estate administration 4 is what it is. And I've got attorneys 5 with conflicts of interest who still 6 keep working on the estate for I can't 7 understand why. I've got a person who 8 entered into an agreement, made perfect 9 sense, March of 2012. April it was 10 approved by The Court. He didn't hire 11 a lawyer to do that till March of 2013. 12 So I gave him till July to do this 13 transfer, and then that didn't happen. 14 Had another contempt. So I would say, 15 Okay. You either do it, or you pay 16 her the \$25,000. You get to keep your 17 lots. This child gets her \$25,000." 18 But we keep coming back to the lots, 19 the lots, the lots. Just pay her. And 20 if it's going to be -- you know, I just 21 don't understand why this estate has 22 taken such a horrible turn and used up 23 so much of my time, and your time, 24 Patterson's time, Gene's time, Mr. 25 Coulter's time for a simple matter. I	Page 32 1 -- I did everything I could to try to 2 come have -- and not have Mr. Trippe go 3 to jail. He's been -- like I said, I 4 don't remember how many contempts, but 5 I have tried to be as understanding as 6 I know how to be because it seems to me 7 that reasonable people should be able 8 to handle this, but it just seems like 9 he is just wanting to push the envelope 10 and doesn't think the horns will hook. 11 MR. BANNISTER: 12 Judge, he has had absolutely no input 13 -- I mean, I'll represent to you he has 14 had absolutely no input in dealing with 15 the lawyer in the Bahamas other than to 16 pay everything I've told him to pay 17 him. 18 THE COURT: 19 Well -- 20 MR. BANNISTER: 21 And I have been in contact with that, 22 and I just -- I mean, I can't really -- 23 THE COURT: 24 Well, if you think I'm going to let a 25 Bahamas lawyer keep that child from

Page 33 1 getting her inheritance, you are sorely 2 mistaken. 3 MR. BANNISTER: 4 Judge, the Bahamas lawyer, as far as I 5 know, is working as hard as anybody to 6 get the ancillary estate filed and get 7 the lots deeded to her. 8 THE COURT: 9 Im sure hes working on it every day. 10 first thing every day. 11 MR. BANNISTER: 12 I dont understand why it takes so long 13 either, and I have asked, What does it 14 take? And I attached his E-mail in 15 response back. 16 THE COURT: 17 Well, but for the fact that your client 18 hadnt done such a -- hes done such a 19 horrible job in his estate 20 administration, as I said, Ive got 21 21 missed deadlines and about 17 22 extensions, and Ive even got a Motion 23 from you right now wanting another 24 extension. 25 MR. BANNISTER:..	Page 35 1 in the last Order, and I have not -- I 2 mean, Ive read over the last Order, 3 and it just said that shes entitled to 4 fees from Mr. Trippe. Are you still, 5 Mr. Coulter, are you wanting to pursue 6 that? 7 MR. COULTER: 8 I agree with Mr. Bannister that 9 everything we wanted to pursue was just 10 contained in the Memorandum. 11 THE COURT: 12 All right. Ms. Patterson, have you got 13 a Fee Affidavit? 14 MS. PATTERSON: 15 Your Honor, I have engaged a separate 16 counsel to review all my time on this 17 matter on the several contempt actions 18 to provide to this Court the 19 reasonableness of my fees. He hasn't 20 had time to review that. Well submit 21 it next week. 22 THE COURT: 23 All right. And I think the last time 24 you were here did you get examined 25 about your fees?
Page 34 1 Based on what the attorney tells me, 2 Judge. Thats all I can do. 3 THE COURT: 4 \$25,000, and that problem is cured. 5 And that is, you know, that is part of 6 the Order thats in effect right now, 7 which we are here to reconsider. But I 8 had to just get that off my chest. I 9 mean, I read through this thing this 10 afternoon, and it is just abysmal the 11 way this thing has been handled. 12 Anything else? 13 MR. BANNISTER: 14 I dont believe the Motion stated it 15 all, Judge, but -- 16 THE COURT: 17 Well, the Motion, I think, Mr. Coulter, 18 you had in there, since you wrote the 19 Motion, even though Mr. Coulter should 20 have, I dont know who is getting -- 21 well, about her fees. You dont think 22 her fees were -- met the standards in 23 the Order. What was it -- you believe 24 that her fees werent justified or 25 didnt go down through all the factors	Page 36 1 MS. PATTERSON: 2 I believe I did. 3 THE COURT: 4 Didnt they ask you -- 5 MS. PATTERSON: 6 Yes. Yes, Your Honor. 7 THE COURT: 8 Werent you sitting up here? Mr. 9 Bannister went through your time sheets 10 and why was this, and why was that? 11 MS. PATTERSON: 12 Yes, Your Honor, and I think you made a 13 ruling thereafter, but out of an 14 abundance of caution, which is what 15 Ive had to do in this case over and 16 over again, I have engaged counsel to 17 review it all and provide to this Court 18 an Affidavit of separate counsel as to 19 the reasonableness. 20 THE COURT: 21 Well, once I receive that, if youll 22 copy opposing counsel with it. What I 23 may do, I may have you amend the Order 24 just to include a separate section on 25 the fees, and once I get your -- once I

Probate Court 8/21/13
Case Number: 2009ES2300707

Multi-Page™

In the Matter of: James Trippe, III

Page 37

1 get your Fee Affidavit I will send you
2 and opposing counsel an E-mail on what
3 I want you to do as far as amending the
4 Order, if anything.
5 MS. PATTERSON:
6 Yes, Your Honor. Just so the record is
7 clear, I -- I am as well confused about
8 whether or not this Motion is a true
9 Motion because its signed by a
10 beneficiary who is not a real party in
11 interest to the action because the
12 action was the Conservator against the
13 Personal Representative to close this
14 estate. The James, IV was never a
15 named party, however, Mr. Bannister
16 showed up at every hearing, but never
17 -- never filed to be a party to this
18 action. So, just for the record, to
19 make it clear, I dont think he has
20 standing. I dont think hes a real
21 party interest. He did not follow Rule
22 24. I feel like this is a Rule 11
23 frivolous action, and were asking The
24 Court, again, for our fees, and we
25 would like our fees to stop, we really

Page 39

1 Thats what I was referring to as far
2 as additional evidence and objection
3 to. Thank you.
4 THE COURT:
5 Okay. All right. Well, the Motion to
6 Reconsider is denied. Its denied,
7 first of all, because it wasnt filed
8 by the estate attorney. Second of all,
9 even if it were filed by the estates
10 attorney, for the reasons Ive already
11 discussed I find that the Order as
12 issued should stand. Ms. Patterson has
13 asked for fees for todays hearing.
14 Im going to hold that in abeyance
15 until I get her Affidavit fees, and
16 Ill make a ruling on that when I get
17 it. And, counsel, if you have any
18 objection to her fees, send me
19 something, and let me know why you
20 object, and Ill make a ruling on that
21 on the Pleadings. Okay.
22 (HEARING ADJOURNED)
23
24
25

Page 38

1 would, because we would like this to
2 come to an end, and we would like the
3 25,000, and we would like postjudgment
4 interest.
5 THE COURT:
6 Mr. Coulter?
7 MR. COULTER:
8 Just final, Judge. If The Court would
9 like me to sign that Motion, I would be
10 happy to do that, one. Two, and I
11 understand The Courts position on
12 this, but we would just like to note
13 for the record, with all due respect,
14 we would object to the admission of any
15 additional evidence regarding fees at
16 this time since all evidence was
17 presented during the last hearing, but
18 I just want to make that note.
19 MS. PATTERSON:
20 Your Honor, we will have additional
21 fees for this hearing.
22 MR. COULTER:
23 Im sorry. I was just referring to an
24 Affidavit by another attorney talking
25 about the reasonableness of the fees.

Page 40

1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF GREENVILLE)
4 I, DONNA B. FRIDDLE, a Notary Public, duly
5 commissioned and qualified in and for the
6 State of South Carolina, do hereby certify
7 that the Probate Court hearing was taken
8 before me on August 21, 2013, commencing at
9 4:06 p.m., and concluding at 4:40 p.m.; that
10 said hearing was transcribed under my
11 direction; and that this transcript is a
12 true record of said proceedings. I further
13 certify that I am not of kin or counsel to
14 the parties in this case, am not in the
15 regular employ of counsel for any of said
16 parties, nor am I interested in the results
17 of this case.
18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and affixed my official seal this
20 day of , 2013.
21
22 Notary Public for South Carolina
23 My Commission Expires: 01/30/16
24
25

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKER
STATE OF SOUTH CAROLINA
2014 FEB 17 PM 1:22
COUNTY OF GREENVILLE

IN THE MATTER OF
JAMES A. TRIPPE, III Deceased

Gene D. Morin, Conservator
for Katelin [REDACTED]

Respondent,

v.

James Trippe, Jr., individually and as
Personal Representative of the Estate of
James A. Trippe, III,

Appellant.

IN THE CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT

APPEAL FROM THE
GREENVILLE COUNTY
PROBATE COURT

Case No. 2013-CP-23-05389

BRIEF OF RESPONDENT, GENE D.
MORIN, CONSERVATOR FOR
KATELIN [REDACTED]

Respondent, Gene D. Morin, Conservator for Katelin [REDACTED] ("Respondent"), submits the following brief in opposition to the Appeal filed by Appellant, James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III (hereinafter, "Appellant").

STATEMENT OF ISSUE BEFORE THE COURT

Appellant James Trippe, Jr., individually and as Personal Representative of the Estate of James A. Trippe, III ("Appellant"), has appealed the Orders of the Greenville County Probate Court dated June 25, 2013 and September 30, 2013, finding him in contempt of court and awarding attorney's fees to Respondent for Appellant's failure to comply with Orders dated (i) April 27, 2012, (ii) June 15, 2012 and (iii) December 21, 2012.

In filing his Grounds for Appeal, Appellant disregards the facts in the record. Despite ample opportunity, Appellant made no legitimate effort to comply with the Probate Court's instructions and Orders until after Respondent had filed his Verified Petition on February 7, 2013 requesting a finding of contempt. As such, the Probate Court's decision should be AFFIRMED.

STANDARD OF REVIEW

This appeal involves a question as to whether the evidence presented by Appellant was sufficient to establish his defense for failing to comply with the Probate Court's Orders. *Brasington v. Shannon*, 288 S.C. 183 (1986); *Pratt v. South Carolina Dept. of Social Services*, 283 S.C. 550 (Ct. App. 1984) (Once the moving party shows noncompliance with the Court's Order, the burden shifts to the offender to establish his defense and inability to comply.)

"A decision on contempt rests within the sound discretion of the trial court. On appeal, a decision regarding contempt should be reversed only if it is without evidentiary support or the trial judge has abused his discretion." (citations omitted) *Floyd v. Floyd*, 365 S.C. 56, 615 S.E.2d 465 (Ct.App. 2005).

A review of attorney's fees awarded is governed by an abuse of discretion standard. *Blumberg v. Nealco*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). An appellate court will not reverse an award unless it is based on an error of law or is without any evidentiary support. *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997) ("An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support."). Where an attorney's services and their value are determined by the trier of fact, an appeal will not prevail if the findings of fact are supported by any competent evidence. *Baron Data Sys. v. Loter*, 297 S.C. 382, 384, 377 S.E.2d 296, 296 (1989)

STATEMENT OF FACTS

1. Decedent James A. Trippe, III ("Decedent") died intestate on March 26, 2009. On or about April 16, 2009, Appellant was appointed as Personal Representative of Decedent's Estate.

2. The heirs of Decedent's Estate are his two children, James Trippe, IV ("James IV") and Katelin [REDACTED] ("Katelin"). Because Katelin is a minor child, Respondent was appointed by the Court to act on Katelin's behalf.

3. The original deadline for distributing Decedent's assets (including two Bahamas Lots) and closing the Estate was April 16, 2010. To date, Appellant has been granted seventeen (17) extensions and has missed twenty-one (21) deadlines during the administration of this Estate.

4. On June 6, 2011, more than one year after the original deadline to close the Estate, Respondent petitioned to remove Appellant as Personal Representative (the "Removal Petition") because Appellant had acted wrongfully, unreasonably and in bad faith in his dealings with Katelin by, among other things, failing to distribute the Estate in a timely manner and by proposing to distribute the Estate contrary to law¹ and in unequal shares with Katelin receiving less than her rightful inheritance.

5. During the discovery phase of the litigation, Respondent discovered that Appellant, as self-appointed Treasurer of JAT, approved large salary increases to Paul Trippe (Decedent's brother) and James IV (Decedent's son):

TOTAL INCREASED salaries of JAT, Inc. reported on Form W-3:

<u>2008</u>	<u>2009 (Mar 26 Death)</u>	<u>2010</u>
\$461,083.00	\$668,364.00	\$692,656.00

Despite these increased payouts, the Estate received no dividend income from JAT resulting in no distributions for the care and support of the minor child, Katelin.

6. Appellant and Respondent reached a settlement of the allegations set forth in the Removal Petition, and the settlement was formalized through the execution of a Mutual Release

¹ Appellant attempted to distribute approximately one-third of the Estate to Decedent's brother, Paul Trippe.

and Settlement Agreement ("Settlement Agreement")². The Settlement Agreement was incorporated into an Order of the Court dated April 27, 2012.

7. Paragraph 4 of the Settlement Agreement states as follows:

Bahamas Lots. Within sixty (60) days following the execution of this Agreement, Respondent PR shall transfer to Petitioner the two (2) lots located in the Bahamas (the "Lots") and identified on Schedule A.1. of the Second Supplemental Inventory and Appraisal dated December 9, 2011. The Lots shall be transferred free and clear of all liens, mortgages or other encumbrances. In connection herewith, Respondent PR shall perform all acts and execute all documents required by the Greenville County Probate Court to transfer the Lots to Petitioner. (Emphasis added)

8. By Order dated June 15, 2012, Appellant was held in contempt of court for failing to make a required payment to Respondent under the terms of the Settlement Agreement. As part of such Order, the Probate Court, understanding the difficulties of transferring foreign properties, extended the time for transferring the Bahamas Lots by stating that such lots were to be "conveyed as soon as possible."

9. On October 4, 2012, Respondent filed a second contempt action, this time seeking to enforce Paragraph 4 of the Settlement Agreement (as altered by the June 15, 2012 Order). By Order dated December 21, 2012, Appellant was held in contempt of court for failing to transfer the Bahamas Lots to Respondent as required by the Settlement Agreement. The Court found that Appellant and/or his counsel had received at least ten (10) different letters stating that the Probate Court required copies of recorded deeds of distribution. Despite such letters, Appellant refused to take the steps necessary to properly transfer the Bahamas Lots and close the Estate.

10. The Court provided Appellant a grace period to transfer the Bahamas Lots, and such transfer had to be completed on or before February 1, 2013.

² Although not parties to the action, James IV and JAT, Inc. were signatories to the Settlement Agreement because they obtained certain rights and obligations under the Settlement Agreement. However, neither James IV nor JAT, Inc. have any rights or obligations relating to issues raised in this Appeal.

11. On February 7, 2013, Respondent filed a third contempt action against Appellant because Appellant had again failed to timely transfer the Bahamas Lots as required by the Settlement Agreement and numerous Court Orders.

12. By Order dated June 25, 2013, the Probate Court found Appellant to be in contempt of court because he had failed to make legitimate efforts to transfer the Bahamas Lots.

13. At the hearing, Appellant presented no evidence excusing his non-compliance with the Court's Orders. In fact, Appellant proffered evidence showing that he did not even retain Bahamian counsel until March 2013, more than one month after the Bahamas Lots were to be transferred.

ARGUMENTS

Respondent would respectfully show that the decision of the Greenville County Probate Court should be AFFIRMED. Appellant has shown a conscious disregard toward the Orders and letters of the Greenville County Probate Court. First, Appellant argues that the Personal Representative did not know he had to file a deed of distribution in the Bahamas until the Court ordered him to do so in December 2012. This argument, however, is contrary to the evidence and findings of the Court. Prior to the December 2012 Order, the Court provided at least ten (10) written notices to the Personal Representative and/or his counsel stating that a copy of recorded Deeds of Distribution were required to be filed with this Court prior to closing the Estate. This finding was established in the December 2012 Order from which Appellant did not appeal. As such, it became the law of the case. *Charleston Lumber Co. v. Miller Hous. Corp.*, 338 S.C. 171, 174-75, 525 S.E.2d 869, 871 (S.C. 2000) (An unchallenged ruling is the law of the case.)

In the December 2012 Order, the Court provided Appellant approximately forty-five (45) more days to transfer the Bahamas Lots by extending his deadline to transfer the Lots and close

the Estate to February 1, 2013. At the hearing, no evidence was presented showing Appellant made efforts to begin the transfer process during such grace period. Appellant attempted to proffer evidence at the hearing, but even the evidence he proffered showed that he did not attempt to comply with the February 1, 2013 deadline. In fact, Appellant did not retain Bahamian counsel until March 2013. As part of the Motion to Reconsider, Attorney Bannister attached a Motion for Extension (filed April 29, 2013) and correspondence from Bahamian counsel (dated April 25, 2013). Notably, the correspondence and the Motion for Extension are all dated after the February 1, 2013 deadline set by the Court. Appellant has and continues to use actions taken after the court-ordered deadline as a justification for his non-compliance.

The law in this state is well-settled that a finding of contempt may be predicated upon a violation of a settlement agreement approved by a Court where it was determined that the offender made no legitimate efforts to comply with the settlement agreement. *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596 (Ct. App. 2002). Here, it is clear that the Personal Representative made no legitimate effort to comply prior to the Court-ordered deadline. Petitioner met its burden by showing that the Personal Representative has failed to comply with three Orders of the Probate Court commanding him to transfer the Lots. Respondent failed to provide any defense as to why he did not comply or even attempt to comply with this Court's Orders prior to such deadline. As is very apparent from the five-year administration of this Estate, Appellant continues to exhibit a pattern of incompetency and delay.

With regard to attorney's fees, it is well settled in South Carolina that attorney's fees are recoverable if authorized by contract or statute. *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). In this case, Paragraph 14 of the Settlement Agreement provides as follows:

Attorneys' Fees. If an action is commenced to enforce any provision of this Settlement Agreement, the prevailing party as determined by a final court judgment shall be entitled to recover from the other party such reasonable attorneys' fees and costs incurred in the action as the court may award.

Based upon this Paragraph, the Probate Court had the authority to award attorney's fees to Respondent in accordance with the factors set forth in *Baron*. After careful analysis of the *Baron* factors, the Court awarded Respondent attorney's fees. See Order dated September 30, 2013. Appellant now appeals such award of attorney's fees on the grounds that (i) he was pursuing the transfer of the Lots and (ii) the award was unnecessary and excessive. First, for the reasons stated above, Respondent would show that Appellant was not timely pursuing the transfer of the Lots.

Second, Respondent would show that the filing of the contempt action was necessary. As can be seen through the procedural history of this case, Appellant continues to delay distributions to Respondent³. In order to move Appellant to action, Court involvement continues to be required.

Finally, Appellant's claim that the attorney's fees were excessive fails because (i) Appellant did not properly appeal this issue and (ii) there is competent evidence supporting the amount of the award. This case is similar to the case of *Floyd v. Floyd*, 365 S.C. 56, 615 S.E.2d 465 (Ct.App. 2005). As in *Floyd*, the award of attorney's fees was both a contempt sanction and damages for violating the Settlement Agreement. See Order dated June 25, 2013 and September 30, 2013. When an award is based upon more than one ground, both grounds must be appealed. Otherwise, the unappealed ground becomes the law of the case. *Id.* citing *Anderson v. Short*, 323 S.C. 522, 525, 476 S.E.2d 475, 477 (1996). Here, Appellant did not specify which ground he is appealing, and therefore, the unappealed ground has become the law of the case.

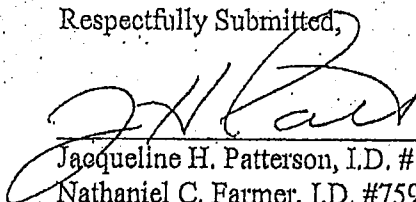
³ This pattern of delay is further evidenced by the fourth contempt proceeding filed February 7, 2014 for Appellant's nonpayment of the second monetary installment due to Respondent under the Settlement Agreement.

Had Appellant properly appealed this issue, his claim fails as a matter of law. As noted above under the Standard of Review, an appellate court will not reverse an award unless it is based on an error of law or is without any evidentiary support. *Gooding v. St. Francis Xavier Hosp.*, 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997). Respondent would show that, in response to a subpoena, Respondent's counsel provided Appellant with its time entries prior to the April 24, 2013 hearing. Using these time sheets, Attorney Bannister examined Respondent's counsel under oath. Respondent's counsel also submitted fee affidavits which were reviewed by the Court. Having received the testimony and evidence and having analyzed the same with the factors set forth in *Baron*, the Probate Court ordered Appellant to pay a reasonable fee to Respondent. Because the award of attorney's fees is based upon competent evidence, Appellant's claim fails as a matter of law.

CONCLUSION

For the reasons stated in Respondent's Motion and Memo to Dismiss, the Appeal filed by Appellant should be dismissed. In the alternative, the decision of the Greenville County Probate Court should be AFFIRMED. Additionally, Respondent is entitled to an award of interest, costs and attorney's fees.

Respectfully Submitted,



Jacqueline H. Patterson, I.D. # 12090

Nathaniel C. Farmer, I.D. #75976

PATTERSON & ASSOCIATES, P.A.

1088 N. Church Street

Greenville, SC 29601

(864) 370-4159

Attorneys for Respondent

February 17, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA - CLERK OF COURT IN THE CIRCUIT COURT
 GREENVILLE CO. S.C. THIRTEENTH JUDICIAL CIRCUIT
 COUNTY OF GREENVILLE PAUL D. WICKENSIMR

IN THE MATTER OF 2014 JUN 19 PM 4 45
 JAMES A. TRIPPE, III Deceased)

APPEAL FROM THE
 GREENVILLE COUNTY
 PROBATE COURT

Gene D. Morin, Conservator
 for Katelin [REDACTED])

Case No. 2013-CP-23-05389

Respondent,)

v.)

**MOTION TO ALTER OR
 AMEND JUDGMENT**

James Trippe, Jr., individually and as)
 Personal Representative of the Estate of)
 James A. Trippe, III,)

Appellant.)

PLEASE TAKE NOTICE THAT the undersigned attorneys for Respondent, Gene D. Morin, Conservator for Katelin [REDACTED] ("Respondent"), pursuant to Rules 52(b) and 59(e), SCRCP, would respectfully move to amend the Court's Order dated June 4, 2014, and received by Respondent on June 9, 2014, as follows:

1. That the Court alter or amend the following findings of fact which are in error:
 - a. The Court erred in finding that the Court Order approving the Settlement Agreement did not require the Appellant (sometimes referred to herein as "PR") to record the deeds of distribution. Paragraph 4 of the Settlement Agreement stated that "PR shall perform all acts and execute all documents required by the Greenville County Probate Court to transfer the Lots to Petitioner." The Probate Court informed the PR and his counsel in writing on at least ten (10) occasions that the deeds of distribution had to be recorded

with specific written instructions required by the Probate Court. The PR's erroneous belief of the law does not excuse his failure to comply.

- b. For the reasons set forth in (a) above, the Court erred in finding that the PR made good faith efforts to transfer the Bahamas lots within the time periods set by the Probate Court. To date, the PR still has not transferred the Bahamas Lots.
 - c. The Court erred in relying upon the redacted portions of Respondent's invoices. The redacted portions related to matters outside the scope of this appeal, and Respondent did not seek recovery of these amounts.
 - d. The Court erred in finding that Attorney Bannister represented the PR during the Probate Court proceedings. Attorney Bannister represented another Estate beneficiary during the Probate Court proceedings, and the Probate Court repeatedly informed Attorney Bannister that he could not represent the PR because of a conflict of interest which was not waived by Respondent.
 - e. The Court erred in finding that "[n]o one was disputing the mechanics of Bahamas real estate law" and that "the hiring of Bahamas lawyer to advise as to a collateral matter benefitted neither the Estate nor Katelin." Bahamian counsel was retained because the PR and opposing counsel attempted to transfer the Bahamas lots contrary to Bahamian law. Only after Bahamian counsel opined as to the requirements did the PR agree to make a good faith effort to transfer the lots.
2. That the Court alter or amend the Order to exclude facts and documents which were not properly in the record. At the hearing dated April 24, 2013, Appellant sought to

admit evidence which the Probate Court denied. Appellants proffered this evidence but never appealed the Probate Court's denial of the admissibility of the proffered evidence. Therefore, this Court's reliance upon the proffered evidence is in error.

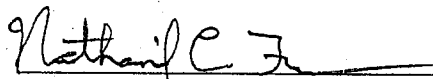
3. That the Court alter or amend the Order because there is competent evidence supporting Respondent's claim for attorney's fees. *Baron Data Sys. v. Loter*, 297 S.C. 382, 384, 377 S.E.2d 296, 296 (1989) (Where an attorney's services and their value are determined by the trier of fact, an appeal will not prevail if the findings of fact are supported by any competent evidence.) The Probate Court examined the award of attorney's fees based upon the fee affidavits of counsel and the testimony of Respondent's counsel. Attorney Bannister, using the time sheets of Respondent's counsel, examined Respondent's counsel under oath. Based upon the testimony and evidence, the Probate Court found Respondent's attorney's fees to be reasonable.
4. That the Court alter or amend the Order because the Court's denial of attorney's fees prior to December 21, 2012 relies solely on case law relating to contempt actions and fails to consider Paragraph 14 of the Settlement Agreement incorporated into the Probate Court's Order which awarded attorney's fees to the prevailing party. In this case, Respondent is entitled to recover all of his attorney's fees pursuant to Paragraph 14 of the Settlement Agreement.
5. That the Court alter or amend the Order because the Court's Order overrules the law of the case which was not before this Court on appeal. The Probate Court's Order dated December 21, 2012 found Appellant to be in contempt of court. Because Appellant did not appeal the Probate Court's Order dated December 21, 2012, the

December 21, 2012 Order became the law of this case and Appellant was in contempt prior to such date.

6. That the Court alter or amend the Order because the reduction of Respondent's attorney's fees to the amount of \$4,500.00 for more than one year's services (which included several motion hearings and an appeal) is arbitrary and without any factual support.
7. That the Court alter or amend the Order because the Probate Court's Order dated September 30, 2013 found that the Motion to Reconsider filed by Attorney Bannister was improperly filed.
8. That the Court alter or amend the Order because the PR did not properly appeal the issue of attorney's fees. When an award of attorney's fees is based upon more than one ground, all grounds must be appealed. *Floyd v. Floyd*, 365 S.C. 56, 615 S.E.2d 465 (Ct.App. 2005).

This Motion shall be supported by the applicable laws of the State of South Carolina, whether common or statutory, and any supporting affidavits or memoranda as may be filed with the Court prior to the hearing.

Respectfully Submitted,


Jacqueline H. Patterson, I.D. # 12090
Nathaniel C. Farmer, I.D. #75976
PATTERSON & ASSOCIATES, P.A.
1088 N. Church Street
Greenville, SC 29601
(864) 370-4159
Attorneys for Respondent

June 19, 2014
Greenville, South Carolina

State of South Carolina

In the Probate Court

County of Greenville

C.A. No. 2009-ES-23-00707

IN THE MATTER OF: James A. Trippe III

In the above-entitled case, a hearing was held on the 19th day of December 2012, commencing at approximately 2:07 p.m., attended as follows:

Appearances:

THE HONORABLE DEBORA FAULKNER
Greenville County Probate Court
301 University Ridge
Greenville County Square
Greenville, South Carolina 29601

JACQUELINE H. PATTERSON, Esquire
NATHANIEL C. FARMER, Esquire
Patterson & Associates, P.A.
1088 North Church Street
Greenville, South Carolina 29601

Attorneys for Petitioner,

MICHAEL T. COULTER, Esquire
Clarkson, Walsh, Terrell & Coulter, P.A.
1164-A Woodruff Road
Greenville, South Carolina 29607

Attorney for Respondent,

OSCAR W. BANNISTER, JR., Esquire
Bannister, Wyatt & Stalvey, LLC
P.O. Box 10007
401 Pettigru Street
Greenville, South Carolina 29601

Attorney for James A. Trippe IV and
Paul Trippe.

Court Reporter:

BONNIE J. WALKER

Index

	Page
Examination of James A. Trippe	8
Examination of Gene D. Morin	29
Explanation and Ruling	49
Certificate of Notary Public	56

Exhibits (Retained by the Court):

Petitioner's Exhibit Number 1

Petitioner's Exhibit Number 2

1 The within hearing was taken by the above reporter,
2 a notary public, by consent of all parties, at the
3 Greenville County Probate Court, Greenville, South
4 Carolina.

5 ** ** ** **

6 The hearing began as follows:

7 **BY JUDGE FAULKNER:**

8 Please have a seat. We're here today in the Estate of
9 James A. Trippe III, deceased, 09-707. We're here on a
10 petition filed on behalf of the conservator protecting
11 Trippe, Gene Morin, who is present, represented by
12 Jacqueline Patterson. The Respondent is James Trippe,
13 Jr., personal representative. Mr. Coulter?

14 **BY MR. COULTER:**

15 Yes, sir -- ma'am.

16 **BY JUDGE FAULKNER:**

17 Are you representing the estate?

18 **BY MR. COULTER:**

19 Yes, ma'am.

20 **BY JUDGE FAULKNER:**

21 All right. Ms. Patterson, the issue before the Court
22 that's still remaining, the Bahama property, is that
23 the ---

24 **BY MS. PATTERSON:**

25 We filed a Petition 62-3-1001, Your Honor.

1 **BY JUDGE FAULKNER:**

2 Right.

3 **BY MS. PATTERSON:**

4 We are requesting that not only the Bahamas lot be
5 transferred, pursuant to our Settlement Agreement, but
6 we are asking this Court to move this closing of this
7 estate along. This estate has been open for four years,
8 nearly four years, Your Honor, and we are asking this
9 Court to examine the requirements that have been set
10 forth by the Court and provided to the PR to close this
11 estate and give the PR a deadline to meet those
12 requirements.

13 **BY JUDGE FAULKNER:**

14 Okay. So the issues then are the remaining outstanding
15 items in order to close the Estate, mainly the Bahama
16 transfer, and ---

17 **BY MS. PATTERSON:**

18 Yes, ma'am.

19 **BY JUDGE FAULKNER:**

20 --- and the request on behalf of the petitioner to get
21 the estate closed as soon as possible; is that right?

22 **BY MS. PATTERSON:**

23 The final accounting has not been provided to the Court.
24 Petition for Settlement, a Deed of Distribution,
25 receipts, releases, waivers, we would like to see all of

1 those provided to the Court. Your Honor, there's an
2 August 3rd letter from this Court to the PR setting
3 forth exactly what they need to do to close this estate,
4 so we're asking the Court to -- the issue regarding the
5 two Bahamas lots, Your Honor, that issue is really
6 within the Settlement Agreement, which was approved by
7 the Court by consent on Aug- -- April 27th of this
8 year. There are three issues there. The PR has agreed
9 to effectively transfer the two lots in the Bahamas,
10 provide three ti- -- provide title, free of any liens
11 and encumbrances, and to comply with all requirements
12 and acts required by this Court. So those are the three
13 issues that we see in effectuating the transfer to the
14 conservator of the Bahamas lots.

15 **BY JUDGE FAULKNER:**

16 So you have yet to have a document in-hand showing that
17 the Bahama property is now owned by the conservatorship?

18 **BY MS. PATTERSON:**

19 Well, we received a Deed of Distribution from the PR,
20 Your Honor, and if I could, we have provided exhibits
21 for the Court.

22 **BY JUDGE FAULKNER:**

23 Well, let me stop you before we move on and take
24 testimony, but what I'm saying is are you satisfied that
25 the transfer has been properly done to the satisfaction

1 of your client?

2 **BY MS. PATTERSON:**

3 No, Your Honor. We have been provided the Deed of
4 Distribution. We have presented this Deed of
5 Distribution to the Bahamian Counsel, and they have
6 informed us that not only does it not meet the
7 requirements to transfer, that the party who has
8 executed this deed does not have authority to transfer
9 property under the Bahamian law.

10 **BY JUDGE FAULKNER:**

11 Okay. You ---

12 **BY MS. PATTERSON:**

13 Not only that, they have advised us of liens on the
14 property, tax liens on the property, that ha- -- and we
15 were to receive them in the Settlement Agreement free
16 and clear of any tax liens. That's it, Your Honor.

17 **BY JUDGE FAULKNER:**

18 All right. And I failed to note Mr. Nathan Farmer's
19 presence, as well. Mr. Bannister, you -- are you the --
20 you're representing, is it Paul and James Trippe?

21 **BY MR. BANNISTER:**

22 Yes, ma'am.

23 **BY JUDGE FAULKNER:**

24 All right. Okay. Ms. Patterson, you can call your
25 first witness.

1 **BY MS. PATTERSON:**

2 Your Honor, Nathan is going to call the first witness,
3 and that is Mr. Trippe, Jr., personal representative.

4 **BY JUDGE FAULKNER:**

5 Okay.

6 **BY MR. FARMER:**

7 Your Honor, before I get started, I want to go ahead and
8 hand this to you. This is a list of exhibits. They are
9 tabbed, and I will be referring to these throughout.

10 **BY JUDGE FAULKNER:**

11 Okay. Opposing counsel got copies of all?

12 **BY MR. FARMER:**

13 Yes, Your Honor. We have provided those, too.

14 **BY BAILIFF:**

15 Step up, face the Judge, and raise your right hand.

16 **BY JUDGE FAULKNER:**

17 Step forward and raise your right hand.

18 **BY MR. TRIPPE:**

19 Mm-hmm (affirmative).

20 **BY JUDGE FAULKER:**

21 Do you solemnly swear or affirm that the testimony
22 you're about to give is the truth, the whole truth, and
23 nothing but the truth, so help you God?

24 **BY MR. TRIPPE:**

25 I do.

1 **BY JUDGE FAULKER:**

2 Thank you, sir. Please have a seat.

3 **DIRECT EXAMINATION BY MR. FARMER:**

4 Q. Can you state your name for the record?

5 A. James A. Trippe, Jr.

6 Q. Mr. Trippe, before I begin, I'm going to hand you a
7 notebook. I'm going to periodically refer to that
8 notebook throughout ---

9 A. Mm-hmm (affirmative).

10 Q. --- by tab number, so I just want you to hold onto that
11 right now. Can you give your relation to the decedent,
12 Mr. James Trippe, III?

13 A. I'm his father.

14 Q. Okay. And have you been appointed as personal
15 representative of this estate?

16 A. Yes.

17 Q. Okay. And when were you appointed?

18 A. Oh, in 2009; I don't know the exact date.

19 Q. Okay. And just for the record, who is your attorney
20 here today?

21 A. Mr. Coulter.

22 Q. Okay. Mr. Trippe, have you filed any inventories and
23 appraisements with this Court?

24 A. Have you filed inventory ---

25 Q. Yes.

- 1 A. --- with the Court?
- 2 Q. Yes, sir.
- 3 A. Yes. Mr. Coulter -- we filed them. Yes.
- 4 Q. Okay. And can you turn to Tab A for me, if you don't
- 5 mind?
- 6 A. (Witness complies).
- 7 Q. And if you'll look at the first page, is that your
- 8 signature?
- 9 A. Provided I don't see very well, looks like it to me.
- 10 Yeah.
- 11 Q. Okay. And if you will look at the second page, you'll
- 12 see a Schedule A at the top of the second page.
- 13 A. Okay.
- 14 Q. And do you see the two lots, and I'll -- I know I'll
- 15 mispronounce it; Eleuthra, Bahamas, do you see that
- 16 listed as an asset of the estate?
- 17 A. It's an asset of the estate. I can't see that well,
- 18 but ---
- 19 Q. Okay.
- 20 A. --- I'm sure it is.
- 21 Q. And isn't it true that you also filed two supplemental
- 22 inventories and appraisalment with this Court?
- 23 A. I'm not sure.
- 24 Q. Okay. Well, if I could have you turn to page -- or Tab
- 25 9, if you don't mind?

- 1 A. Okay.
- 2 Q. Is that your signature ---
- 3 A. Yes.
- 4 Q. --- on that document?
- 5 A. Yeah.
- 6 Q. Okay. And what's that dated?
- 7 A. 3/26/09.
- 8 Q. Let me -- that's the ---
- 9 A. Okay. All right.
- 10 Q. Right there, if you don't mind?
- 11 A. The 27th of May.
- 12 Q. Okay. And if you will, turn to Tab 10, just for the
- 13 record. Is this your signature on this document?
- 14 A. Yes.
- 15 Q. And when is that one dated?
- 16 A. Oh, the 9th of December, it looks like.
- 17 Q. Okay. And isn't it true that you listed the Bahamas
- 18 lots on all three of these inventories?
- 19 A. I'm sure I did.
- 20 Q. Okay. And Mr. Trippe, back here is Mr. Gene Morin.
- 21 A. Mm-hmm (affirmative).
- 22 Q. Are you familiar with Mr. Morin?
- 23 A. Yes. I met him.
- 24 Q. Okay. And did Mr. Morin file a lawsuit back in 2011
- 25 against you as PR?

1 A. I'm -- not to my knowledge. Maybe he did. I don't
2 know.

3 Q. Okay. Well, I want to turn your attention to Tab 3, if
4 you don't mind?

5 A. Okay.

6 Q. Do you see the caption right there?

7 A. Mm-hmm (affirmative).

8 Q. "Order Approving Settlement," is that what that says?

9 A. Yeah.

10 Q. Okay. And if you don't mind turning to the back of the
11 document, and you'll see a Settlement Agreement that was
12 signed. Is that your signature on the last page?

13 A. Yes.

14 Q. That is your signature?

15 A. It looks like it to me.

16 Q. Okay. And would you agree with me that that is a
17 Settlement Agreement that you signed there?

18 A. It's my signature, whatever ---

19 Q. Okay.

20 A. --- it is. Yes. It's my signature.

21 Q. Okay. And in what capacity did you sign this document?

22 A. It says as individual.

23 Q. Okay. And there's another line down there.

24 A. And personal ---

25 Q. Personal representative ---

1 A. Right.

2 Q. --- is that correct?

3 A. Right.

4 Q. Okay. Mr. Trippe, can you turn into that Settlement
5 Agreement and look at Paragraph 4 of the Settlement
6 Agreement?

7 A. What page?

8 Q. Paragraph 4; it's on Page 3 of the Settlement Agreement.
9 You see it?

10 A. I'm not sure. I can't read with these glasses on that
11 well.

12 Q. Okay. Let me turn one more page for you.

13 A. Okay.

14 Q. And I'm going to look at this paragraph, Paragraph 4, if
15 you don't mind?

16 A. Mm-hmm (affirmative).

17 Q. And I'm going to read it, and you tell me if I don't
18 read it correctly. I understand you're having a little
19 trouble with your vision today so ---

20 A. Yeah.

21 Q. --- a copy has been given to the Court, so she can
22 correct me, as well.

23 **BY MR. FARMER:**

24 Your Honor can correct me.

25 **DIRECT EXAMINATION RESUMED BY MR. FARMER:**

1 Q. So I'll just read it. "Within 60 days following the
2 execution of this agreement, respondent PR shall
3 transfer to petitioner the two lots located in the
4 Bahamas (the "Lots") and identify on Schedule A-1 of the
5 Second Supplemental Inventory and Appraisement dated
6 December 9th, 2011. The Lots shall be transferred free
7 and clear of all liens, mortgages, or other
8 encumbrances. In connection herewith, respondent PR
9 shall perform all acts and execute all documents
10 required by the Greenville County Probate Court to
11 transfer the lots to petitioner." Did I read that
12 correctly?

13 A. I think so.

14 Q. Okay. Mr. Trippe, have you transferred these lots to
15 the Petitioner?

16 A. As far as I know, we have.

17 Q. Okay. Can you turn with me to Tab Number 7? Okay. Is
18 this a copy of the Deed of Distribution, which you gave
19 to the petitioner?

20 A. I think so.

21 Q. Okay. Is that your signature on the back of it?

22 A. Yes.

23 Q. Okay. Mr. Trippe, can you tell me where you received
24 the legal description for this property?

25 A. Where did I receive the legal description?

1 Q. The legal description.

2 A. From -- I think the only legal description I had was
3 from the tax payments.

4 Q. Have you ever seen a deed?

5 A. No.

6 Q. Okay. Without a deed, how do you know you're conveying
7 the right property?

8 A. I'm conveying the property that was left in the estate
9 with the information I had. That's all I had.

10 Q. The tax notices, do you have a copy of those?

11 A. I have the ones that I paid. The last two, I think I
12 forwarded to you.

13 Q. Okay. Let's take a look at those tax notices, if you
14 don't mind? I believe they're on Tab 6. Is this what
15 you provided to me?

16 A. I believe so.

17 Q. Okay. And can you tell me the date of that check?

18 A. This one was '09, the 10th month of '09.

19 Q. Okay. And what's the second one?

20 A. Tenth month of '09.

21 Q. Okay. So it would be fair to say that, if you were
22 paying taxes on this, it would be any taxes that were
23 due before that point; would that be fair?

24 A. I paid the taxes on the past bills as I received them.

25 Q. Okay. Do you know whether the tax bills have been paid

1 since '09?

2 A. Yes. All of them's been paid, but the last two, I sent
3 you.

4 Q. Okay. Have you forwarded those -- do you have a copy of
5 those?

6 A. I thought that you had them.

7 Q. This is -- this is what you gave me.

8 A. This is all you have? Okay. Yeah. I would have to
9 look and see if I still have those.

10 Q. Okay. If you do find them, can you provide them to us?

11 A. Sure.

12 Q. Okay. Mr. Trippe, I'm going to show you a letter from
13 the Court, and you'll see it identified as Petitioner's
14 Exhibit 1, so if you will turn to Tab 1 for me, I would
15 appreciate it.

16 A. One? Okay.

17 Q. Now, I'm going to read this, and I'm going to jump down
18 to the third bullet point, if you don't mind?

19 A. Mm-hmm (affirmative).

20 Q. It says, "Now that the litigation is resolved in the
21 above estate, the personal representative may proceed to
22 complete the probate. We will need," and I'm going to
23 look at the third bullet, "copy of recorded Deeds of
24 Distribution from Bahamas property." Did I read that
25 correctly?

1 A. Yes.

2 Q. Okay. Have you recorded any Deeds of Distribution in
3 the Bahamas?

4 A. Recorded any deeds? No, as I know of, I mean. I would
5 have to -- I'd have to ask Mr. Ballenger to answer
6 that ---

7 Q. Okay.

8 A. --- because I asked him to do that for me, and he did
9 that.

10 Q. Mr. Ballenger?

11 A. Not Ballenger, Mr. ---

12 Q. Okay.

13 A. --- Bannister. I'm sorry.

14 Q. Now, have you filed with the Probate Court any recorded
15 Deeds of Distribution?

16 A. I'd have -- I'd still have to refer to the attorney for
17 that but ---

18 Q. But you don't know of any that you filed?

19 A. I don't know whether it has been filed or not.

20 Q. Okay. Can you turn to page -- or Tab 2 for me?

21 A. Okay.

22 Q. It says, and I'm going to read the second paragraph,
23 "There seems to be some question regarding the Bahamas
24 property. As noted in our prior letter, a copy of the
25 recorded Deed of Distribution is one of the closing

- 1 requirements." Do you see that?
- 2 A. Yes, sir.
- 3 Q. Okay. And would you agree with me that that requirement
4 has not been met?
- 5 A. I don't -- to tell you the truth, I don't know whether
6 it's been met or not because we had contacted the
7 Bahamas, and we got all the information we could from
8 them. Now, I haven't been to the Bahamas and registered
9 any property.
- 10 Q. You have not been there and registered ---
- 11 A. No.
- 12 Q. Okay. Mr. Trippe, there's been some legal arguments
13 made that you're not responsible for recording the deed
14 in the Bahamas. Did you make that argument?
- 15 A. I don't think I'm responsible for recording it. No.
- 16 Q. And why not?
- 17 A. Because I'm turning over what the estate has ---
- 18 Q. Okay.
- 19 A. --- I mean, the estate doesn't have. It doesn't have a
20 recorded deed that I can find.
- 21 Q. Are you the PR?
- 22 A. Yes.
- 23 Q. And was that letter addressed to the PR?
- 24 A. Yes.
- 25 Q. So are you not responsible, based upon the Probate

1 Court's letter?

2 **BY MR. BANNISTER:**

3 Your Honor, I expect that I have standing to object.

4 That requires a legal conclusion, and I would object.

5 He's not a lawyer.

6 **BY JUDGE FAULKNER:**

7 What's your opinion, Mr. Farmer?

8 **BY MR. FARMER:**

9 Your Honor, he is the PR, and that was sent to him, so

10 whether or not he -- he should know whether or not it's

11 been recorded.

12 **BY JUDGE FAULKNER:**

13 Well, I don't think we'd be here if it was.

14 **BY MR. FARMER:**

15 Okay.

16 **BY JUDGE FAULKNER:**

17 So let's just say ---

18 **BY MR. FARMER:**

19 Fair enough.

20 **BY JUDGE FAULKNER:**

21 Let's note for the record that it's not been recorded.

22 **BY MR. FARMER:**

23 Okay.

24 **DIRECT EXAMINATION RESUMED BY MR. FARMER:**

25 Q. Mr. Trippe, can you turn to Tab 4 for me? And I don't

1 want to take too much of the Court's time, but can you
2 look at the top and tell me what the date is up there on
3 this letter?

4 A. December the 31st, 2009.

5 Q. Okay. And can you tell me the first bullet point under,
6 "Once claims have been resolved, proceed with closing
7 the estate. We will require the following
8 documents..."?

9 A. What was the question? I didn't ---

10 Q. What does the first bullet point say?

11 A. You're talking about Carolina First Bank?

12 Q. No, sir, but the one right below, "Once claims have been
13 resolved, proceed with closing the estate."

14 A. I don't see where you're talking about. I'm sorry.

15 Q. Right here, the highlighted portion for you.

16 A. "Copy of a recorded deed."

17 Q. Okay. Can you flip to the next page? Is that dated
18 February 8th, 2010?

19 A. Yeah; mm-hmm (affirmative).

20 Q. Okay. And does that also say, "Copy of recorded Deeds
21 of Distribution"?

22 A. Yes.

23 Q. Okay. Can you turn to the next page for me, June the
24 4th, 2010? Does that also say, "Copy of recorded Deeds
25 of Distribution"?

1 A. Yes.

2 Q. Can you turn to the next page, August 13, 2010?

3 A. Yes.

4 Q. Does that say, "Copy of recorded Deeds of Distribution"?

5 A. Yes.

6 Q. Okay. August 27, 2010, "Copy of recorded Deeds of
7 Distribution"?

8 A. Yes.

9 Q. September 10th, 2010, "Copy of recorded Deeds of
10 Distribution"?

11 A. Yes.

12 Q. Okay. November 5th, 2010, "Copy of recorded Deeds of
13 Distribution"?

14 A. Yes.

15 Q. Okay. And May the 3rd, 2011, "Copy of the Bahama lots
16 transfer"?

17 A. Yes.

18 Q. Okay. Now, let's turn to -- back to Tab 3, which is
19 the -- which is the Order Approving Settlement, and can
20 you tell me when that Order is filed?

21 A. April 27th.

22 Q. What year?

23 A. 2012.

24 Q. Okay. And would you agree with me that this Order was
25 filed after all those letters?

1 A. I believe so. Yeah.

2 Q. Okay. And would it be fair to say that you were aware
3 that you needed to record Deeds of Distribution?

4 A. I didn't understand it that way. No.

5 Q. You didn't understand it that all those letters ---

6 A. No. I understood. What my understanding was I turn
7 over anything that I had, that the estate had ---

8 Q. Okay.

9 A. --- and the estate didn't have it.

10 Q. Well, let me say that -- let me refer you back to
11 Paragraph 4 under the Settlement Agreement. If you'll
12 turn there, if you don't mind?

13 A. What number is that?

14 Q. It's the same tab.

15 A. I'm sorry.

16 Q. Same tab, it's just behind the Order.

17 A. Okay.

18 Q. And I'm going to read the last sentence of it: "In
19 connection herewith, respondent PR shall perform all
20 acts and execute all deeds -- or documents," excuse me,
21 "required by the Greenville County Probate Court to
22 transfer the lots to petitioner." Did I read that
23 correctly?

24 A. Mm-hmm (affirmative).

25 Q. Okay. Mr. Trippe, can you look at Paragraph 5 of that

1 same document? It's right there below Paragraph 4.

2 A. Yeah.

3 Q. Okay. You see it talks about 425 Stiles Road? I think
4 you're on the wrong page. Let me -- let me jump you.
5 425 Styles Road, do you see that?

6 A. Yeah; mm-hmm (affirmative).

7 Q. Okay. Do you see the word "record" anywhere in that
8 paragraph? And take your time to look at it. Let me
9 stop you there. Does it say that "Respondent PR shall
10 transfer to petitioner the decedent's real interest in
11 the property identified as 425 Styles Road"? Is that
12 what that says?

13 A. Yeah; mm-hmm (affirmative).

14 Q. Okay. Did you transfer that property?

15 A. As far as I know, we did.

16 Q. Okay. Did you record the deed for that property?

17 A. I would have to check with the attorney to see.

18 Q. Okay. Well, if you will give me a second and turn to
19 Tab 11? If you'll turn to Tab 11 for me? And is this
20 the Deed of Distribution for 425 Styles Road?

21 A. I can't tell what it says. I don't see where it
22 says ---

23 Q. Okay. All right. If you don't mind, if I point to you
24 right there?

25 A. "Record"; yeah. Yes.

1 Q. Okay. And you see some information on the bottom, what
2 looks like a barcode ---

3 A. Mm-hmm (affirmative).

4 Q. --- down here?

5 A. Yeah.

6 Q. And it says, "Filed in Greenville County, SC." Do you
7 see that?

8 A. Yes.

9 Q. Okay. So based upon this document, did you record
10 the -- did you file this with the Registrar of Deeds?

11 A. I believe this was handled by the attorney. Yes.

12 Q. Okay. But it would be fair to say that it was filed
13 based upon the ---

14 A. Yeah.

15 Q. --- stamp?

16 A. It looks like it was.

17 Q. Okay. Why would you file this document but not think
18 the other deed would be -- need to be recorded?

19 A. Well, one reason is one was -- one's in Greenville, and
20 the other one's in the Bahamas.

21 Q. So because it's in the Bahamas, you don't think it needs
22 to be recorded?

23 A. If the estate doesn't have -- own the -- doesn't have
24 the property and the funds for me to go to the Bahamas
25 and hire an attorney and get it filed in the Bahamas,

1 no, I don't think it is. I turned over everything I had
2 that the estate owned to you, and what I was -- should
3 do.

4 Q. Mr. Trippe, under the Settlement Agreement, you said
5 that you would perform all acts and execute all
6 documents required by the Greenville County Probate
7 Court to transfer the lots to petitioner. Did you not
8 agree to that?

9 A. Yeah. I agreed to that. Yeah. I signed it.

10 Q. Okay. Then why do you think that this shouldn't be
11 recorded in the Bahamas?

12 A. I just stated.

13 Q. Okay.

14 **BY MR. FARMER:**

15 Your Honor, I don't have any further questions.

16 **BY JUDGE FAULKNER:**

17 Thank you.

18 **BY MR. COULTER:**

19 I defer to Mr. Bannister.

20 **CROSS EXAMINATION BY MR. BANNISTER:**

21 Q. Mr. Trippe, some of the requirements that the Deed of
22 Distribution be recorded, would it be fair to say they
23 were done before you entered into this agreement with
24 Mr. Morin as the Guardian ad Litem for your
25 granddaughter? Some of the letters that you were

1 referred in here, 2009, 2010 ---

2 A. Yes. Yes.

3 Q. --- those were all done before you entered into this
4 agreement with the -- to transfer ---

5 A. Yes.

6 Q. --- transfer these lots?

7 A. Yes.

8 Q. And all the property required to be transferred, except
9 the two Bahama lots, was in Greenville County?

10 A. Yes.

11 Q. And the Bahama lots, you specifically dealt with in the
12 agreement to do all acts necessary to transfer the
13 property?

14 A. Yes.

15 Q. And to your knowledge, was a Deed of Distribution
16 delivered or transferred to Mr. Morin as the Guardian ad
17 Litem for Katelin [REDACTED]

18 A. As far as I knew, all the papers that we had and
19 everything was transferred. I wasn't -- I'm not sure
20 about the Deed of Distribution or anything like that
21 because I ---

22 Q. So the only thing really that we're here about is that
23 who is going to pay to have the Deed of Distribution
24 recorded in the Bahamas?

25 A. Yes.

1 Q. And the way you interpreted this agreement, it was not
2 the responsibility of the personal representative?

3 A. That's the way I interpret it.

4 Q. Okay. Thank you.

5 **BY JUDGE FAULKNER:**

6 Mr. Farmer?

7 **BY MR. FARMER:**

8 Just one follow up, Your Honor, or just a couple of
9 questions.

10 **REDIRECT EXAMINATION BY MR. FARMER:**

11 Q. Mr. Trippe?

12 A. Yes.

13 Q. If the Deed of Distribution that you signed was not
14 effective or could not be recorded in the Bahamas, would
15 you say that it's not effective, it could not be
16 recorded?

17 **BY MR. BANNISTER:**

18 Your Honor, I don't know where he's going in that
19 matter. That calls for such a legal conclusion, and I
20 don't know that that's in response to anything we asked.

21 **BY JUDGE FAULKNER:**

22 What was your question again, Mr. Farmer?

23 **BY MR. FARMER:**

24 If it couldn't be recorded, was it effective?

25 **BY JUDGE FAULKNER:**

1 He wouldn't under- ---

2 **BY MR. FARMER:**

3 I'll rephrase it.

4 **BY JUDGE FAULKNER:**

5 Sustained.

6 **REDIRECT EXAMINATION RESUMED BY MR. FARMER:**

7 Q. Would you agree that it has to be in the correct form in
8 order to transfer?

9 A. That's a legal question. I don't know.

10 Q. Okay. I want to jump back to something Mr. Bannister
11 brought up on the letters that were dated before the
12 Settlement Agreement. Would you agree with me that
13 based upon those letters, you had notice of what the
14 Court wanted prior to signing the Settlement Agreement?

15 A. I was under the impression the Court wanted me to turn
16 over everything that the estate owned, and that's what I
17 tried to do.

18 Q. Mr. Trippe, are you aware of whether or not you have
19 authority to transfer property in the Bahamas?

20 A. Am I? No. I don't know whether I am or not.

21 **BY MR. FARMER:**

22 No further questions, Your Honor.

23 **BY JUDGE FAULKNER:**

24 Re-cross?

25 **BY MR. BANNISTER:**

1 No, Your Honor.

2 **BY JUDGE FAULKNER:**

3 Thank you, Mr. Trippe. You can step down.

4 **BY MR. TRIPPE:**

5 Thank you.

6 **BY JUDGE FAULKNER:**

7 Watch your step, first step there.

8 **BY MR. TRIPPE:**

9 Mm-hmm (affirmative).

10 **BY MS. PATTERSON:**

11 We call Gene Morin.

12 **BY JUDGE FAULKNER:**

13 Okay. Do you solemnly swear or affirm that the

14 testimony you are about to give is the truth, the ---

15 **BY MR. MORIN:**

16 I do.

17 **BY JUDGE FAULKNER:**

18 --- and nothing but the truth, so help you ---

19 **BY MR. MORIN:**

20 I do.

21 **BY JUDGE FAULKNER:**

22 --- God? Thank you, sir. Go ahead.

23 **DIRECT EXAMINATION BY MS. PATTERSON:**

24 Q. You may be seated. State your full name for me, please.

25 A. Gene Douglas Morin.

1 Q. And where do you reside, Mr. Morin?

2 A. 36 Stillwood Drive, Greenville, 29607.

3 Q. Mr. Morin, in what capacity are you here today?

4 A. I'm here as the conservator for the minor, Katelin
5 [REDACTED].

6 Q. And is Katelin Trippe an heir under the estate of James
7 A. Trippe III?

8 A. She is.

9 Q. Okay. About when were you appointed?

10 A. Oh, I guess it was around May, if I recall correctly,
11 May of 2011.

12 Q. Okay. And after your appointment, did you file an
13 action, a petition, seeking that the personal
14 representative be restrained from acting in his
15 capacity?

16 A. I did.

17 Q. And from the date that you filed on June 6, 2011,
18 through April 2012, you were in litigation with the
19 personal representative regarding several issues that
20 you had in the administration of the estate; correct?

21 A. That's correct.

22 Q. Okay. And around April 27th, you settled -- after two
23 mediation attempts, we settled the matter and entered
24 into a Settlement Agreement; is that correct?

25 A. That's correct.

1 Q. And that Settlement Agreement was approved by this
2 Court; correct?

3 A. That's correct.

4 Q. Okay. If you will, turn to Tab 3.

5 A. I need the reference there. Tab 3. All right. I have
6 it.

7 Q. Okay. Tab 3 is the Order approving the settlement, and
8 it's entitled April 27th; correct?

9 A. That's correct.

10 Q. And attached as an exhibit is the Mutual Release and
11 Settlement Agreement; correct?

12 A. Correct.

13 Q. And have you signed this agreement, sir?

14 A. I have.

15 Q. And Paragraph 4 deals with two lots located in the
16 Bahamas; correct?

17 A. That's correct.

18 Q. And we've gone over this paragraph several times. When
19 you negotiated this settlement, was your expectation
20 that you would receive two ---

21 **BY MR. BANNISTER:**

22 All right. Your Honor ---

23 **DIRECT EXAMINATION RESUMED BY MS. PATTERSON:**

24 Q. --- Deed ---

25 **BY MR. BANNISTER:**

1 I believe the agreement speaks for itself, and what his
2 expectations were is consumed into the written words of
3 the agreement, unless they're ambiguous.

4 **BY JUDGE FAULKNER:**

5 Right. Well, the only thing is that on direct and on
6 cross of him, he testified that in his mind, he'd done
7 whatever he was supposed to do, and he didn't understand
8 that, that everything that was in the estate, he thought
9 he had deeded out, so he talked about what he thought
10 the agreement meant, so I'm going to overrule it and
11 going to let you proceed.

12 **DIRECT EXAMINATION RESUMED BY MS. PATTERSON:**

13 Q. Was your expectation that you would receive recorded
14 Deeds of Distribution or a recorded deed in whatever
15 form that was required under Bahamian law to transfer
16 the two lots?

17 A. That was my expectation, and that was based on the fact
18 I've done a lot of estates for this Court as PR, and the
19 classic one was the Judge Darrow from Colorado, who held
20 a lot of Colorado assets, and his wife, who held West
21 Virginia, and I personally had to go up to West Virginia
22 and open up an ancillary estate. I did the same thing
23 in Colorado. I didn't go out there, but I opened it up.
24 So that -- I know what the rules are here, and I
25 expected the same would be followed here.

1 Q. Okay. And prior -- during this litigation process, this
2 year-long litigation process, you served a discovery on
3 the personal representative; correct?

4 A. Yes.

5 Q. And we received that discovery prior to entering into
6 this agreement; correct?

7 A. What discovery are you talking about now, which
8 specific?

9 Q. Production that the personal representative gave to us
10 when we filed our Requests for Production?

11 A. Oh, yes. Yes.

12 Q. And if you will, turn to Tab 4.

13 A. All right.

14 Q. During this litigation, year-long litigation process, we
15 received the discovery from the personal representative,
16 along with the Probate file, and you were aware of these
17 eight letters requesting recorded Deeds of Distribution;
18 correct?

19 A. I was. Yes.

20 Q. And just turn back to your Mutual Settlement Agreement.
21 Based on what had been requested already from the
22 Probate Court, you requested that the language inserted
23 in the last sentence of Paragraph 4 be inserted,
24 correct, of the Settlement Agreement, sir?

25 A. That's correct.

1 Q. And would you read that one more time for this Court?

2 A. "The lots shall be transferred free ---

3 Q. I'm sorry.

4 A. --- and clear of all liens, mortgages, or other
5 encumbrances. In connection herewith, respondent PR
6 shall perform all acts and execute all documents
7 required by the Greenville County Probate Court to
8 transfer the lots to petitioner."

9 Q. And that was a term that you specifically requested to
10 be added to this agreement; correct?

11 A. That's correct because I had seen that earlier copy of
12 Deed of Distribution, and I made the observation to you
13 and other people involved that was not satisfactory.

14 Q. Okay. Sir, you have filed -- on October 4th, you filed
15 a petition requesting that the personal representative
16 be made to close this estate and comply with all acts
17 that are required by the Probate Court; is that correct?

18 A. That's correct.

19 Q. What are you seeking today from this Court?

20 A. I am seeking proper transfer of the two Bahama lots to
21 Katelin [REDACTED] and also that the estate be closed.

22 Q. Okay. The lots would be transferred to you, sir, as
23 Katelin's conservator ---

24 A. That's correct.

25 Q. --- correct?

1 A. Mm-hmm (affirmative).

2 Q. Now, sir, have you retained counsel in the Bahamas?

3 A. I have.

4 Q. What is the name of your counsel?

5 A. The name is -- it's a long name. I need -- it's
6 McKinney, Bancroft and Hughes in Nassau.

7 Q. Okay. And how -- and tell me what Ms. Lourey Smith of
8 McKinney, Bancroft and Hughes has informed you regarding
9 the Deeds of Distribution that ---

10 **BY MR. BANNISTER:**

11 Your Honor, that's ---

12 **DIRECT EXAMINATION RESUMED BY MS. PATTERSON:**

13 Q. --- have been presented to you?

14 **BY MR. BANNISTER:**

15 --- that's so patently hearsay that it's hardly worthy
16 of objection, but I would pose the objection anyway.

17 **BY JUDGE FAULKNER:**

18 Ms. Patterson, it appears to be hearsay, so unless
19 you've got an exception, I'm going to sustain that
20 objection, and you can ask him something else.

21 **DIRECT EXAMINATION RESUMED BY MS. PATTERSON:**

22 Q. Do you have any information as to whether or not the
23 deeds presented to you are in recordable form?

24 **BY MR. BANNISTER:**

25 Your Honor ---

1 **WITNESS ANSWERS:**

2 A. I have.

3 **BY MR. BANNISTER:**

4 --- that's nothing but an attempt to sidestep hearsay.
5 If the information he has is what somebody told him,
6 it's hearsay by another name, and I recent Ms. Patterson
7 trying to get around the Court's ruling on hearsay by
8 simply phrasing the question in another manner.

9 **BY JUDGE FAULKNER:**

10 Ms. Patterson?

11 **BY MS. PATTERSON:**

12 Your Honor, Mr. Morin has acted in a fiduciary capacity
13 with this Court on many, many occasions. He knows how
14 to research and has provided me with research regarding
15 what is in recordable form and not for different
16 jurisdictions. I'm simply asking if he has any personal
17 knowledge as to whether what has been provided by the PR
18 is in recordable form to the best of his knowledge.

19 **BY JUDGE FAULKNER:**

20 Well, let's -- if you have some sort of a business
21 document or a government document that would fall within
22 an exception to the hearsay rule, we can take that.
23 It's obvious that he has -- the personal representative,
24 has not given us a recorded Deed of Distribution or
25 whatever document would be required by the Bahamian

1 government. We don't have that, so I don't know if
2 you're just trying to underline that with this testimony
3 or you're trying to get at some information that goes
4 beyond that, but you're going to have to get it in in
5 some way that either is not hearsay or is an exception
6 to the hearsay rule. So I'm going to sustain the
7 objection.

8 **BY MS. PATTERSON:**

9 Okay, Your Honor.

10 **DIRECT EXAMINATION RESUMED BY MS. PATTERSON:**

11 Q. Gene, as you have performed in fidu- -- in your
12 fiduciary capacity on other estates, do you have any
13 knowledge on what you have had to do to qualify in other
14 jurisdictions to record a deed as a personal
15 representative?

16 A. I do. You have to get -- I don't remember the term, but
17 you have to come to this Court and get documents
18 properly certified and mail those to the Probate Court
19 of the other town, other location where the property
20 exists, and open up an ancillary estate, and then once
21 you've done that, then you can go through the procedures
22 followed by that Probate Court to transfer the property,
23 and once the property gets transferred in the ancillary
24 estate, then I can process that through the local
25 Greenville County Probate Court.

1 Q. And those are called exemplified copies; correct?

2 A. Exemplified; that's correct.

3 Q. So you present those exemplified copies, and the foreign
4 jurisdiction then acknowledges your power?

5 A. That's correct.

6 Q. Okay. And would you have expected that to be provided
7 to you, the appointment of that power of foreign
8 jurisdiction?

9 A. I would. Yes.

10 Q. Okay. And in this case, did you expect the appointment
11 of the personal representative in a foreign jurisdiction
12 to be presented to you showing the authority to transfer
13 the property in the Bahamas?

14 A. That's correct.

15 Q. Mr. Morin, have you performed any search individually to
16 see if Mr. -- the decedent owned property in the
17 Bahamas?

18 A. Yes. I've tried to ge- -- have phone calls made on my
19 behalf to try and find out, and I've also engaged the
20 attorney in the Bahamas to try and find whether that
21 property is properly recorded. I have ---

22 Q. Have you found ---

23 A. I have not received any satisfaction, either.

24 Q. Have you then found that the decedent owned any property
25 in the Bahamas?

1 A. I have not. I didn't get any deed, so I don't know
2 whether a deed exists or not.

3 Q. Did you request copies of the deeds or any document
4 evidencing that the decedent owned these two lots in the
5 Bahamas?

6 A. I did.

7 Q. Do you know about when you requested that?

8 A. I've got a record of that here. Let me see if I can
9 find it. I did. I made a request to Mr. Coulter,
10 dated -- in a letter dated June the 8th, 2011, and it's
11 under Paragraph 3, which says, "Copies of the current
12 deeds for the lots in the Bahamas."

13 Q. And have you received those?

14 A. No. I have not.

15 Q. So as we sit here today, you have no records of the
16 decedent owning these two lots except for a Deed of
17 Distribution that the personal representative has
18 presented to you and that is not recorded?

19 A. That's correct; and what was in the inventory.

20 Q. Correct. Now, Gene, let me ask you about taxes. In
21 your discovery, you were provided payment of taxes in
22 2009, and that is under Tab, let's see, 6.

23 A. I see it here. Yes.

24 Q. Do you -- or have you been provided -- strike that. You
25 served discovery asking for all information regarding

1 the Bahamas property; correct?

2 A. That's correct.

3 Q. And March of 2012, you were provided this discovery?

4 A. Right.

5 Q. And the only evidence of payment for taxes is the Year
6 2009; is that correct?

7 A. That's correct.

8 Q. So today, you have no evidence showing that the taxes
9 have paid for the Year 2010, 2011, or what they are
10 today?

11 A. That's correct.

12 Q. Did you agree to take this property free and clear of
13 all liens?

14 A. Yes. That was one of the terms of the settlement. It
15 was to be free and clear of all liens.

16 Q. And have you been presented any information regarding
17 the title of this property and whether it is free and
18 clear of any liens?

19 A. I have not been presented same.

20 Q. And do you have the authority to obtain that
21 information?

22 A. Well, I signed my name on the Settlement Agreement.

23 Q. As a ---

24 A. And I cannot -- I cannot go to the Bahamas and ask them
25 for that information. That's a privacy of information.

1 Q. And who could ask for that information?

2 A. The personal rep of the estate.

3 **BY MS. PATTERSON:**

4 No further questions, Your Honor.

5 **BY JUDGE FAULKNER:**

6 All right. Mr. Coulter? Mr. Bannister?

7 **CROSS EXAMINATION BY MR. BANNISTER:**

8 Q. Mr. Morin, you referenced several instances of having an
9 ancillary estate property transfer in other states.

10 Those were in the United States; is that correct?

11 A. That's correct.

12 Q. Okay. Now, do you recognize the difference between the
13 term "transfer" and "record" as it regards to real
14 estate?

15 **BY MS. PATTERSON:**

16 Your Honor, I object. He's asking for a legal ---

17 **WITNESS ANSWERS:**

18 A. That's beyond ---

19 **BY MS. PATTERSON:**

20 --- conclusion.

21 **WITNESS CONTINUES:**

22 A. --- beyond my ---

23 **BY JUDGE FAULKNER:**

24 Well, I will go ahead and overrule it only because you
25 guys asked Mr. Trippe a lot of questions that were in a

1 similar vein, so I'll let him do it. Go ahead.

2 **CROSS EXAMINATION RESUMED BY MR. BANNISTER:**

3 Q. So that's beyond your knowledge? You ---

4 A. I ---

5 Q. --- see no distinction between transferring real estate
6 or recording it?

7 A. I can't give you a specific definition of it.

8 Q. Okay. I understand. You say that you have no evidence
9 the taxes have been paid on two lots in the Bahamas.
10 Have you got any evidence it hasn't been paid?

11 A. No.

12 Q. All right. And has the personal representative, under
13 this agreement -- and I'll just wrap it up. Other than
14 these Bahama lots, has the personal representative
15 transferred to you all that he was supposed to transfer?

16 A. He transferred the automobile.

17 Q. Made the first payment of money?

18 A. I don't know anything about that. Trans- -- the first
19 payment of money?

20 Q. There was \$175,000 that was due on April 25th, 2012?

21 A. Oh.

22 Q. Has it ---

23 A. You're talking about ---

24 Q. --- been transferred?

25 A. Yes. It has been.

1 Q. All right. So you've got that?

2 A. Yeah.

3 Q. You've got the 1955 Chevrolet Bel Air?

4 A. That's correct.

5 Q. The Styles Road property has been transferred to your
6 guardianship; is that not correct?

7 A. That's correct.

8 Q. All the assets that have been transferred have been
9 titled to Gene Morin as conservator; is that correct?

10 A. The ones that have been transferred have been titled as
11 such, accordingly. Yes.

12 Q. Other than the Bahama lots, have any not been
13 transferred?

14 A. Not according to the calendar, but there's still some
15 cash payments that are due in the out years.

16 Q. But those payments that are due have been made?

17 A. Yes.

18 Q. The ones that are in the future have not been?

19 A. That's correct.

20 Q. Okay. So we're here about the transfer of two lots?

21 A. That's correct.

22 Q. And what -- would you agree with me that what we need is
23 the Probate Court to simply read the agreement,
24 interpret it, and say either you got to do it or we got
25 to do it -- or not we, but the personal representative;

1 would you agree with that?

2 A. I think it's more than this Probate Court, sir. I think
3 it's the ground rules that exist in the Bahamas. If
4 their ground rules are that the personal rep has to
5 effectuate this Deed of Distribution, then I can't do
6 it.

7 Q. Do you agree with me that the only issue before this
8 court today is who's going to be financially responsible
9 for getting these two lots transferred to you as the
10 guardian of Katelin [REDACTED]

11 A. No. It's more than financial. It's administratively.

12 Q. All right. Financially and administratively, the
13 transfer of the lots?

14 A. Yes. I think that's correct.

15 Q. Okay. So that's based on this agreement and
16 interpretation by the Court of this agreement and who's
17 to perform the administrative and financial
18 responsibility for getting these lots transferred?

19 A. The way I see it, yes.

20 Q. All right. Let me ask you one last question. Have you
21 ever known in your experience -- and I understand you've
22 got vast experience and so forth. Have you ever known
23 tax notices to be sent to anyone other than the
24 landowner?

25 A. All depends on whose address is on the tax notice, and

1 I've seen that happen here in this ---

2 Q. The tax notices ---

3 A. --- Greenville County.

4 Q. --- came specifically to Mr. Trippe; did they not?

5 A. I don't know.

6 Q. The deceased?

7 A. I don't know.

8 Q. You didn't see that on ---

9 A. No. I ---

10 Q. --- the notice?

11 A. --- don't know.

12 Q. Okay. All right. So do you question whether or not
13 that they even own these lots?

14 A. Well, if I don't have a deed that somebody's presented
15 to me, I don't know for sure.

16 Q. Okay. So it's your testimony that Mr. Trippe, the
17 deceased, and personal representative who at least paid
18 some of the taxes on two lots in the Bahamas, they
19 didn't have any idea whether they owned them or not;
20 they just paid the bill?

21 A. I don't -- I can't answer that question. I don't know.

22 **BY MR. BANNISTER:**

23 I don't think I have anything further, Judge.

24 **BY JUDGE FAULKNER:**

25 Anything on redirect?

1 BY MS. PATTERSON:

2 Yes, Your Honor.

3 REDIRECT EXAMINATION BY MS. PATTERSON:

4 Q. Mr. Bannister said that the only issue is this issue
5 with regard to the Bahamas lot. Are you seeking the --
6 from this Court today, not only a determination about
7 the Bahamas lot, but about the closing, meeting the
8 closing requirements?

9 A. I earlier stated that in my initial testimony here.

10 Q. Okay. So it's not just regarding the Bahamas lots;
11 correct? Is it conceivable that someone would pay taxes
12 in the Year 2009 and transfer property in the Year 2010,
13 sir?

14 A. It could happen. Of course, it could.

15 Q. Okay. And is it conceivable that if you don't pay the
16 taxes in the Years 2010 and 2011 that the taxing
17 authority might take the property?

18 A. They could. It's happens here in Greenville County all
19 the time.

20 Q. Are you aware of any payment that has not been made on
21 this estate resulting in a creditor foreclosing or
22 taking back property?

23 A. Absolutely; that's what happened on 425 Styles Road, and
24 I had to enter into negotiations with the bank because
25 they were ready to foreclose, and I had to bail them

1 out.

2 Q. And as we were walking in today, you were presented an
3 interim accounting; is that correct?

4 A. I saw it. Yes.

5 Q. And on that interim accounting -- do you have that with
6 you, sir?

7 A. It's back there on my -- top of my ---

8 Q. Did the personal representative represent that a boat
9 had been repossessed for nonpayment?

10 A. I remember seeing that. Yes.

11 Q. Okay. So are you fearful that the Bahamas lots may have
12 been either taken over by tax authority or some other
13 creditor or even deeded out to another party?

14 A. That's why we're asking that we go through the Bahama
15 authorities to find out. We don't know.

16 Q. Okay. Thank you.

17 **BY JUDGE FAULKNER:**

18 Re-cross?

19 **BY MR. BANNISTER:**

20 No, Your Honor.

21 **BY JUDGE FAULKNER:**

22 Okay. Thank you, Mr. Morin. Any other witnesses?

23 **BY MS. PATTERSON:**

24 No, Your Honor.

25 **BY JUDGE FAULKNER:**

1 Mr. Coulter?

2 **BY MR. COULTER:**

3 Your Honor, I defer to Mr. Bannister.

4 **BY JUDGE FAULKNER:**

5 Any witnesses you want to call?

6 **BY MR. BANNISTER:**

7 Judge, I don't want to call any witnesses, but I would
8 present to the Court that this is an issue for the
9 Court. You simply need to interpret the agreement. I
10 understand your letters and how it normally works, a
11 recorded deed, but this is an agreement between the
12 parties, approved by the Court. Just if we've got to do
13 it -- I say "we." If the Personal Representative has to
14 do it, then interpret it, and tell him he has to do it,
15 and he can get about doing it. If his interpretation,
16 the personal representative's interpretation of the
17 agreement, is that the transfer in the normal sense is
18 what he has to do is deliver an acceptable deed and that
19 transfers the property, and that's what he got to do,
20 then tell us so we quit -- I mean, we don't have to
21 burden the Court anymore; we know what physically has
22 to be done.

23 **BY JUDGE FAULKNER:**

24 All right. Ms. Patterson?

25 **BY MS. PATTERSON:**

1 Your Honor, we -- two things: we want this estate
2 closed. We want to be able to receive the final
3 accounting and rely on the documents that are provided
4 to the Court. We have an agreement in place, but we
5 would question what has been provided to us today in the
6 interim accounting. So not only that, but we do feel
7 that we negotiated to receive the transfer to the
8 property, free and clear, and thirdly, that we knew
9 going into that the Court had already requested several
10 times a recorded Deed of Distribution, and we made sure
11 that that was a part of our Settlement Agreement, and so
12 we would like to make sure that the deed we receive
13 effectively transfers the property and the party is in
14 the correct form and the party signing it has the
15 authority, but without the authority, it's not a
16 transfer. I can't sign a deed transferring Your Honor's
17 house if I don't have the authority to do so. Thank
18 you.

19 **BY JUDGE FAULKNER:**

20 All right. Okay. The Probate Code -- clearly,
21 throughout the Probate Code, the personal representative
22 is the fiduciary, and as a part of the fiduciary, they
23 have a responsibility to all of the parties who are
24 beneficiaries and/or creditors. Their primary duty is
25 to marshal all the assets and administer and distribute

1 assets to beneficiaries and to creditors, and as
2 part of that duty, it is incumbent upon the personal
3 representative, throughout the Code, they can hire
4 lawyers, appraisers, and other professionals to assist
5 them in the transfer of property. It is also
6 boilerplate that personal representatives, in the
7 process of administration, in the final phase of
8 distribution, is they are required, after payment of all
9 taxes and court costs, attorney's fees, and so on and so
10 forth, that they distribute out property to the rightful
11 owner in a form that the owner can take and enjoy the
12 benefit of their inheritance. It is incumbent upon
13 personal representative, in this case, Mr. Trippe, who
14 signed an inventory affirming under oath that this
15 decedent owned Bahama properties, it is incumbent upon
16 him, to make sure that property gets distributed and
17 transferred to its rightful owner, in this case, to the
18 conservatorship. The personal representative takes
19 title in trust to all property listed in the inventory,
20 and then he holds it in trust for the benefit of the
21 person who is to inherit, the evidence of the transfer,
22 As we all know in Probate law, the will is the actual
23 document of conveyance, and in this particular case, Mr.
24 Trippe died intestate, and since there was no will, the
25 ability of Mr. Trippe to transfer this property was

1 memorialized in a court order. As such, it's incumbent
2 upon him to do whatever is needed to be done to
3 distribute this asset to this conservatorship, whatever
4 that takes. If it means going to the Bahamas, if it
5 means -- it's incumbent upon him. It comes with the
6 territory when he signed up. That's his job. It's not
7 the job of the conservatorship to pay for its own
8 inheritance. So clearly, this should be no surprise as
9 counsel's pointed out all the letters that went out.
10 This is standard operating procedure, whether the
11 property's in the Bahamas or in France or anywhere else:
12 we get documents in to show that the property has been
13 distributed so that we can release the personal
14 representative. A Deed of Distribution, as we all know,
15 is not a true deed in the form and the sense of a deed.
16 It is just an instrument con- -- notifying the public-
17 at-large that the personal representative has released
18 control of the property for purposes of administration,
19 and it is not a deed. It does not transfer title, so
20 giving us a Deed of Distribution without doing anything
21 else is a waste of time.

22 So ruling is, Ms. Patterson, the personal
23 representative in this case has had the duty and has
24 continuing duty to provide the proper documents in order
25 for the conservatorship to receive Bahama property, free

1 and clear, so that she, through her conservator, can
2 enjoy the ownership of that property until such time as
3 she's 18, and then it becomes her individual property.

4 Also, this estate is three years old, and it's
5 overdue for closing. I'm requiring that the personal
6 representative present to Ms. Patterson all documents
7 necessary to give good title to the conservatorship and
8 that that happen on or before February the 1st, 2013,
9 and that all other final closing documents be filed at
10 the same time so that the estate can be closed.

11 All issues with regard to attorney's fees and
12 costs are held in abeyance pending the final closure --
13 closing of the estate and what happens between now and
14 then.

15 All parties are to cooperate with one another, to
16 make sure that the information that Mr. Morin has that
17 the PR needs in order to get the deed to the
18 conservatorship, he will -- I'm sure, always will give
19 him that information, and personal representative will
20 also provide information as needed in order to
21 accomplish this, and this includes, in the transfer,
22 that all taxes and encumbrances be satisfied by the
23 estate, as well.

24 And Ms. Patterson, if you will, prepare an Order
25 for me. I will be here until Friday, the 21st, and then

1 I won't be back 'til the middle of January, so if you
2 could, get me that, and copy Mr. Bannister and Mr.
3 Coulter with your Order.

4 **BY MR. BANNISTER:**

5 Judge, could I ask one more ---

6 **BY JUDGE FAULKNER:**

7 Yes.

8 **BY MR. BANNISTER:**

9 --- thing before ---

10 **BY JUDGE FAULKNER:**

11 Yes.

12 **BY MR. BANNISTER:**

13 --- we leave?

14 **BY JUDGE FAULKNER:**

15 Absolutely.

16 **BY MR. BANNISTER:**

17 Can we have permission to contact their lawyer about
18 how -- what exactly needs to be done to get the thing
19 correct?

20 **BY JUDGE FAULKNER:**

21 Absolutely. Yeah. I don't think -- I think they're
22 willing to do anything they can to get it done. So if
23 you'll give him the name and contact information of
24 the ---

25 **BY MS. PATTERSON:**

1 I will.

2 **BY JUDGE FAULKNER:**

3 --- of the law firm in the Bahamas ---

4 **BY MR. BANNISTER:**

5 Well, actually in this ---

6 **BY JUDGE FAULKNER:**

7 --- wherever it is.

8 **BY MR. BANNISTER:**

9 --- tab, they have a law firm.

10 **BY JUDGE FAULKNER:**

11 Oh, okay. Is that the same one?

12 **BY MS. PATTERSON:**

13 Yes. Your Honor, we have a Motion prepared to request
14 attorney's fees for not only the last hearing but this
15 hearing, as well. The conservator had to expend
16 considerable funds to get information from the Bahamas.
17 Apparently, it's \$600 an hour for an attorney down
18 there. I'm going to work down there next year. But we
19 have a Motion ready to file with the Court seeking that
20 the personal representative pay the attorney's fees
21 associated with preparation at this hearing. Are you
22 saying you do not -- you want to hold off on ---

23 **BY JUDGE FAULKNER:**

24 Well, since it wasn't raised during the testimony and it
25 wasn't listed as an issue ---

1 BY MS. PATTERSON:

2 Right.

3 BY JUDGE FAULKNER:

4 --- today was -- I believe, we were talking about the
5 property and the trying to get it done ---

6 BY MS. PATTERSON:

7 Right. We understand.

8 BY JUDGE FAULKNER:

9 --- I'm holding it in abeyance.

10 BY MS. PATTERSON:

11 Okay.

12 BY JUDGE FAULKNER:

13 And if you all can work that out, that'd be great. If
14 not, there's always that procedure that comes about when
15 you get the final accounting that gets reviewed. So I'm
16 holding it, and I'm going to hope that you all can work
17 that out, but if not, we'll hear it again.

18 BY MS. PATTERSON:

19 Thank you, Your Honor.

20 BY JUDGE FAULKNER:

21 All right. We'll be adjourned.

22 (THIS HEARING WAS CONCLUDED AT APPROXIMATELY 3:15 P.M.)

23

24

25

1 STATE OF SOUTH CAROLINA)
2) IN THE PROBATE COURT
3 COUNTY OF GREENVILLE) **COPY**
4 IN THE MATTER OF:

5 JAMES A. TRIPPE, III, Deceased

6 CASE NUMBER:

7 2009ES2300707.

8 GENE D. MORIN FOR KATELIN [REDACTED]

9 Petitioner.

10 JAMES A. TRIPPE, JR., INDIVIDUALLY AND AS PR,
11 Respondent.

12

13 Probate hearing taken in the aforementioned
14 matter was heard before the Honorable Judge
15 Debora A. Faulkner taken before Treasa Hix,
16 Court Reporter and Notary Public, at Probate
17 Court, Greenville County Square, 301
18 University Ridge, Greenville, South
19 Carolina, on the 24th day of April, 2013,
20 commencing at the hour of 1:15 o'clock, p.m.

21

22

23

24

25

26

1 APPEARANCES:

2 **JACQUELINE H. PATTERSON, Esquire**

3 **NATHANIEL C. FARMER, Esquire (Not Present)**

4 Patterson & Associates, P.A.

5 1088 North Church Street

6 Greenville, South Carolina 29601

7 Attorneys for Petitioner.

8 **MICHAEL T. COULTER, Esquire**

9 Clarkson, Walsh, Terrell & Coulter, P.A.

10 1164A Woodruff Road (29607)

11 Post Office Box 6728

12 Greenville, South Carolina 29606

13 Attorney for the Estate and James A.

14 Trippe, Jr., individually and as PR.

15 **OSCAR W. BANNISTER, JR., Esquire**

16 Bannister & Wyatt LLC

17 401 Pettigru Street (29601)

18 Post Office Box 10007

19 Greenville, South Carolina 29603

20 Attorney for Respondent James A.

21 Trippe, Jr. individually, and Paul Trippe.

22 - - - - -

23

24

25

1	INDEX OF EXAMINATION	
2		PAGE
3	TESTIMONY OF GENE MORIN	
4	DIRECT EXAMINATION: BY MS. PATTERSON	10
5	CROSS-EXAMINATION: BY MR. COULTER	21
6	REDIRECT EXAMINATION: BY MS. PATTERSON	28
7	TESTIMONY OF JAMES A. TRIPPE, JR.	
8	DIRECT EXAMINATION: BY MR. BANNISTER	45
9	CROSS-EXAMINATION: BY MS. PATTERSON	70
10	TESTIMONY OF GENE MORIN (REBUTTAL)	
11	REREDIRECT EXAMINATION: BY MS. PATTERSON	72
12	RECROSS-EXAMINATION: BY MR. COULTER	76
13	RE-RE-REDIRECT EXAMINATION:	80
14	BY MS. PATTERSON	
15	TESTIMONY OF JACQUELINE H. PATTERSON	
16	DIRECT EXAMINATION: MR. BANNISTER	87
17	- - - - -	
18	INDEX OF EXHIBITS	
19		PAGE
20	RESPONDENT'S EXHIBIT NUMBER ONE	45
21	(Proffer Only.)	
22	RESPONDENT'S EXHIBIT NUMBER TWO	52
23	(Proffer Only.)	
24	RESPONDENT'S EXHIBIT NUMBER THREE	55
25	(Proffer Only.)	

1		
2	INDEX OF EXHIBITS	
3		PAGE
4	RESPONDENT'S EXHIBIT NUMBER FOUR	
5	(Withdrawn.)	
6	RESPONDENT'S EXHIBIT NUMBER FIVE	56
7	(Proffer Only.)	
8	RESPONDENT'S EXHIBIT NUMBER SIX	57
9	RESPONDENT'S EXHIBIT NUMBER SEVEN	59
10	(Proffer Only.)	
11	RESPONDENT'S EXHIBIT NUMBER EIGHT	60
12	(Proffer Only.)	
13	RESPONDENT'S EXHIBIT NUMBER NINE	60
14	(Proffer Only.)	
15	RESPONDENT'S EXHIBIT NUMBER TEN	61
16	RESPONDENT'S EXHIBIT NUMBER ELEVEN	62
17	RESPONDENT'S EXHIBIT NUMBER TWELVE	62
18	(Proffer Only.)	
19	RESPONDENT'S EXHIBIT NUMBER THIRTEEN	63
20	(Proffer Only.)	
21	RESPONDENT'S EXHIBIT NUMBER FOURTEEN	63
22	(Proffer Only.)	
23		

1	INDEX OF EXHIBITS	
2		PAGE
3	RESPONDENT'S EXHIBIT NUMBER FIFTEEN	66
4	(Proffer Only.)	
5	RESPONDENT'S EXHIBIT NUMBER SIXTEEN	67
6	(Proffer Only.)	
7	RESPONDENT'S EXHIBIT NUMBER SEVENTEEN	67
8	RESPONDENT'S EXHIBIT NUMBER EIGHTEEN	66
9	(Proffer Only.)	
10	RESPONDENT'S EXHIBIT NUMBER NINETEEN	92
11	RESPONDENT'S EXHIBIT NUMBER TWENTY	109
12	RESPONDENT'S EXHIBIT NUMBER TWENTY-ONE	112
13	RESPONDENT'S EXHIBIT NUMBER TWENTY-TWO	112
14	RESPONDENT'S EXHIBIT NUMBER TWENTY-THREE	117
15	(Exhibit Numbers One through Seventeen were	
16	marked prior to the commencement of the	
17	hearing. Exhibit Number Four was withdrawn,	
18	and Exhibit Number Eighteen was entered	
19	before Exhibit Number Fifteen.)	
20	- - - - -	
21	(In the following transcript, a dash [--]	
22	is used to indicate an unintentional or	
23	purposeful interruption in a sentence, or to	
24	indicate halting speech or an unfinished	
25	sentence in dialogue.)	

1 THE COURT: We are here in the Estate of
2 James A. Trippe, III, deceased. File number
3 is 09707. Appearing today is Jacqueline
4 Patterson on behalf of Gene Morin who is the
5 Conservator for Katelin [REDACTED]. For the
6 Estate of James A. Trippe is Michael T.
7 Coulter, representing individually Paul
8 Trippe. And James A. Trippe is Mr. O.W.
9 Bannister. The issue before The Court today
10 is a Rule to Show Cause filed by Ms. Patterson
11 on behalf of the Conservator. And are any of
12 the issues resolved or settled?

13 MS. PATTERSON: No, Your Honor.

14 THE COURT: Okay. All right.
15 Nothing is settled. Okay. All
16 right. Then we'll proceed on a
17 Rule to Show Cause. And Ms.
18 Patterson you can call your first
19 witness.

20 MS. PATTERSON: Your Honor, before
21 I call my first witness, can we go
22 on the record to establish
23 representation in the parties that
24 are here to speak on behalf of the
25 Estate. In the past we -- in the

1 past hearings we've had Mr.
2 Bannister speak on behalf of the
3 Estate. And we have objected to it
4 on several occasions. This Rule to
5 Show Cause is against the Estate.
6 And the Estate is a party to this
7 hearing today. Mr. Bannister is
8 representing a beneficiary. He's a
9 party to the litigation, but not to
10 this proceeding today.

11 THE COURT: Well, the Rule to Show
12 Cause is against Mr. James A.
13 Trippe, Jr. as Personal
14 Representative; correct?

15 MS. PATTERSON: Yes.

16 THE COURT: And if you are
17 alleging it -- and I haven't read
18 your entire thing, but if you are
19 alleging anything that exposes him
20 to individual liability, then Mr.
21 Bannister has a right to represent
22 him on that issue. But if it's
23 just under his duties and
24 obligations as a PR, then Mr.
25 Coulter is the attorney of record

1 for the Estate. Do I have that
2 correct?

3 MR. COULTER: I believe so, Judge.

4 THE COURT: All right. Okay. So
5 he will be representing the Estate
6 in this matter. And Mr. Bannister
7 is on record as representing the
8 individual interest of James A.
9 Trippe and Paul Trippe.

10 MS. PATTERSON: James A. Trippe,
11 IV --

12 THE COURT: The IV.

13 MS. PATTERSON: -- I believe, Your
14 Honor.

15 THE COURT: The IV.

16 MS. PATTERSON: Who is a
17 beneficiary just as my client that
18 -- well, my client is representing
19 the beneficiary. And this Action
20 is against the Estate only.

21 THE COURT: Okay. However, you
22 know, it's a Rule to Show Cause,
23 and should you be successful and
24 show that Mr. James A. Trippe, Jr.
25 is in contempt of the Order, he

1 could be imprisoned or fined,
2 which, you know, in some respects
3 brings up the individual exposure.
4 Since we can't put an Estate in
5 jail.

6 MS. PATTERSON: He represents not
7 Mister -- there's four Trippes
8 here. Mr. Trippe as PR, and he
9 represents --

10 THE COURT: Oh, I see what you're
11 saying.

12 MS. PATTERSON: -- the son.

13 THE COURT: The man he represents
14 is not the same as the PR. Okay.

15 MS. PATTERSON: And the man he
16 represents is not here today, Your
17 Honor.

18 THE COURT: Okay. Okay. All
19 right. All right. You may call
20 your first witness.

21 MS. PATTERSON: Okay. I call Mr.
22 Gene Morin.

23 **GENE D. MORIN,**
24 being first duly sworn/affirmed, was
25 examined and testified as follows:

1 THE COURT: Thank you. Please be
2 seated.

3 MS. PATTERSON: And Your Honor,
4 for ease of reference I've pulled
5 the Orders that have already been
6 filed with this court and just
7 tabbed it so that all parties can
8 easily reference it. May I?

9 THE COURT: Yes. Just as an aid
10 to The Court?

11 MS. PATTERSON: Absolutely
12 (counsel hands up documents).

13 THE COURT: Okay. Thanks.

14 **DIRECT EXAMINATION**

15 **BY MS. PATTERSON:**

16 Q. State your full name, please.

17 A. Gene Douglas Morin.

18 Q. Mr. Morin, you are here today acting in
19 the capacity as a Conservator for
20 Katelin [REDACTED], is that accurate?

21 A. I am.

22 Q. Okay. And you've been here before?

23 A. Absolutely.

24 Q. This is your --

25 A. Yes.

1 Q. And you've been here on this matter
2 several times; correct?

3 A. I have.

4 Q. Okay. You have filed a Rule to Show
5 Cause. Can you tell The Court what you
6 are seeking today?

7 A. Yes, I'm requesting that basically the
8 Estate be brought to a closure, and
9 that also that my attorney, Ms.
10 Patterson, on behalf of Katelin [REDACTED],
11 be reimbursed for the attorney fees
12 that have been forced to incur because
13 of failure to do certain things.

14 Q. Okay. And maybe just to give The Court
15 some history, 'cause they deal with so
16 many cases. You reached a Settlement
17 with the Estate; is that correct?

18 A. I did, uh-huh.

19 Q. And was that on or about April the 27th
20 of 2012?

21 A. It was, yes.

22 Q. Okay. And that Settlement was approved
23 by The Court?

24 A. It was.

25 Q. Okay. And one of the issues that

1 you're asking The Court to resolve for
2 you today is the conveyance of certain
3 property in the Bahamas; is that --

4 A. That's correct.

5 Q. -- accurate?

6 A. That's correct.

7 Q. And under the Order that was approved
8 by The Court in the Settlement
9 Agreement, your client was to be
10 conveyed -- or you were to be conveyed
11 certain property in the Bahamas; is
12 that correct?

13 A. On behalf of Katelin [REDACTED] as her
14 Conservator.

15 Q. And can you read the pertinent section
16 of the Settlement Agreement --

17 A. Yes.

18 Q. -- that requires that.

19 A. "As to the property in the Bahamas and
20 taking into consideration the
21 difficulties which might arise in
22 transferring property in a foreign jur
23 -- jurisdiction, the two lots located
24 in the Bahamas, which are to be
25 conveyed to the Petitioner, pursuant to

1 paragraph four of the Settlement
2 Agreement, shall be conveyed as soon as
3 possible."

4 Q. I'm sorry, Gene, I have given you the
5 wrong tab. I'm sorry.

6 A. Okay.

7 Q. Let me give you the right tab here.
8 It's tab 73 for The Court, Your Honor.
9 And it is paragraph four. There you
10 go. I'm sorry.

11 A. Okay. Now, this is part of the
12 Settlement Agreement. Paragraph four,
13 "Bahamas lots within 60 days following
14 the execution of this Agreement.
15 Respondent PR, shall transfer to the
16 Petitioner the two lots located in the
17 Bahamas, and identified on schedule A1
18 of the second supplementary inventory
19 and appraisal dated December 9th,
20 2011. The lots shall be transferred
21 free and clear of all liens, mortgages,
22 or other encumbrances. In connection
23 therewith Respondent PR shall perform
24 all acts and execute all documents
25 required by the Greenville County

1 Probate Court to transfer the lots to
2 the Petitioner."

3 Q. Very good. And did you find yourself
4 back in court on a Rule to Show Cause
5 regarding this Settlement Agreement?

6 A. I have, yes.

7 Q. And was that on around May of 2012?

8 A. Yes, that's correct.

9 Q. Okay. And was there a Contempt Order
10 signed by this court?

11 A. Yes.

12 Q. And that's dated June 15th --

13 A. Yeah, that's right.

14 Q. -- of 2012?

15 A. Correct.

16 Q. And if you could tab over to the next
17 74. Yes.

18 A. Let's see that's --

19 Q. There it is (counsel points out tab).

20 A. Yeah. Which record?

21 Q. There you go. And if you will read
22 from this document. Is it dated June
23 15th?

24 A. It is dated June 15th and --

25 Q. And then --

1 A. -- I'm reading from page five of the
2 Contempt Order.

3 Q. And is it an Order of Judge Faulkner?

4 A. (Witness reviews document.) It is
5 signed by Judge Faulkner.

6 Q. Okay.

7 A. It reads on page five, the last
8 paragraph, "As to the property in the
9 Bahamas, and in taking into
10 consideration the difficulties which
11 might arise in transferring property in
12 a foreign jurisdiction, the two lots
13 located in the Bahamas, which are to be
14 conveyed to the Petitioner, pursuant to
15 paragraph four of the Settlement
16 Agreement shall be conveyed as soon as
17 possible." And, further, on page six
18 is -- it says, "Therefore it is ordered
19 under item two, the Deed for the
20 Bahamas property shall be delivered as
21 soon thereafter as possible."

22 Q. And that Contempt Order is dated June
23 15th of 2012?

24 A. That is correct, June 15th, 2012.

25 Q. Did you find that you had to file yet

1 another Petition and rule on this
2 matter?

3 A. Yes, I did.

4 Q. And was that on or about October 4th,
5 2012?

6 A. (Witness reviews document.) That's
7 correct.

8 Q. Okay. And did this court issue an
9 Order as a result -- let me step back.
10 There was a hearing scheduled; correct?

11 A. Yes.

12 Q. And that was in the month of November;
13 correct?

14 A. Yes.

15 Q. And the Estate failed to show up for
16 that hearing; correct?

17 A. That's correct.

18 Q. And it had to be rescheduled for
19 December?

20 A. Correct.

21 Q. Okay. And was there an Order of this
22 court as a result of that December
23 hearing? And I'll reference the next
24 tab for you, tab 75.

25 A. Yes, that Order is dated December 21st,

1 2012, and signed by Judge Faulkner.

2 Q. Okay. And, if you would, on page two
3 of that Order read the highlighted
4 section there regarding the Bahamas
5 lots.

6 A. It's page five.

7 Q. Page five of that Order states, "To
8 effectively convey title of the lots to
9 the Petitioner, the Personal
10 Representative must comply with
11 Bahamian law. The Estate by and
12 through the Personal Representative
13 shall be responsible for paying all
14 taxes, liens, or other encumbrances
15 affecting the lots, prior to the
16 transfer. Once a Deed of Conveyance is
17 properly recorded in the Bahamas, a
18 copy of the recorded Deed must then be
19 filed with this court. The Personal
20 Representative must file all documents
21 necessary to close this Estate,
22 including but not limited to a recorded
23 copy of the Bahamas Deed, no later than
24 February 1st, 2013.

25 Q. Have you received that Deed?

1 A. No.

2 Q. Okay. Thereafter, did The Court ask in
3 the hearing on December -- the December
4 hearing, did The Court instruct you to
5 try to work out the attorney's fees
6 that you had incurred with regard to
7 all of the rule --

8 A. Yes, that's --

9 Q. -- Petitions that you filed?

10 A. -- correct. The Court did not rule at
11 that time on attorney's fees.

12 Q. And have you tried to work through the
13 --

14 A. Yes.

15 Q. -- issue --

16 A. -- with you.

17 Q. -- of attorney's fees?

18 A. That's correct.

19 Q. Okay. Did you thereafter file an
20 Attorney's Fee Motion?

21 A. Yes.

22 Q. And was that on or about January 25th
23 of this year?

24 A. Was that the 23rd? That's dated 20 --
25 January 25th. And it's a Motion from

1 me, against certain parties.

2 Q. And are you asking this court to have
3 the Estate reimburse your attorney's
4 fees for the filing of all the Rule to
5 Show Cause?

6 A. Absolutely, yes.

7 Q. And what is the basis -- I'm sorry,
8 let's go back to the original Agreement
9 that is in the first document that I
10 handed you. The --

11 A. Approving the Settlement.

12 Q. The Settlement Agreement; correct. If
13 you'll --

14 A. There is no Settlement Agreement.

15 Q. There you go (counsel hands Agreement
16 to witness. All right. And on page
17 four --

18 A. Page four states and --

19 Q. Paragraph --

20 A. -- it's item 14. "Attorney's Fees. If
21 an Action is commenced to enforce any
22 provision of this Settlement Agreement,
23 the prevailing party, as determined by
24 a final court Judgment, shall be
25 entitled to recover from the other

1 party such reasonable attorney's fees
2 and costs incurred in the Action, as
3 The Court may award."

4 Q. And Gene, after not receiving your
5 Deed, and hadn't -- and the Estate not
6 being closed as instructed by The Court
7 by February 1st, did you file another
8 Order in Rule to Show Cause?

9 A. Let's see (witness reviewing
10 documents).

11 Q. That would be the February Order?

12 A. Yes, that's dated -- filed date
13 February the 7th.

14 Q. Yes. And in this rule you are now
15 asking The Court for your attorney's
16 fees; correct?

17 A. Yes, that's correct.

18 Q. And asking The Court to find cause why
19 the Deeds have not been filed -- but
20 been served upon you?

21 A. That's correct.

22 Q. Okay.

23 MS. PATTERSON: No further
24 questions, Your Honor.

25 THE COURT: Mr. Coulter.

1 **(READY TO BEGIN CROSS-EXAMINATION)**

2 **BY MR. BANNISTER:**

3 Q. Mr. Morin, you received a --

4 THE COURT: Mr. Bannister, let me
5 ask you, Mr. Coulter represents the
6 Estate.

7 MR. BANNISTER: Well, do I have an
8 interest though, as one of the
9 Heirs?

10 THE COURT: Well, you have an
11 interest that's collateral to this,
12 but Mr. Coulter represents the
13 Estate.

14 MR. BANNISTER: I'm sorry. I'll
15 go after him.

16 MR. COULTER: I'll be happy to ask
17 him.

18 THE COURT: All right.

19 **CROSS-EXAMINATION**

20 **BY MR. COULTER:**

21 Q. Mr. Morin, let me understand this. On
22 page four of the -- on your
23 documentation provided from your
24 attorney, it lists as an April 11th and
25 12th listing, it mentions E-Mails with

1 Seligman regarding lot transfers. Do
2 you see that?

3 A. (Witness reviewing documents.)

4 Q. Go down towards --

5 A. I see it, third item from the bottom.

6 Q. That's right. That's right.

7 THE COURT: I don't. Tell me
8 again where it is.

9 MR. COULTER: I'm sorry, on page
10 four, Judge.

11 THE COURT: Okay.

12 MR. COULTER: Right here down --

13 THE COURT: At the bottom. Okay.

14 MR. COULTER: Correct.

15 THE COURT: Thank you.

16 Q. I'm not quite sure I understand where
17 that comes from. Were those E-Mails
18 that you had with --

19 A. Not with me personally, no.

20 Q. Okay. Were those E-Mails that your
21 attorney had with Mr. Seligman?

22 A. To the best of my knowledge.

23 Q. And Mr. Seligman --

24 A. Well, I -- wait a minute. I do not --
25 I do not know. It's not identified on

1 here, and I don't know whether Mr.
2 Bannister sent out E-Mails. And I
3 don't know whether my attorney -- I
4 didn't come prepared to answer that
5 question.

6 Q. Well, I'm going to ask you these
7 questions anyway.

8 A. Okay.

9 Q. So do the best you can. You understand
10 Mr. Seligman is an attorney in the
11 Bahamas; correct?

12 A. He is. I understand he is an attorney
13 in the Bahamas.

14 Q. Okay. And you understand he is an
15 attorney in the Bahamas that the Estate
16 hired to try to make this transfer
17 occur; correct?

18 A. To the best of my knowledge, I -- I
19 think that's correct.

20 Q. Okay. And you understood, and you were
21 present at the hearing in December
22 wherein the Estate had a legal issue,
23 or had an argument that they didn't
24 believe -- the Estate, didn't believe
25 it was responsible for going through

1 and hiring the attorney in the Bahamas;
2 correct? Do you remember that hearing?
3 A. I can remember the particulars of that.
4 Q. Okay. Well, you went over an Order
5 just a second ago, at your attorney's
6 request. And if you'll go to item 75.
7 A. Okay. What page?
8 Q. All right. Item 75. And on page one,
9 this is an Order on a hearing date
10 listed December 19th of 2012. Do you
11 see that?
12 A. (Witness reviews document.) I see it.
13 Q. Okay. And it was in December of 2012,
14 if you go to the end, that The Court
15 ordered the Estate to actually complete
16 the transfer with the attorney and pay
17 those fees. That's when The Court made
18 that determination; isn't that correct?
19 A. You're talking about the end here?
20 Q. Yes.
21 A. It says, "The Personal Representative
22 must file all documents necessary to
23 close the Estate, including but not
24 limited to a recorded copy of the
25 Bahamas Deed.

- 1 Q. Okay. And the issue at that time was
2 who had to pay for the attorneys down
3 in the Bahamas; correct?
- 4 A. (The witness does not answer.)
- 5 Q. You don't know? Okay.
- 6 A. I don't know an --
- 7 Q. That's fine.
- 8 A. -- answer to the question.
- 9 Q. All right. But you do agree that in
10 December -- as a matter of fact, that
11 Order is dated December 21st of 2012.
12 And The Court finalized the Order on
13 that date to have the Estate complete
14 the transfer to the Bahamas; correct?
- 15 A. That's correct.
- 16 Q. All right. And you know that Mr.
17 Bannister had, on behalf of the Estate,
18 retained an attorney in the Bahamas to
19 do just that; correct?
- 20 A. I don't know when he did, no.
- 21 Q. Well, you knew he did; correct?
22 Because you were contacted about some
23 information that we needed --
- 24 A. Later.
- 25 Q. -- to provide?

1 A. Yes, I was later. I was at one point,
2 yes.

3 Q. Okay.

4 A. Whether I knew it at that time, I don't
5 know.

6 Q. And if you look at the procedural
7 history provided by your attorney,
8 going back to page four.

9 A. Page four?

10 Q. Of item one.

11 A. You mean 73 -- oh here. Page four.
12 Okay.

13 Q. Would you agree that on this notation
14 it says, "E-Mails with Seligman
15 regarding lot transfers and Bahamas
16 probate, at least a four to six months
17 to probate. Do you see that?

18 A. I recall that E-Mail. Who had sent it,
19 I don't know. But I remember seeing
20 that.

21 Q. So you knew in April that an attorney
22 in the Bahamas had been hired; correct?
23 And that that attorney had said it was
24 going to take at least four to six
25 months to have the probate completed on

1 the lot transfer; correct?

2 A. I remember seeing that, yes.

3 Q. And despite that you-all filed the Rule
4 to Show Cause, even though an attorney
5 had been hired, and said there was no
6 way that it could be done any quicker
7 than four to six months; correct? You
8 still filed the Rule to Show Cause
9 knowing that it was going to take this
10 amount of time for the attorney in the
11 Bahamas to get it done; right?

12 A. Yes, because there was more than one
13 item on the Rule to Show Cause.

14 Q. Okay. Well, that is one of the Rules
15 to Show Cause?

16 A. That's one of them. That's right.

17 Q. And you well know that there -- was
18 there anything that we could do to make
19 the guy in the Bahamas do things any
20 quicker?

21 A. I don't know.

22 Q. Okay. All right. But you had no
23 reason to disbelieve that it was going
24 to take another several months to get
25 this done --

1 A. I --

2 Q. -- when you filed a Rule to Show Cause?

3 A. I don't know. I don't know the rule in
4 the Bahamas.

5 Q. Okay. All right. Thank you.

6 THE COURT: All right. Anything?

7 MS. PATTERSON: Yes, Your Honor.

8 **REDIRECT EXAMINATION**

9 **BY MS. PATTERSON:**

10 Q. I'm sorry, I think I lost what Mr.
11 Coulter was trying to say. Your Rule
12 to Show Cause, Gene, was filed in
13 February; correct?

14 A. The last one, yes.

15 Q. Yes, in February. And the first
16 correspondence that you received was --
17 that's listed in that procedural
18 history that there is an attorney
19 involved, he's referring to April?

20 A. That's correct.

21 Q. Okay. So you filed it prior to the
22 issues with the attorney contacting --
23 or that we contacted the attorney in
24 the Bahamas; is that accurate?

25 A. It sounds accurate to me. Just --

1 Q. Okay. Thank you.

2 THE COURT: Anything else Mr.
3 Coulter?

4 MR. COULTER: Nothing.

5 THE COURT: Thank you Mr. Morin.

6 MR. MORIN: Okay.

7 THE COURT: Mr. Coulter, you may
8 call your witness.

9 MR. COULTER: Thank you, I call
10 Bill Bannister to the stand.

11 MS. PATTERSON: Your Honor, I
12 object.

13 THE COURT: All right. Let me
14 hear your objection.

15 MS. PATTERSON: The rule on -- I
16 printed this for you (counsel holds
17 up a document).

18 THE COURT: All right.

19 MS. PATTERSON: There is a rule on
20 lawyers as witnesses. And it's
21 Rule 3.7 of the rules of
22 professional conduct. "A lawyer
23 shall not act as an advocate, he is
24 a witness, and --

25 THE COURT: That's okay, I'm

1 familiar with the rule.

2 MS. PATTERSON: Okay. In this
3 case Mr. Bannister has acted as an
4 advocate in the litigation.

5 THE COURT: Excuse me.

6 MS. PATTERSON: And as such I do
7 not think it is appropriate for him
8 now to be a witness. Not only
9 that, Your Honor, we issued a
10 subpoena to Mr. Bannister early
11 April asking that any documentation
12 on -- that he had in his possession
13 with any of the Bahamian lawyers be
14 provided to us. We came to pick up
15 those documents, and he verbally
16 refused to provide them to us. So
17 to the extent that any
18 documentation that they are going
19 to provide today, that I have not
20 seen, and that is under subpoena,
21 that I do not believe should be
22 privileged, I would ask that that
23 evidence be excluded.

24 THE COURT: Okay. But we don't
25 know if they are going to offer

1 anything at this point.

2 MS. PATTERSON: No, I'm just
3 speaking --

4 THE COURT: So if they attempt to
5 offer something, then we'll hear
6 that at that point.

7 MS. PATTERSON: But his testimony
8 --

9 THE COURT: But right now you're
10 talking about that it's improper
11 for him to be a witness, because
12 he's acted as an advocate for --

13 MS. PATTERSON: The beneficiary
14 who is a party to this litigation.
15 Not only that, his testimony is
16 evidence. Which if he is going to
17 pro offer the documentation that we
18 requested, and have not received,
19 it would be prejudicial to my
20 client.

21 THE COURT: Okay. We can deal
22 with that if he tries to offer that
23 at that point. What I'm trying to
24 get around, or trying to understand
25 now, this procedure that we're

1 about to do whereas counsel for one
2 of the devisees is now going to be
3 a witness. Can you explain? Do
4 you-all want to let me know what
5 we're doing?

6 MR. COULTER: I'll be happy to
7 throw this in and let Bill throw --

8 THE COURT: Okay.

9 MR. COULTER: -- in his. But what
10 I've -- the issue here is that my
11 client is in contempt because he
12 hasn't acted appropriately. The
13 only person that can testify to who
14 is acting appropriately or what has
15 been done to move this process
16 along, is the person that was hired
17 to do that. And he's right here.
18 And how else can it be shown that
19 he's acted within the scope of what
20 The Court ordered, without the
21 attorney being able to say, "These
22 are the steps we've taken."

23 THE COURT: Okay.

24 MR. COULTER: If we're dealing
25 with the Bahamas property, we can't

1 bring somebody in from the Bahamas
2 to say, "This is what's being
3 done."

4 THE COURT: So what you're saying
5 then is, that the Estate has hired
6 Mr. Bannister to address the issue
7 of the Bahamas property, and it has
8 retained Mr. Bannister to do so.
9 Is that what you're telling The
10 Court?

11 MR. COULTER: That's what I'm
12 telling The Court.

13 THE COURT: And he's being paid
14 out of the Estate, and he's
15 representing a beneficiary of the
16 Estate?

17 MR. COULTER: I have no idea how
18 he is -- and I'll let Mr. Bannister
19 address that.

20 THE COURT: Okay. Mr. Bannister,
21 you can just -- I'm trying to
22 figure this out.

23 MR. BANNISTER: Mr. Trippe has
24 been a personal client of mine for
25 many years.

1 THE COURT: Which Trippe are we
2 talking about? We've got so many.

3 MR. BANNISTER: I'm talking about
4 the Trippe that Ms. Patterson is
5 trying to put in jail.

6 THE COURT: Okay.

7 MR. BANNISTER: He came to me and
8 hired me to get these lots
9 transferred as soon as possible.
10 I'm going to testify to the acts
11 taken on his behalf, as his agent,
12 to get these lots transferred.

13 THE COURT: And he hired you while
14 he had also hired Mr. Coulter?

15 MR. BANNISTER: Mr. Coulter is
16 representing the Estate. He asked
17 me to do it for him personally, as
18 his representative. Personally.

19 THE COURT: So the Estate's lawyer
20 did not do the legal work for the
21 Estate. The Estate's legal work as
22 to the Bahamas properties was sort
23 of farmed out to you because you
24 had represented Mr. Trippe in the
25 past. Is that what you're saying?

1 MR. BANNISTER: I wouldn't
2 characterize as "farmed out." If
3 The Court will recall there was
4 some difficulty in getting a loan
5 to satisfy first payment on the
6 Agreement. Mr. Trippe was held in
7 contempt and sentenced to jail,
8 given so much time to comply.

9 THE COURT: Right, right.

10 MR. BANNISTER: That has caused a
11 certain amount of trepidation with
12 him, whereas the Estate doesn't go
13 to jail, he personally goes.

14 THE COURT: Right.

15 MR. BANNISTER: So he engaged me
16 to get the Bahamas lots transferred
17 in his behalf, so that he would
18 still be in compliance with the
19 Order, or at least not out of
20 compliance. Because the Rule to
21 Show Cause, one of the elements --
22 I mean, I'm not telling The Court
23 anything it knows, but it has to be
24 a willful content.

25 THE COURT: Yes.

1 MR. BANNISTER: And he wanted to
2 get this done as soon as possible.

3 THE COURT: Is there no reason he
4 can't testify to what all he's done
5 as far as having you do all of
6 this.

7 MR. BANNISTER: He can now.

8 THE COURT: And then you can just
9 summarize what you did, you know,
10 if he gets confused and he doesn't
11 understand. I mean, he's the one
12 on the burner and on the hot seat.
13 Why can't he testify what all he's
14 done to show good faith?

15 MR. BANNISTER: Because he hasn't
16 done anything but hire me to get it
17 done. He's not aware of the
18 correspondence back and forth, the
19 E-Mails back and forth, and what
20 we've done, and the timing of it.

21 THE COURT: So he wasn't --

22 MR. BANNISTER: He supplied --

23 THE COURT: He wasn't, I guess,
24 briefed or said, "You've got to
25 testify today that you've tried to

1 do this. And these are the things
2 you've done." And you know have
3 one of those conversations?

4 MR. BANNISTER: Judge, I have a
5 suggestion of how to resolve this
6 today.

7 THE COURT: Okay.

8 MR. BANNISTER: This is a Rule to
9 Show Cause which is, as, you know,
10 has personal liberty at stake.

11 THE COURT: Right.

12 MR. BANNISTER: And I am an
13 officer of The Court, so I will
14 make a proffer to The Court, not as
15 a witness, but as an officer of
16 this court, on the issue of Rule to
17 Show Cause, as to whether his
18 conduct has been contentious, what
19 has been done in his behalf to
20 satisfy The Court's requirement.

21 THE COURT: In addition to his
22 testimony.

23 MR. BANNISTER: If you need him to
24 testify, then we will call him
25 after that.

1 THE COURT: Well, it appears to me
2 --

3 MR. BANNISTER: I think The Court
4 and --

5 THE COURT: I mean, I want to know
6 what all the -- what all he has
7 either paid for or done. Because I
8 do have to make a finding on
9 whether or not the failure of this
10 Estate to transfer this property
11 after so many months have passed,
12 I've got to make a finding on
13 whether or not it's willful. So
14 Mr. Trippe is the one who bears the
15 ultimate burden of that because he
16 is the one who is responsible. The
17 Court has appointed him to make
18 sure that the intentions of the
19 testator gets completed, and that
20 he's engage -- he's entered into
21 this Agreement. He is the person
22 who has to answer for this. So I'm
23 going to have to hear from him.
24 But I understand what you're saying
25 is that you've done some things on

1 his behalf, and you want The Court
2 to be aware of that, because if
3 it's not, then his ultimate liberty
4 is at stake, and I need to be aware
5 of that. So what I might suggest
6 is that I'll allow you to give a
7 summary of what has been done on
8 his behalf as -- just as a
9 presentation to The Court. And
10 then at that point we'll have that
11 list. And if you're going to offer
12 evidence, that needs to come
13 through Mr. Trippe.

14 MR. BANNISTER: It can't come from
15 Mr. Trippe.

16 THE COURT: It can't come through
17 Mr. Trippe?

18 MR. BANNISTER: No, ma'am.

19 THE COURT: Okay.

20 MR. BANNISTER: Because --

21 THE COURT: He doesn't know
22 anything about it; right? Or --

23 MR. BANNISTER: Yes, he knows
24 about it. But he can't
25 authenticate any document sent on

1 his behalf.

2 THE COURT: But he can -- he knows
3 he's hired you; correct?

4 MR. BANNISTER: Yes.

5 THE COURT: And if you say, "Mr.
6 Trippe, does this look like
7 something that you -- you've asked
8 me to fix this problem for you;
9 right?" "Right." "Here are
10 documents with my signature. These
11 are documents that I'm trying" --

12 MR. BANNISTER: You know --

13 THE COURT: -- "to do."

14 MR. BANNISTER: -- if you want to
15 go that way, Judge, I'll call Mr.
16 Trippe. Come on Mr. Trippe.

17 THE COURT: Okay. Mr. Trippe.

18 **JAMES A. TRIPPE, JR.,**

19 being first duly sworn/affirmed, was
20 examined and testified as follows:

21 THE COURT: All right. Before we
22 get started -- you can go ahead and
23 have a seat.

24 MR. TRIPPE: Uh-huh.

25 THE COURT: Before we get started,

1 I want to make a -- for the purpose
2 of the record, Mr. Coulter is the
3 Estate's attorney. But he has as
4 an officer of The Court informed
5 The Court that as a part of his
6 duties as an attorney for the
7 Personal Representative, he either
8 hired or delegated, or -- did you
9 hire Mr. Bannister from the Estate?
10 Did you pay him from the Estate, or
11 is this something that was done
12 outside of that?

13 MR. COULTER: Well, I think it
14 would be fair to say that we had
15 agreed that he would be delegating
16 this legal representation of
17 attempting to get this resolved.
18 So we could be --

19 THE COURT: So does that mean you
20 hired him or you didn't?

21 MR. COULTER: Again --

22 THE COURT: You didn't; right? I
23 mean --

24 MR. COULTER: Personally?

25 THE COURT: The Estate, not you

1 personally.

2 MR. COULTER: Okay.

3 THE COURT: Did the Estate hire --

4 MR. COULTER: Mister --

5 THE COURT: -- co-counsel?

6 MR. COULTER: Yes, Mr. Trippe
7 requested that he perform legal
8 services in getting the transfer.

9 THE COURT: So since Mr. Bannister
10 then is performing a service of the
11 Estate, for which normally an
12 Estate attorney would do, then he
13 is going to be paid by the Estate
14 for this segment of the Estate
15 Administration?

16 MR. BANNISTER: No, ma'am, I'm
17 being paid by Mr. Trippe.

18 THE COURT: So Mr. Trippe is
19 paying --

20 MR. BANNISTER: Personally.

21 THE COURT: -- you for an activity
22 that he has been charged to do with
23 by the Estate.

24 MR. BANNISTER: Correct.

25 THE COURT: But he is paying you

1 privately?

2 MR. BANNISTER: Privately.

3 THE COURT: Okay.

4 MS. PATTERSON: And Your Honor --

5 THE COURT: Yes.

6 MS. PATTERSON: -- the objection
7 we have, and have had for two
8 years, is that Mr. Bannister
9 represents Paul Trippe, Mr.
10 Trippe's son, and the decedent's
11 brother who originally took half
12 the assets of the Estate -- it's in
13 the record -- and --

14 MR. BANNISTER: And I object to
15 that Your Honor. That has
16 absolutely nothing to do --
17 whatever Paul Trippe did, or
18 somebody else did, has nothing to
19 do with him.

20 THE COURT: Okay.

21 MR. BANNISTER: If that's a
22 conflict, then the interest lies
23 with the Trippes, not with Ms.
24 Patterson.

25 THE COURT: The "interest"

1 meaning?

2 MR. BANNISTER: The one who is
3 entitled to raise the conflict are
4 the Trippes, not Ms. Patterson.

5 THE COURT: Have you been made
6 whole since the incident with Mr.
7 Trippe -- or Mr. Paul Trippe?

8 MS. PATTERSON: We've reached a
9 Settlement.

10 THE COURT: Okay. So that's off
11 the table; correct?

12 MS. PATTERSON: Yes.

13 THE COURT: Okay. I'm going to
14 note your objection. I'm going to
15 allow it to go ahead. I'm
16 preserving your objection for the
17 record. But I'm going to go ahead
18 and let him ask him these
19 questions; okay?

20 MS. PATTERSON: Yes, Your Honor.

21 THE COURT: Thank you. Go ahead.
22 I'm sorry.

23 **DIRECT EXAMINATION**

24 **BY MR. BANNISTER:**

25 Q. Mr. Trippe, just for the record, you

1 hired me personally to assist you in
2 getting these lots in the Bahamas
3 transferred?

4 A. Yes.

5 Q. And that was done in January, after
6 this Order was received from The Court
7 -- January 2013?

8 A. That's right.

9 Q. After that Order received from The
10 Court; okay?

11 A. Yes, uh-huh.

12 Q. All right.

13 MR. BANNISTER: Your Honor, we
14 would offer Exhibit One which is a
15 Google of lawyers in Eleuthera, the
16 Bahamas, which is where these lots
17 are located.

18 THE COURT: Any objection Ms.
19 Patterson?

20 MS. PATTERSON: (Counsel reviewing
21 document.) Is this offer just for
22 the location of the lots, Bill?

23 MR. BANNISTER: To show how we
24 contacted and obtained the name of
25 the lawyer to do the work.

1 MS. PATTERSON: Bill, can you show
2 me? I don't see. I've got some --

3 MR. BANNISTER: One is Eleuthera,
4 the second part of it is Arthur
5 Seligman, which is the Googling of
6 his name, as a lawyer that handles
7 property transfers in Eleuthera.

8 MS. PATTERSON: Your Honor, we're
9 going to object to the extent that
10 anything that Mr. Bannister is
11 offering was under subpoena by my
12 office, and has not been provided.
13 We would like to have what he's
14 offering excluded.

15 THE COURT: Okay. And you mean
16 under a subpoena as in like -- what
17 did your subpoena say, "Anything
18 that you've got that you ever want
19 to offer"?

20 MS. PATTERSON: No, Your Honor,
21 it's very specific. Any offers,
22 copies --

23 MR. BANNISTER: Your Honor, there
24 is a -- I object. If a subpoena is
25 issued to a third-party, which

1 she's made me the third-party, and
2 the third-party refuses to produce
3 it, then there's a procedure under
4 the rule that you go through for
5 The Court to determine whether it
6 is protected by some
7 attorney/client privilege, work
8 product, or whatever else. And she
9 is not following that rule. I
10 object, that is not a bad
11 injection, something that has not
12 been litigated as to whether she
13 had been furnished by the subpoena
14 or not.

15 THE COURT: Is there a Motion to
16 Quash, or anything been filed?

17 MR. BANNISTER: There is no Motion
18 to Quash, Your Honor, because she
19 says I'm a third-party. I just
20 refused to produce them.

21 THE COURT: "Third-party" meaning
22 -- right now you're acting as the
23 attorney for the Estate, basically
24 for the transfer of these
25 properties.

1 MS. PATTERSON: Which he is not --
2 I mean, at this hearing he has been
3 -- he has established a
4 relationship. Heretofore he has
5 not established a relationship with
6 the Personal Representative; Mr.
7 Coulter has been. We subpoenaed
8 his documents with the Bahamian
9 attorney so we could find out what
10 had happened, when it had happened.
11 And at that time he was acting
12 solely as the attorney for the
13 Heir, Jamie Trippe, and therefore
14 any correspondence between --

15 MR. BANNISTER: Your Honor, I
16 object to that.

17 MS. PATTERSON: -- the attorney on
18 behalf of the Estate, is not
19 privileged. Your Honor, the rule
20 says that if he was claiming
21 privilege, he was to provide the
22 basis for his privilege in writing
23 to me. We've received no --
24 nothing. Nothing in writing. We
25 sent our assistant over to pick up

1 the documents, and he verbally --

2 MR. BANNISTER: That's --

3 MS. PATTERSON: -- told her, "I'm
4 not giving you anything."

5 MR. BANNISTER: Your Honor,
6 communications on behalf of a
7 client, work product, are not
8 producible, unless the client
9 agrees. We are in a Rule to Show
10 Cause, and now I am producing these
11 documents in response for Mr.
12 Trippe, as to why he is not in
13 contempt.

14 THE COURT: Okay.

15 MR. BANNISTER: That's another
16 issue.

17 MS. PATTERSON: The rule --

18 MR. BANNISTER: That's just a red
19 herring. She has --

20 MS. PATTERSON: Well --

21 MR. BANNISTER: -- procedures that
22 she can follow to resolve it, and
23 she has not followed those
24 procedures. So she hasn't got a
25 valid objection.

1 MS. PATTERSON: Your Honor, under
2 Rule 45(d), "A person responding to
3 a subpoena" -- I'm sorry, under
4 2(a), "If the subject is -- to the
5 subpoena is withheld on a claim
6 that is privileged, the claim shall
7 be made expressly and shall be
8 support by a description of the
9 nature of the documents, or things
10 produced that is sufficient to
11 enable the demanding party to
12 contest the claim." I have yet to
13 receive that. I asked Mr.
14 Bannister in court here, yesterday,
15 for the documents. And he said --
16 MR. BANNISTER: You didn't ask me
17 for them. You asked me if I was
18 going to produce them. And I said,
19 "I was."
20 THE COURT: Okay. So did you give
21 her what the rule says about which
22 ones of these were "protected by
23 privilege"? So that she could then
24 know what to expect or what to --
25 MR. BANNISTER: I did not.

1 THE COURT: Okay. All right.
2 Then under the rules, if you did
3 not do that, then I don't know if I
4 have a choice other than to exclude
5 it. I mean, if you didn't do that,
6 she didn't know what was coming in.
7 And all of this was for this
8 hearing today?

9 MS. PATTERSON: Yes, Your Honor.

10 THE COURT: I mean, it's not like
11 an old subpoena for one of the
12 hearings we had --

13 MS. PATTERSON: No, I've got it
14 right here, Your Honor. It was
15 issued on -- he was supposed to
16 provide everything by Monday, April
17 the 22nd --

18 THE COURT: Okay.

19 MS. PATTERSON: -- so I could
20 prepare for this hearing.

21 THE COURT: Well, what I'm going
22 to do is I'm going to exclude it
23 under that rule. But I'm going to
24 let him proffer it to make a
25 record. But I'm not going to

1 consider it for my ruling. But I'm
2 going to let him make it in case he
3 appeals. So I'm going to let him
4 do a proffer. Go ahead.

5 MR. BANNISTER: Okay.

6 Q. You made a --

7 MR. BANNISTER: And I have this
8 marked as Exhibit One.

9 THE COURT: For proffer, yes.

10 MR. BANNISTER: For proffer.

11 Q. And that is a contact made in your
12 behalf for a lawyer in the Bahamas; is
13 that correct?

14 A. Yes.

15 Q. All right. And do you recognize the
16 letter, which is Exhibit Two, from my
17 office to Mr. Seligman?

18 A. (Witness reviews proffer exhibit.)
19 Yes.

20 Q. -- dated January the 30th.

21 MR. BANNISTER: Here Judge, do
22 you want to see these?

23 THE COURT:: Yes.

24 MR. BANNISTER: All right.

25 Q. January the 30th, 2013 --

1 THE COURT: I'm going to write
2 "proffer" on this; okay?

3 MR. BANNISTER: That's okay.

4 THE COURT: And if you would, if
5 we have another one, you'll need to
6 do that (The Court talking to the
7 court reporter).

8 Q. -- advising -- please advise the cost
9 and the documents you need. If you
10 cannot, recommend an attorney who can;
11 is that correct?

12 A. Yes, sir.

13 MS. PATTERSON: Provide me a copy
14 of it.

15 MR. COULTER: Do you want me to --

16 THE COURT: Okay. Just a second.
17 Do you want a -- did you get a copy
18 of this?

19 MR. BANNISTER: Yes, I'll give her
20 a copy.

21 THE COURT: Is all of this just
22 like the first one?

23 MR. BANNISTER: From the back to
24 the front.

25 THE COURT: Okay.

1 MR. BANNISTER: And note for the
2 record, Judge, that I have now
3 furnished her a copy of everything
4 that I am proffering.

5 THE COURT: Okay. So all of the
6 ones that are coming in now are all
7 for proffer only. Okay.

8 MR. BANNISTER: And that I have
9 furnished them --

10 THE COURT: But --

11 MR. BANNISTER: -- at this time.

12 THE COURT: And the record shows
13 that he has now furnished them to
14 her. But for today's proceeding
15 they are coming in as proffer only.
16 And she has a continuing objection,
17 I assume. Correct, Ms. Patterson?

18 MS. PATTERSON: Yes, Your Honor.

19 THE COURT: Okay. I'm just trying
20 to speed --

21 Q. Exhibit --

22 MR. BANNISTER: Your Honor,
23 excuse me, I'm sorry.

24 THE COURT: That's okay. Go
25 ahead.

1 Q. Exhibit Number Three is an E-Mail from
2 Mr. Seligman, back to me?

3 A. (Witness reviews proffer exhibit.)
4 Yes.

5 Q. It's dated February the 6th --
6 (Thereupon the court reporter
7 marked the pertinent document as
8 RESPONDENT'S EXHIBIT-NUMBER-THREE
9 PROFFER ONLY.)

10 Q. -- in which he gives a quote, a certain
11 number of documents he needs, and some
12 --

13 MS. PATTERSON: Can we -- sorry.

14 Q. -- price --

15 MS. PATTERSON: Object, Your
16 Honor, to the extent that he's
17 leading the client.

18 MR. BANNISTER: Judge, I'd ask
19 permission to lead under the
20 circumstances, since we're just
21 doing this for proffer.

22 THE COURT: I'm going to let him
23 go ahead because these are only
24 proffer.

25 MS. PATTERSON: Okay.

1 Q. In February --

2 MR. BANNISTER: I'm sorry, these
3 are both the same, I believe.
4 Number Four we'll withdraw because
5 it's just a copy of Number Three.

6 THE COURT: Okay.

7 MR. BANNISTER: I don't know how
8 that got in there.

9 THE COURT: All right.

10 MR. BANNISTER: And Number Five
11 for proffer. It's a transfer of
12 funds --

13 (Thereupon the court reporter
14 marked the pertinent document as
15 RESPONDENT'S EXHIBIT-NUMBER-FIVE
16 PROFFER ONLY.)

17 MR. BANNISTER: -- from a check
18 from James Trippe, Jr., which is
19 you, personally for \$2,000.00 to
20 the Bahamas.

21 (Thereupon the court reporter
22 marked the pertinent document as
23 RESPONDENT'S EXHIBIT-NUMBER-SIX
24 PROFFER, THEN REMOVED BY THE
25 COURT.)

1 MR. BANNISTER: And a letter of
2 February the 25th, proffer. And I
3 would note to The Court that this
4 letter is actually addressed to
5 Nathan Farmer and Jacqueline
6 Patterson, of February the 25th.
7 And therefore I would ask since she
8 already has a copy of this, that
9 this be offered into evidence,
10 without proffer.

11 THE COURT: Have you seen --

12 MS. PATTERSON: Yes.

13 THE COURT: Okay. This will be
14 then -- I'm going to remove the
15 proffer note on the exhibit. And
16 that will be one that will come in
17 in normal course.

18 MR. BANNISTER: Let me publish it,
19 Your Honor, since it's in evidence.

20 THE COURT: All right.

21 Q. "Attorneys. Arthur Seligman an
22 attorney in Nassau, in the Bahamas" --

23 MS. PATTERSON: Your Honor, I
24 object. Can we have the witness
25 authenticate the document?

1 THE COURT: I'll let him read it.

2 Q. "Which is near the two lots transferred
3 to Gene Morin, has advised the cost of
4 opening an Estate in the Bahamas and
5 transferring the two lots to your
6 client is a total of \$5,000.00. We are
7 in the process of getting documents to
8 have the lots transferred." Mr.
9 Seligman advises, "That in order to
10 transfer the lots to Gene Morin as
11 Trustee he will need" -- and then it
12 lists eight items. Mr. Seligman's firm
13 will prepare the Power of Attorney to
14 ensure it is in a form acceptable by
15 the probate register there. And he
16 will provide us samples of an
17 Affidavit. Please supply these
18 documents and instruments to us at your
19 earliest convenience so we may proceed
20 with getting the lots transferred.
21 Attorney fees are going to be a
22 contested matter. For that reason I'm
23 enclosing a subpoena for the
24 timesheets, charges as outlined in your
25 two Motions. You may of course just

1 simply send the timesheets to me and
2 satisfy the subpoena. And this one's
3 in evidence. That's dated February
4 25th.

5 THE COURT: Thank you.

6 MR. BANNISTER: And March the 6th
7 is proffer Number Seven.

8 (Thereupon the court reporter
9 marked the pertinent document as
10 RESPONDENT'S EXHIBIT-NUMBER-SEVEN
11 PROFFER ONLY.)

12 Q. Which is an E-Mail to Mister -- the
13 attorney. Saying, "We're getting the
14 documents. We agree to the fee in the
15 letter. We would like to forward
16 \$2,000.00 now, and pay the remainder
17 when the application to your registry
18 is prepared." Mr. Trippe, do you
19 recall why we were trying to get an
20 Agreement to send \$2,000.00 then, and
21 the rest of it later?

22 A. Yes, we asked them to do that. We
23 tried to expedite the -- the -- the
24 attorney in the Bahamas to do the work
25 quicker. In other words, we was paying

1 him so -- so much of the money up
2 front, and we'd do the rest when he --
3 when he completed his work. That's the
4 reason we did that.

5 Q. All right.

6 MR. BANNISTER: And we would like
7 to proffer Number Eight.

8 (Thereupon the court reporter
9 marked the pertinent document as
10 RESPONDENT'S EXHIBIT-NUMBER-EIGHT
11 PROFFER ONLY.)

12 MR. BANNISTER: And that's dated
13 March the 17th.

14 THE COURT: All right.

15 MR. BANNISTER: Proffer Number
16 Nine.

17 (Thereupon the court reporter
18 marked the pertinent document as
19 RESPONDENT'S EXHIBIT-NUMBER-NINE
20 PROFFER ONLY.)

21 MR. BANNISTER: Dated March the
22 18th, in which he agrees to the
23 terms.

24 MR. BANNISTER: And proffer Number
25 Ten. And I would offer this into

1 evidence because it is a letter
2 from Ms. Patterson to me. It is
3 Number Ten.

4 THE COURT: All right. Have you
5 seen that one?

6 MS. PATTERSON: It's actually not
7 from me. It's from our firm
8 though.

9 MR. BANNISTER: Oh, I'm sorry, I
10 stand corrected. It's from the
11 Patterson & Associates Firm, by Mr.
12 Farmer.

13 THE COURT: Okay. All right.
14 That will come in and we will make
15 it yours.

16 MR. BANNISTER: And I would note,
17 Your Honor, for the record, that
18 inquiring about the documents, Ms.
19 Patterson, by the letter that's in
20 evidence was February 25th. And I
21 got a response from her March 21st,
22 which is three/four weeks later,
23 that the documentation requested by
24 Mr. Seligman was being forwarded to
25 him, by her, directly, a month

1 later. And Number Eleven, I
2 believe is just her fax to me.
3 That's the same document.

4 THE COURT: Okay. Do you want to
5 offer that?

6 MR. BANNISTER: I do.

7 THE COURT: All right.

8 MR. BANNISTER: Number Twelve.
9 (Thereupon the court reporter
10 marked the pertinent document as
11 RESPONDENT'S EXHIBIT-NUMBER TWELVE
12 PROFFER ONLY.)

13 MR. BANNISTER: Your Honor, I
14 would offer this because I believe
15 this came after subpoena for the
16 documents that she objects to. It
17 is a -- I'm sorry, never mind. I
18 don't -- I withdraw that. This is
19 April the 1st, in which we had sent
20 Mr. Seligman certain documents.

21 Q. Do you recall we had to get up some
22 documents for him?

23 A. Yes.

24 Q. Okay.

25 MR. BANNISTER: And that's for

1 proffer.

2 THE COURT: Okay.

3 MR. BANNISTER: And Number
4 Thirteen is dated April the 3rd in
5 which he acknowledges he's grateful
6 of the documentation sent.

7 (Thereupon the court reporter
8 marked the pertinent document as
9 RESPONDENT'S EXHIBIT-NUMBER-
10 THIRTEEN PROFFER ONLY.)

11 MR. BANNISTER: It's part of an E-
12 Mail that we had back with Mr.
13 Seligman on the 1st, and he
14 responded on the 3rd, that
15 document. And then I have Number
16 Fourteen, which I would offer into
17 evidence because it is after the
18 date of the subpoena, April the
19 18th.

20 THE COURT: I would let Ms.
21 Patterson take a look, please.

22 MS. PATTERSON: I'm sorry, you're
23 saying --

24 MR. BANNISTER: On your subpoena
25 on the 12th. This is April the

1 18th.

2 MS. PATTERSON: We were
3 supposed to be delivered on the
4 22nd all documents.

5 MR. BANNISTER: Well, I would
6 offer it, Your Honor, because it
7 came after the date of the
8 subpoena. It was on the 14th.

9 THE COURT: Was the subpoena --

10 MS. PATTERSON: "Any and all
11 correspondence between you, any
12 attorney, and your paralegal, or
13 assistant of the Bahamian attorney,
14 which in any way mentions, refers,
15 or relates to the lots owned by
16 decedent, James Trippe."

17 THE COURT: Is there an end date
18 or a beginning date? What was your
19 --

20 MS. PATTERSON: It was due Monday,
21 April 22nd. It was issued April
22 (counsel refers to notes) -- I
23 believe April 1st, Your Honor.

24 THE COURT: And what's the date of
25 that?

1 MR. BANNISTER: April the 18th.

2 THE COURT: It will be a proffer.

3 MR. BANNISTER: All right.

4 Proffer it.

5 (Thereupon the court reporter

6 marked the pertinent document as

7 RESPONDENT'S EXHIBIT-NUMBER-

8 FOURTEEN PROFFER ONLY.) Mr.

9 Seligman was asking for certain

10 documentation in addition. And I

11 don't think -- we mismarked this

12 one somehow. But would you mark

13 this one as Fourteen? Wait a

14 minute, let me see if I've got --

15 Judge -- this is an April 4th

16 letter. Would you mark that and

17 make it a proffer (counsel talking

18 to court reporter)? I tried

19 keeping them in the chronological

20 order.

21 THE COURT: Do you need to know

22 the last number?

23 COURT REPORTER: I've got it.

24 THE COURT: You've got it.

25 COURT REPORTER: It's -- this is

1 Eighteen.

2 (Thereupon the court reporter
3 marked the pertinent document as
4 RESPONDENT'S EXHIBIT-NUMBER-
5 EIGHTEEN.)

6 MR. BANNISTER: It's a letter of
7 April the 4th. We're making a
8 proffer to Mr. Seligman. Sending
9 him exemplified copies of the
10 application, fiduciary letters,
11 inventory, appraisal, amended, and
12 second amended Settlement
13 recognized the Family Court Order.
14 Number Fifteen is dated April the
15 8th. It's an E-Mail. I make that
16 for proffer also.

17 (Thereupon the court reporter
18 marked the pertinent document as
19 RESPONDENT'S EXHIBIT-NUMBER-FIFTEEN
20 PROFFER ONLY.)

21 MR. BANNISTER: From Jan Brown
22 reflecting that the documents had
23 been sent. I have a letter -- I'm
24 sorry, I have an E-Mail from
25 Seligman on April 22nd, which is

1 Number Sixteen, which he furnishes
2 an Affidavit, form of an Affidavit,
3 which I'll make as a proffer.

4 (Thereupon the court reporter
5 marked the pertinent document as
6 RESPONDENT'S EXHIBIT-NUMBER-SIXTEEN
7 PROFFER ONLY.)

8 MR. BANNISTER: And, Your Honor, I
9 have a letter dated April the 23rd
10 with attachments, which is beyond
11 the date of our subpoena, which I
12 will offer into evidence.

13 THE COURT: All right. Ms.
14 Patterson take a look at it and
15 make sure.

16 MR. BANNISTER: She's got a copy.

17 THE COURT: Okay.

18 MS. PATTERSON: I've got it.

19 THE COURT: Okay. So you're
20 offering into evidence, is there
21 any objection Ms. Patterson?

22 MS. PATTERSON: No, Your Honor.

23 THE COURT: All right. We admit
24 it in the normal course, then.

25 MR. BANNISTER: "Dated April 23rd

1 to Mr. Arthur Seligman. Mr.
2 Seligman, enclosed is a Power of
3 Attorney, which had been executed
4 by James Trippe, Jr., witnessed by
5 me, so sworn before a notary public
6 with a sealed instrument. Also
7 enclosed is a signed and notarized
8 Affidavit of law. And "apostille"
9 is not a term I am familiar with,
10 but I believe to be the appointment
11 of a notary public. I have
12 enclosed a copy of the appointment
13 of the notary, along with the back.
14 The notary appointment which
15 indicates the appointment of a
16 notary was filed with the Clerk of
17 Court of a county here in South
18 Carolina. If the apostille is
19 some other instrument
20 authenticating Ms. Atkins in good
21 stand, please let me know and I
22 will definitely furnish you the
23 same immediately. Please keep me
24 apprised as the progress is being
25 made. I understand that "Gene

1 Morin has supplied his
2 documentation to you by separate
3 means. Would you please confirm
4 what he has done so. And anything
5 else you **need please let me know**
6 **and we** will attend to it right
7 away." And attached to it is the
8 Affidavit reflecting that it has
9 been done.

10 Q. Mr. Trippe, on every occasion that I
11 have asked you for documents, have you
12 supplied those documents to me
13 immediately?

14 A. Yes.

15 Q. On every occasion I've asked you to
16 sign some document to get these lots
17 transferred, have you come to my office
18 and immediately signed them?

19 A. Yes.

20 Q. Have you done anything to delay the
21 transferring of these two lots?

22 A. Absolutely not.

23 Q. Have you willfully and intentionally
24 delayed the transfer of these lots,
25 ever?

1 A. No.

2 Q. Do you want to get the two lots
3 transferred as quickly as possible?

4 A. Absolutely, yes.

5 Q. And are you doing everything you can,
6 including paying me, to get it done?

7 A. Absolutely. Yes, I'm paying
8 personally.

9 Q. All right, sir.

10 MR. BANNISTER: No further
11 questions.

12 THE COURT: Anything Mr. Coulter?

13 MR. COULTER: No.

14 THE COURT: Ms. Patterson.

15 **CROSS-EXAMINATION**

16 **BY MS. PATTERSON:**

17 Q. Mr. Morin -- I'm so sorry. Mr. Trippe,
18 you retained counsel in the Bahamas
19 after February 1st of this year; is
20 that correct?

21 A. I'm not sure of the date. Whatever,
22 Bill had there. I'm not -- I'm not
23 sure though.

24 Q. After the hearing that we had in
25 December, what steps did you take to

1 fulfill The Court Order that the Estate
2 be closed and the Bahamas lots be
3 transferred by February 1st?

4 A. I hired Mr. Ballinster to -- Bannister
5 to -- to do the work on the lots in the
6 Bahamas to get -- to get those, so we
7 could get a Deed to you. And we've
8 done everything I possibly know to do
9 that.

10 Q. Okay.

11 MS. PATTERSON: Your Honor, no
12 further questions.

13 THE COURT: Okay. Anything on
14 redirect?

15 MR. BANNISTER: No, Mr. Trippe.

16 THE COURT: Thank you, Mr. Trippe,
17 you may step down.

18 MR. TRIPPE: Thank you.

19 MS. PATTERSON: Your Honor, may I
20 call Gene as a rebuttal witness?

21 THE COURT: You-all don't have any
22 more witnesses; right? You don't?

23 MR. BANNISTER: No.

24 THE COURT: Okay. Yes.

25 MS. PATTERSON: Gene Morin.

1 THE COURT: All right. This is
2 rebuttal. You've already been
3 sworn.

4 MR. TRIPPE: Yes, ma'am.

5 THE COURT: Okay. Okay. You may
6 proceed.

7 GENE MORIN (REBUTTAL WITNESS)?

8 REREDIRECT EXAMINATION

9 BY MS. PATTERSON:

10 Q. Gene, you heard from the testimony of
11 the Personal Representative that his
12 attorney sent you a request on February
13 the 25th for certain documentation to
14 be provided to the Bahamian lawyer; is
15 that correct?

16 A. That's correct.

17 Q. Do you --

18 MS. PATTERSON: It's already in
19 evidence, Your Honor. If I may
20 hand this up (counsel hands up
21 document).

22 Q. Do you recall what they asked you to
23 provide?

24 A. I -- I recall specifically. And I
25 remember when I first saw this I was

1 meeting with you and another
2 professional guardian in town, about
3 another matter, and this had just come
4 up on the desk, and we both looked at
5 it. And our initial reaction was since
6 the Estate and The Court -- most people
7 don't even require Social Security
8 numbers. They don't require passports,
9 things like this. "You need to look
10 closely at this before we start handed
11 out all of this personal information."
12 And so we looked at it. And then you
13 -- you got in contact with me. Mr.
14 Farmer did, and said, "Well, we'll do
15 our best. And so Gene, it's
16 -- it's in your court. You try to get
17 what you can for them." So I took
18 action, and I drafted a letter for
19 Judge Sauvain to sign vouching for my
20 professional qualifications. And he
21 wouldn't do it. I didn't take that as
22 a personal slur, but he didn't do it.
23 I then went to my bank, and I asked
24 them to do such. And they refused to
25 do it. I then went to Edward Jones who

1 manages the account for Katelin [REDACTED]
2 and they wouldn't stick their neck out
3 to sign such a document. So I decided,
4 "Well, we'll give them what we can."
5 And I provided that to Ms. Patterson,
6 and she forwarded it to Mr. Seligman,
7 separately. One thing that -- we still
8 hadn't resolved the problem of what a
9 police reference is. I -- it's like
10 when did you start -- stop beating your
11 wife. I mean, how do you get something
12 that says you haven't been put in jail
13 here in the county. So it's been kind
14 of difficult to comply with this.
15 Plus, it so happens at that time my
16 sister was on her deathbed. And she
17 died in the middle of March. And I had
18 some -- what could have been very
19 serious medical problems. Tax season
20 was upon me and so forth. A lot of
21 other cases had gone completely haywire
22 in the Probate Court. So I had a lot
23 of things on the table at that time.

24 Q. Right. When you received the
25 notification of the documents you

1 needed, which were very extensive, you
2 worked diligently --

3 A. I did.

4 Q. -- to provide --

5 A. I did.

6 Q. -- those things?

7 A. Yes, I did.

8 Q. And you did have some medical issues
9 during that --

10 A. Yes.

11 Q. -- month long?

12 A. Right.

13 Q. We provided on March the 21st, which is
14 in evidence already, the documentation
15 as you could obtain; correct?

16 A. That's correct. That's right.

17 Q. And we are working through the
18 remainder of the documents that they
19 still require?

20 A. Except for the police record. We still
21 don't know how we're going to resolve
22 that.

23 Q. That's right. But did you receive any
24 communication that the documentation
25 you provided is adequate, and that it

1 is not --

2 A. I haven't --

3 Q. -- holding up probate?

4 A. -- heard one thing about that, whether
5 it's adequate or inadequate.

6 Q. Okay. Okay. Thank you.

7 MS. PATTERSON: No further
8 questions.

9 THE COURT: Mr. Coulter.

10 MR. COULTER: Thank you, Judge.

11 **RECROSS-EXAMINATION**

12 **BY MR. COULTER:**

13 Q. Mr. Morin, I'm sorry about your sister
14 --

15 A. Yeah.

16 Q. -- and about your health. And I mean,
17 we all understand other things come up
18 that can cause some problems in dealing
19 with things of ordinary life. But
20 you've been a Conservator for some
21 time; correct?

22 A. Yes, I think I have.

23 Q. Okay. And now, is this really the
24 first time you've been asked to come up
25 with all of these types of things in

1 order --

2 A. It is.

3 Q. So it was unusual; wasn't it?

4 A. Yes, it is unusual.

5 Q. Okay. And so you understood that this
6 was an unusual situation with the
7 Bahamian government and what they need
8 to be able to get this done and
9 completed; correct?

10 A. I would agree with that.

11 Q. So it is a long process, because we
12 don't, and we're not familiar with how
13 the Bahamian laws work; correct?

14 A. We don't. That's what we're trying to
15 find out.

16 Q. That's right. And so in addition to
17 that, you still have to come up with
18 more documentation to be able to get
19 this Deed transferred, don't you?

20 A. Well, that's what we're working with
21 that attorney as to what is required.

22 Q. My point is this, it doesn't make any
23 difference what Mr. Trippe does, we
24 still can't transfer the Deed, because
25 you haven't got that information to

1 them, have you?

2 A. I've sent everything I could.

3 Q. Well, my point is you want to hold Mr.

4 Trippe in contempt, and he can't even

5 get this done because you don't have

6 that documentation to the Bahamian

7 people.

8 A. I think it's -- sir, this goes way, way

9 back to when I first took over this

10 situation.

11 Q. This is about the Bahamian lots today.

12 A. That's right.

13 Q. Okay.

14 A. And it goes way --

15 Q. And --

16 A. The Bahamian lots go way, way back, Mr.

17 Coulter.

18 Q. Can you -- now, wait a second. Can we

19 agree that Mr. Trippe cannot get that

20 transfer done until you provide that

21 information?

22 A. I don't know. It hinges on this

23 attorney here. We don't know whether

24 to believe whether he's asking the

25 right things or not.

1 Q. Yes.

2 A. That's what Ms. Patterson is trying to
3 find out.

4 Q. And so is it possible that we're under
5 the same problems, the same
6 predicament? "We," being the Estate?

7 A. You've got a problem, yes.

8 Q. And so you would agree that Mr. Trippe
9 hasn't willfully done anything
10 regarding the information that you have
11 to provide, which is what's going to be
12 necessary to close out those Deeds;
13 correct?

14 A. I'm not going to testify to that.

15 Q. You're not?

16 A. No.

17 Q. Well, Mr. Trippe can't get that
18 information on his own, from you, can
19 he? Can he go around you to get that
20 information for you?

21 A. I -- I'm going through my attorney for
22 this. But information is provided to
23 Mr. Seligman.

24 Q. Okay. Thank you.

25 A. Okay.

1 THE COURT: Anything?

2 RE-RE-REEXAMINATION

3 BY MS. PATTERSON:

4 Q. The letter requesting the information,
5 what is the date of that letter?

6 A. February the 25th.

7 Q. Okay. And is that the first
8 correspondence that you received
9 regarding any information request on
10 the --

11 A. It is.

12 Q. Do you recall when The Court ordered
13 the Personal Representative to transfer
14 the lots?

15 MR. BANNISTER: Judge, he doesn't
16 have to reply and what he has.

17 THE COURT: Well, he's --

18 MR. BANNISTER: This is supposed
19 to be rebuttal.

20 THE COURT: I believe he is
21 suggesting that his failure to
22 promptly give this information to
23 the lawyer in the Bahamas is also a
24 reason why the Bahamas properties
25 can't be transferred. Such that

1 even if your guy had done
2 everything he's supposed to do, if
3 Mr. Morin hadn't sent him this
4 police record and this other stuff,
5 we still couldn't have a
6 conveyance. And I think that was
7 his point. So he's put in issue
8 the fact that he hasn't done what
9 he's supposed to do. So I'm going
10 to let her ask it.

11 A. The Motion that this issue way before
12 this February 25th letter.

13 Q. Right. So The Court ordered -- I mean,
14 you have had so many contempt hearings
15 --

16 A. That -- that's --

17 Q. The original Settlement was when, Gene?
18 Do you need reference?

19 A. It was 2012 -- was it April?

20 Q. Yes, sir, it was --

21 A. -- if I got that right.

22 Q. -- April.

23 A. Right.

24 Q. And then you had a Contempt hearing,
25 and a Contempt Order.

1 A. Well, we had one where we -- we hadn't
2 gotten the money. I remember that was
3 the first one.

4 Q. June (counsel points to document)?

5 A. Yeah, June the 15th.

6 Q. Which June of last year, which is nine
7 months ago --

8 A. Uh-huh.

9 Q. -- The Court requested the transfer --

10 A. Uh-huh.

11 Q. -- of the property; correct? As soon
12 as possible. And then again, the last
13 Contempt hearing.

14 A. That's the whole point, Judge, is that
15 --

16 MR. BANNISTER: Now, Your Honor --

17 THE COURT: You need to -- no, you
18 need to address your answer to Ms.
19 Patterson.

20 A. Ms. Patterson, the whole point is that
21 we've been trying to make this happen
22 much earlier than February the 25th,
23 and it just hasn't taken place.

24 Q. And what is the date, the final date
25 the Judge last gave them to get all of

1 this completed?

2 A. February the 1st.

3 Q. Thank you.

4 MS. PATTERSON: No further
5 questions, Your Honor.

6 MR. COULTER: Nothing.

7 THE COURT: All right. Mr. Morin,
8 you may step down. Do you have --
9 have you handed up anything to Mr.
10 Bannister, or Mr. Coulter, or The
11 Court about your attorney's fees?

12 MS. PATTERSON: Your Honor, Mr.
13 Bannister subpoenaed my attorney's
14 fees, which we complied with.

15 THE COURT: I don't have anything.
16 I don't think. Have you given me
17 any --

18 MS. PATTERSON: It's in the
19 record.

20 THE COURT: Is it? Well, where is
21 it?

22 MS. PATTERSON: If you will look
23 --

24 MR. BANNISTER: There is a
25 separate filing of --

1 THE COURT: And I just want to
2 make sure I've got them. I know
3 that it's not in the procedural
4 history that you handed up. Was it
5 attached to your Petition?

6 MS. PATTERSON: Yes, the Petition
7 for attorney's fees, Your Honor.
8 That was done January -- here it
9 is. I can give you this copy
10 (counsel hands up document).

11 THE COURT: Now, here -- is that
12 January 23rd --

13 MS. PATTERSON: Twenty-fifth.

14 THE COURT: Eight eighty-eight
15 forty, is that what you've got?

16 MS. PATTERSON: January 25th.

17 THE COURT: 23rd, 2013.

18 MS. PATTERSON: The Court asked us
19 to take our fees from the date we
20 filed our rule to the hearing where
21 the Estate didn't show up.

22 THE COURT: Okay.

23 MS. PATTERSON: So we segregated
24 that, that's the 880. And then we
25 prepared for the December hearing,

1 which is then listed separately.

2 THE COURT: So do I have in my
3 file the attorney's fees that
4 you're asking for as a part of this
5 proceeding today? Okay. That's
6 what I need to know.

7 MS. PATTERSON: I have done a
8 supplemental that brings them all
9 together for you. So it's a
10 summary of all of the fees, Your
11 Honor.

12 THE COURT: Do you-all have any
13 questions about her attorney's
14 fees?

15 MR. BANNISTER: Yes, Your Honor,
16 we do. We would like to examine
17 her on her attorney fees.

18 THE COURT: All right. Ms.
19 Patterson, if you will let him --
20 he's going to ask you some
21 questions about your attorney's
22 fees. Do you want her to take the
23 witness stand, or do you want to
24 just ask her where she is?

25 MR. BANNISTER: I prefer she took

1 the witness stand, Your Honor.

2 THE COURT: Okay. Ms. Patterson,
3 if you'll come up.

4 MS. PATTERSON: Your Honor, to the
5 extent that he is requesting that I
6 speak to matters that my associate
7 has billed --

8 THE COURT: No, you can only
9 testify to what you know, so.
10 You're an officer of The Court, I'm
11 not going to swear you in. You're
12 here to defend your attorney's
13 fees.

14 THE COURT: Because you are
15 representing Mr. Trippe on the
16 Bahamian matter, the Estate lawyer,
17 anything outside of the Bahamas
18 lots, Coulter has to ask her about.
19 And you're talking about the
20 Bahamas lots, because you're the
21 Bahamas lot man on this. So just
22 knowing that, if there's anything
23 else Mr. Coulter will need to ask.
24 Okay?

25 MR. BANNISTER: Okay.

1 JACQUELINE H. PATTERSON,

2 DIRECT EXAMINATION

3 BY MR. BANNISTER:

4 Q. This involves the Bahamas lots. Ms.
5 Patterson, initially there was a Deed
6 of Distribution directed to the Bahamas
7 lots delivered to you. And that would
8 have been sometime in July or August of
9 2012; is that correct?

10 A. I do not know of the exact time. But I
11 do recall that Deeds of Distribution
12 were provided.

13 Q. And there was a dispute at that time
14 over whether Mr. Trippe had fulfilled
15 his responsibilities under the
16 Agreement by doing a Deed of
17 Distribution. And that necessitated
18 the hearing that was held in December
19 of 2012?

20 A. The hearing in December of 2012, sir,
21 was under -- was asking The Court to
22 have the Estate concluded. It was
23 regarding more than the Bahamian lots
24 -- Bahamas lots, excuse me. It was
25 under Statute --

1 Q. Well, do you have a copy of the Order?

2 A. Let me grab my reference (counsel
3 retrieves documents).

4 Q. Do you recall if there was a
5 disagreement between you and I? We
6 had correspondence and I will
7 reference. The Estate was responsible
8 for getting the Deed of these Bahamian
9 lots, and opening the ancillary Estate
10 in the Bahamas, as to whether that was
11 an expense of the Estate, or that was
12 an expense -- going to be an expense of
13 your client, Mr. Morin. Do you want me
14 to show you the correspondence?

15 A. You asked me about the October 4th
16 rule, and if the Petition under
17 62-3-1001, requesting that within one
18 year after the date of first
19 publication that the Estate be settled.
20 It was brought under 1001, sir. It was
21 not specific to the Bahamas lots.

22 Q. Well, let me put it another way. What
23 relief did you request in your
24 Petition?

25 A. I requested -- may I read?

- 1 Q. Sure.
- 2 A. "That The Court issue an Order
3 compelling the Personal Representative
4 to perform all duties required under
5 62-3-1001 to close the Estate."
- 6 Q. That included getting the Bahamian lots
7 recorded in the Bahamas, and filed in
8 this court; is that correct?
- 9 A. I believe at the hearing, one of the
10 issues was the Bahamas lots, yes.
- 11 Q. One of the issues was who should be
12 responsible for recording the Bahamas
13 lots in the Bahamas. Do you recall
14 that?
- 15 A. Yes, I think that The Court made a
16 ruling on that.
- 17 Q. All right. And that was one of the
18 issues?
- 19 A. Just one of the issues, yes.
- 20 Q. Okay.
- 21 A. Yes.
- 22 Q. The other issue was to go ahead and get
23 the Estate closed. That's by your
24 Petition.
- 25 A. Attached to the Order of The Court on

1 December --

2 Q. Well, could you --

3 MR. BANNISTER: Well, Your Honor,
4 would you instruct --

5 A. -- is a list of documents --

6 MR. BANNISTER: -- her to answer
7 "yes" or "no," and then she can
8 explain her answer.

9 THE COURT: No, I'm going to let
10 her explain her answer. I'm not
11 going to -- I mean, she's a lawyer.
12 Just --

13 MR. BANNISTER: Well, could I --

14 THE COURT: Just --

15 MR. BANNISTER: I'm sorry.

16 THE COURT: Okay. You remember
17 his question. He's asking about,
18 you know -- I think he -- well,
19 he's trying to get to the point
20 that the Deed of Distribution was
21 not sufficient. Therefore you had
22 to bring this other Action. And
23 you know, he's trying to make the
24 point that it was an issue of
25 debate. So therefore it weighs

1 into the fact that whether or not
2 his client should bear a brunt for
3 the attorney's fees, I think is
4 where he was going.

5 A. So that yes, the Bahamas lots were one
6 of the issues; correct.

7 Q. And the other issue was closing the
8 Estate?

9 A. Yes, and The Court attached to its
10 Order, on the very last page, 10 or 12
11 items that had to be completed by
12 February 1st, to close the Estate.

13 Q. All right. And you agree the Estate
14 cannot be closed until the Bahamian
15 lots are recorded?

16 A. Correct.

17 Q. Okay. In preparing for the hearing,
18 you have in your timesheets about 20
19 hours of preparation time, and this was
20 a two-hour hearing. Tell me how much
21 time you spent on preparing the issue
22 of the Bahamian lots?

23 A. Bill, I don't know. You'll have to
24 show me what you're referring to. I
25 don't know that 20 hours --

1 Q. Okay.

2 A. -- was spent. I believe the way we
3 bill is we tell the client specifically
4 the time that we're spending and what
5 we're doing.

6 Q. All right. I'm going to show you that.
7 Do you recognize that?

8 A. (Witness reviews document.) This
9 appears to be billing statements from
10 my law firm.

11 Q. Okay.

12 MR. BANNISTER: We would offer
13 these, Your Honor.

14 THE COURT: All right.

15 (Thereupon the court reporter
16 marked the pertinent document as
17 RESPONDENT'S EXHIBIT-NUMBER-
18 NINETEEN.)

19 Q. All right. I want you to look at the
20 billing that's dated January the 9th,
21 2013. I believe there is a second
22 page. Starting at the top with E-Mail
23 to Lourey Smith, regarding schedule,
24 and conference, with points to be
25 discussed. Who is Lourey Smith? Well,

1 I'm sorry, you have the billing.

2 THE COURT: If you want, you can
3 use that.

4 Q. If you would look on January the 9th.

5 A. Which day, sir?

6 Q. Second page, top. The date is -- the
7 first date that shows is December 17th,
8 2012.

9 A. Okay.

10 Q. You have E-Mail to Lourey Smith
11 regarding schedule and conference call,
12 points to be discussed. Who is Lourey
13 Smith?

14 A. That is an entry by my staff. And
15 Lourey Smith is an attorney.

16 Q. In the Bahamas?

17 A. Yes.

18 Q. Is that the attorney in the Bahamas
19 which included in your Petition for a
20 \$1,500.00 fee?

21 A. I believe we paid -- I'm sorry, but I
22 have to rely on memory.

23 Q. Let me show you the Petition --

24 A. We hired --

25 Q. -- and we can --

1 A. -- in preparation for the original
2 December 19th hearing, an attorney,
3 which we had to pay, to obtain the
4 procedure for transferring property.
5 Because we received a letter, which I
6 am glad to provide, from you, Bill, I
7 believe, advising us that the Deed of
8 Distributions that you had given us
9 were sufficient for recording in the
10 Bahamas. So we provided those to the
11 Bahamian attorney, who advised us that
12 they were not sufficient. But we had
13 to spend \$1,500.00 to retain her.

14 Q. I'm referring to your Petition dated,
15 sworn to as 23 January. There's a
16 \$1,500.00 --

17 A. It says to the Bahamas counsel.

18 Q. Is that Lourey Smith?

19 A. Yes, I believe so.

20 Q. Okay. Did Mr. (sic) Smith, at that
21 time, give you an idea of how long it
22 would take to get these lots
23 transferred?

24 A. The first -- my recollection is the
25 first that I knew of the procedure or

1 the length of time was an E-Mail from
2 your attorney, Arthur Seligman, on
3 April -- beginning April 17th, I want
4 to say, or maybe a little earlier,
5 advising me that not until you sent
6 down all of the information to them
7 could they start probate. And at that
8 point it would take anywhere between
9 four to five months before they would
10 need Gene's information, and for me not
11 to worry or hurry.

12 Q. Okay.

13 A. And I --

14 Q. You were quoting -- I did not object,
15 but you were quoting the attorney that
16 you hired --

17 A. No, no, this is your -- this is your
18 lawyer.

19 Q. This is my lawyer.

20 A. Yes.

21 Q. Okay. Mr. Seligman.

22 A. Arthur Seligman (pronouncing see gull
23 men).

24 Q. Okay.

25 A. Seligman (pronouncing see gull men) --

1 Seligman (pronouncing seeg men). I'm
2 sorry.

3 Q. All right.

4 A. That is the information he -- and he
5 also advised us at the same time that
6 you-all retained him mid-March.

7 Q. Yes. And you discussed back with Mr.
8 (sic) Smith in December, did you get
9 any of the procedure about how this had
10 to be done? You say that the Deed of
11 Distribution is not sufficient. But
12 did you ask him the procedure for doing
13 it?

14 A. The conversation that I believe I had
15 with her was that one, confirmation of
16 the Deeds of Distribution. Also, we
17 had lots of problems even finding,
18 because it's an unrecorded Deed, the
19 registration that the decedent owned
20 the property. And then the third issue
21 was that we would need to start
22 probate. That's all we discussed. At
23 no time until I spoke to Mr. Seligman
24 did I realize that it was going to take
25 another five months.

1 Q. Okay. Now, let me go back to the
2 hearing. You're on the same page that
3 I'm on now? If you'll look on December
4 17th of 2012 --

5 A. Okay.

6 Q. -- you have a call to Bahamas counsel,
7 review of letter from Bahamas counsel
8 for one hour.

9 A. (Witness reviews document.) No, sir.

10 Q. I believe it says "one hour."

11 A. It says, "Preparation of hearing, call
12 with the Bahamas counsel, receipt and
13 review of letter from the Bahamas'
14 counsel, one hour." In that one hour I
15 was preparing. I believe our hearing
16 was on the 19th. And so two days
17 before, I started preparing.

18 Q. And then you have a three and a half
19 hour -- or Nathan Farmer had three and
20 a half hour preparation to review of
21 the transcript in correspondence and
22 preparation of the hearing. Three and
23 a half hours?

24 A. Actually if you will look at it there
25 it is blacked out.

1 Q. That's what it says.

2 A. Attorney/client privileged information.
3 So we blocked that out. I can't speak
4 to what he did on that day, but I do
5 recall that we had paid to have the
6 transcript provided to us in
7 preparation of the December 19th
8 hearing.

9 Q. So you had conversations with Mr.
10 Morin, as well as reviewing the
11 transcript, and correspondence?

12 A. I don't know. I don't know what that
13 blocked out would have meant.

14 Q. Well, would you agree with me that the
15 only issues were who was going to pay
16 for the Bahamas lots, and the issue of
17 closing the Estate?

18 A. Yes. However, we had a status
19 conference with the Judge, wherein you
20 provided several issues that were new
21 to me, prior to our hearing. And I
22 believe that based on the conversations
23 you asked me specifically, "Can you not
24 -- do you not understand the King's
25 law?" And that I should get myself --

1 bring myself up to speed regarding that
2 law. And because of the issues that
3 you provided in the status conference,
4 it generated more work on my part.

5 Q. And that conversation had to do with
6 the fact that at the death of a
7 decedent, if someone dies, that then
8 the Heirs inherit the property at that
9 moment; is that correct?

10 A. Which is our South Carolina law.

11 Q. That's --

12 A. I can't recall --

13 Q. -- any --

14 A. -- exactly what you were -- I remember
15 you were telling me that I needed to do
16 XY and Z to be prepared. And I did so,
17 sir.

18 Q. And that -- or you don't remember what
19 it was?

20 A. Yes, you told me to get up on the
21 King's law. I remember that because --

22 Q. Did you get up on the --

23 A. -- I've never had --

24 Q. -- King's law?

25 A. I've never had it told -- someone tell

1 me that before. So I --

2 Q. Okay.

3 A. -- did try to do so.

4 Q. Well, I added up all of the -- do you

5 do everything I tell you to do?

6 A. Well, I like to take advice from folks

7 that have been --

8 Q. An older --

9 A. -- practicing as long --

10 Q. An older lawyer?

11 A. -- as you. As long as you have,

12 because

13 --

14 Q. Then dismiss --

15 A. -- you have a lot of valuable advice to

16 give.

17 Q. Then dismiss this Rule to Show Cause.

18 A. I'm sorry.

19 Q. I added it up, and I got roughly 20

20 hours -- 15 to 20 hours of preparation

21 for that one hearing that lasted two

22 hours. Does that not seem excessive

23 for a two-hour hearing when the only

24 issues are to close the Estate and

25 whether or not the Bahamian lots have

1 to be paid for by Mr. Trippe, or by the
2 Estate?

3 A. I think that today you have made --

4 Q. Would you just --

5 A. -- a big case --

6 Q. Would you answer me "yes" or "no"?

7 A. I'm trying to, sir.

8 Q. Is that not excessive?

9 A. No, sir, because you have presented a
10 case today at how difficult the
11 transferring property is in the
12 Bahamas, and what you had to go
13 through. At the time prior to the
14 hearing you were telling me, advising
15 me that I didn't need anything but the
16 Deeds of Distribution that you had
17 already provided, and that I was good
18 to go, and I should accept it. Because
19 of that, because of the representations
20 that you provided to me, in writing, I
21 felt a need to prepare for the hearing,
22 and know what had to be done in the
23 Bahamas to transfer the lots. But not
24 only that, to try to find the lots to
25 even know if we owned them, which was a

1 big problem. Because --

2 Q. Because you and I --

3 A. -- the Deeds were unrecorded.

4 Q. You and I disagreed on the language in
5 the Agreement, which said that he would
6 not -- that he would do all that was
7 necessary. And we had a disagreement
8 over transfer, the word "transfer" the
9 Deed. That's what you're talking
10 about; isn't it? And I wrote you a
11 letter the difference between
12 "transfer" and so forth?

13 A. You told me that the Deeds of
14 Distribution that were provided to the
15 Conservator were sufficient to transfer
16 the property, and that you had complied
17 with the Order, of which I disagreed.

18 Q. That's a mistatement, Ms. Patterson,
19 but we'll let that go. So you prepared
20 because of some comment that I made?

21 A. I made sure that I was prepared to
22 defend my client's position on the need
23 of recorded Deeds from the Bahamas, in
24 order to effectuate a true transfer.

25 Q. Did you ever share the information you

1 got from the Bahamas attorneys with the
2 Estate and Mr. Trippe?

3 A. Yes, we did.

4 Q. You presented a letter with --

5 A. In fact we gave you --

6 Q. -- the advice of the Bahamian attorney?

7 A. We did not receive a letter from them.

8 All of our correspondence was verbal or

9 maybe some E-Mails. But I spoke to the

10 counsel, 'cause I -- sometimes just

11 conversation generates more questions.

12 And so we spoke to them. They came

13 back asking us more and more questions.

14 It was actually very difficult to find

15 that Mister -- that the decedent even

16 owned the property.

17 Q. Did you --

18 A. Because the Deeds were never recorded

19 into his name.

20 Q. Did you share that information again --

21 did you share that information with Mr.

22 Trippe?

23 A. I shared it with you, sir. And at the

24 hearing that we had in December, I

25 offered my attorney in the Bahamas to

1 you, because she was up -- and found
2 the property, was up on the case, and
3 could -- and we put --

4 Q. Did --

5 A. -- all of that in writing to you?

6 Q. Did you share the information with the
7 Estate --

8 A. Yes.

9 Q. -- regarding any of this information?

10 A. Yes, all correspondence. My office has
11 a rule that any correspondence went to
12 both you and Mr. Coulter, even the
13 Settlement offer this morning.

14 Q. Did you share the correspondence of
15 your attorney that found the lots?
16 Because the only thing --

17 A. Yes, yes, we shared. We have tried.
18 Mr. Morin is not trying to obstruct
19 anything. He has advised me to do
20 everything possible to get this shut
21 down. And we have shared everything.
22 You chose not to use our lawyers in the
23 Bahamas, although they were up on it.
24 They knew exactly where the lots were,
25 and what needed to be done. We had

1 already paid \$1,500.00.

2 Q. Did you advise Mr. Trippe that you had
3 paid \$1,500.00, and you expected him to
4 pay you back?

5 A. Yes, at the hearing, sir, which we all
6 attended. We told The Court. We
7 submitted our Affidavit. It has the
8 fees in there. We told The Court. In
9 fact I remember specifically --

10 Q. When did you --

11 A. -- telling --

12 Q. Wait a minute. Wait a minute.

13 A. -- Judge Faulkner that my lawyer
14 charged \$600.00 an hour, and I was
15 going to move to the Bahamas.

16 Q. When did you supply the documentation
17 regarding your lawyer?

18 A. I don't know. I would have to go back
19 and look at my records. But we
20 absolutely after that hearing sent to
21 you and Mr. Coulter the contact
22 information, so that -- 'cause we had
23 hoped that you would use our lawyer.
24 And we actually advised our lawyer that
25 that was a possibility.

- 1 Q. Did you send the information your
2 lawyer had about the Deeds, and being
3 able to locate the property?
- 4 A. I don't recall. I know that we were
5 trying to be helpful. And so we
6 provided everything that we had. I
7 think that --
- 8 Q. And it's your testimony that you
9 supplied us with a \$1,500.00 attorney
10 fee for a lawyer in the Bahamas, at the
11 hearing in December?
- 12 A. No, I think that the Affidavit of fees
13 were filed after our hearing in
14 December.
- 15 Q. Is the Attorney Fee Affidavit that
16 you're referring to the one that was
17 filed in January?
- 18 A. January 25th we moved for our
19 attorney's fees; correct. But at the
20 hearing we advised The Court of what we
21 had to do to find the information that
22 we were -- and in fact, Mr. Bannister,
23 you objected to my bringing in any
24 information from the attorney in the
25 Bahamas.

1 Q. On the grounds it was hearsay?

2 A. Yes, absolutely.

3 Q. And it was hearsay.

4 A. It was. I couldn't figure out a way to
5 get around it.

6 Q. So then now you admit that you did not
7 furnish that information, even after
8 the hearing?

9 A. I didn't admit that I didn't -- I'm not
10 sure what you're saying.

11 Q. Well, tell me what benefit it has been
12 to the Estate, and this \$1,500.00
13 attorney fee that you charged in the
14 Bahamas?

15 A. But sir, it was the benefit of my
16 client in showing the Estate -- or in
17 preparation for the hearing to show The
18 Court that a transfer had to occur in
19 the Bahamas, which I believe we had to
20 have the probate opened as well. Which
21 prior to the hearing you were telling
22 -- advising that that did not have to
23 happen.

24 Q. Let me just show you a letter of
25 January the 20th, 2012, and ask you if

1 that is -- you recognize that as being
2 a letter sent to you on July the 20th,
3 Deed of Distribution?

4 A. (Witness reviews document.) It is a
5 letter dated July 20th, from you, Bill.

6 Q. Does that refresh your memory that we
7 sent you a Deed of Distribution on that
8 date, or sometime around there?

9 A. I acknowledge that you sent us Deeds of
10 Distribution, absolutely.

11 Q. Okay. Do you recall the correspondence
12 of September the 19th?

13 A. (Witness reviews document.) This is a
14 letter dated September 19th, to me,
15 from Bill. It states he received a
16 copy of the letter from Sheryll Smith
17 directed to me in regards to the
18 recorded Deed of Distribution for the
19 Bahamas lots. Under Judge Sauvain's
20 Order approving our Agreement, "Your
21 client is responsible for recording the
22 lots in the Bahamas."

23 Q. Do you recall receiving that?

24 A. Yes, I do recall that.

25 MR. BANNISTER: Your Honor, we

1 would offer that into evidence.

2 (Thereupon the court reporter
3 marked the pertinent document as
4 RESPONDENT'S EXHIBIT-NUMBER-
5 TWENTY.)

6 THE COURT: You don't object, do
7 you, Ms. Patterson?

8 MS. PATTERSON: No.

9 THE COURT: Okay.

10 A. Are we still on fees here?

11 Q. We are.

12 THE COURT: We're still on fees.

13 Q. And do you recall your letter of
14 September the 6th?

15 A. That letter is dated when?

16 Q. July 30th.

17 A. September 19th. So this is a letter
18 prior to that?

19 Q. Prior to that, yes.

20 A. Okay. So on September 6th --

21 Q. Do you recall that?

22 A. -- it's a letter from me. Yes.

23 Q. You recall the letter? Do you recall
24 sending that letter?

25 A. And this is a letter from me. I'm not

1 sure if I recall the specifics of the
2 letter, sir.

3 Q. Okay.

4 A. Would you like me to read it?

5 Q. Yes. Well, go head. Take your time.

6 A. "Pursuant to the Mutual Release
7 Agreement, the Personal Representative
8 is to perform all acts and execute all
9 documents required by the Probate
10 Court, to transfer the lots to the
11 Conservator." By letter dated April --
12 I'm sorry, August 3rd, from the Probate
13 Court, Sheryll Smith requested copies
14 of the recorded Deeds of the lots.
15 "Additionally at the Contempt hearing
16 the Estate represented to The Court
17 that it was experiencing difficulties
18 in transferring the lots due to the
19 foreign jurisdiction. As a result of
20 this representation, Judge Faulkner
21 agreed to extend the time period for
22 which you were to transfer the lots.
23 Therefore, we once again request that
24 the Personal Representative provide the
25 Conservator with an update as to the --

1 as to the status of the transfer. To
2 be clear the Conservator awaits the
3 recorded Deeds which evidence the
4 transfer of ownership from the Estate
5 to the Conservator. As the Personal
6 Representative is aware, the Deeds have
7 to be recorded in the Registry of the
8 Records in the Bahamas. If the
9 Personal Representative intends not to
10 provide the recorded Deeds, please let
11 us know as soon as possible." That was
12 September 6th.

13 Q. Okay. And that was in response to a
14 letter of September the 4th?

15 A. Yes, "Thank you for your letter of
16 September the 4th."

17 Q. Is that the letter of September the
18 4th?

19 A. (Witness reviews document.) This is a
20 letter dated September 4th, from you,
21 to me.

22 Q. Okay.

23 MR. BANNISTER: Your Honor, we
24 would offer the letter she just
25 read.

1 (Thereupon the court reporter
2 marked the pertinent document as
3 RESPONDENT'S EXHIBIT-NUMBER-TWENTY-
4 ONE.)

5 Q. Do you recognize that letter?

6 A. (Witness reviews document.) Actually,
7 I don't know. I don't recognize the
8 contents. But it is a letter from you,
9 to me.

10 Q. Did you receive that letter?

11 A. Yes, I'm sure I did.

12 Q. All right.

13 MR. BANNISTER: We would offer
14 that.

15 (Thereupon the court reporter
16 marked the pertinent document as
17 RESPONDENT'S EXHIBIT-NUMBER-TWENTY-
18 TWO.)

19 MS. PATTERSON: Can I object?

20 THE COURT: Yes, you can object.

21 MS. PATTERSON: Your Honor, I
22 object. What does this have to do
23 with fees? It's almost as if we're
24 arguing the entire Contempt hearing
25 from December.

1 THE COURT: All of this is coming
2 in solely for fees. So I assume he
3 is trying to claim that you spent
4 too much time on these issues, and
5 some -- and he's using the letters
6 somehow to support that claim. I
7 assume. Is that right, Mr.
8 Bannister?

9 MR. BANNISTER: It is, Your Honor.
10 I'm trying to make a point that the
11 issue in December that came before
12 you, was a non-issue. You just had
13 to rule one way or another. You
14 had to tell us we had to do it, or
15 she had to do it. That doesn't
16 take 20 hours of preparation.

17 THE COURT: Okay. And that's the
18 purpose for which they will be
19 admitted.

20 MS. PATTERSON: Okay. Thank you.

21 A. (Witness reviews document.) It's a
22 letter to me on September 10th of 1012.

23 Q. Do you recognize that?

24 A. I don't know the specifics of it, but
25 it appears to be a letter written by

1 you, directly to me.

2 Q. Okay.

3 A. Do you want me to read it?

4 Q. Yes.

5 A. Okay.

6 MS. PATTERSON: Judge, was my
7 letter dated September 6th?

8 THE COURT: September 4th.

9 MS. PATTERSON: Okay.

10 A. And then my response to him was on
11 September 6th, and then is his response
12 to me now, on September 4th. "This
13 letter is" -- "Ms. Patterson, this
14 letter is in response to your letter of
15 September 6th. You are confusing the
16 word "transfer" with the word "record."
17 These two words are not synonymous in
18 the context of real estate. As
19 previously stated in my letter of
20 September 4th, the Personal
21 Representative is required under the
22 Mutual Release and Settlement Agreement
23 to perform all acts and execute all
24 documents required by the Probate Court
25 to transfer the Bahamas lots to your

1 client. The Personal Representative
2 executed the Deed of Distributions for
3 the lots in the Bahamas. While you do
4 not acknowledge the receipt of that
5 Deed, you do not deny it either.
6 Therefore I presume your receipt of the
7 Deed in behalf of your client. South
8 Carolina is an English Common Law
9 State. Under the Common Law, one way
10 to transfer the ownership of real
11 estate is by a Deed, and a delivery of
12 that Deed to the transferee or grantee.
13 If you doubt that this is law, please
14 refer to Spence versus Spence." I'll
15 skip the cite. "Which sets for the
16 distinction between "transfer" and
17 "recording."

18 MS. PATTERSON: And then he cites
19 from that case, Your Honor.

20 A. May I omit that, please?

21 Q. As a matter of fact if it's into
22 evidence, you don't even have to read
23 it.

24 A. Okay.

25 Q. Is that the English law you referred to

1 earlier? That you said I had
2 challenged you on.

3 A. Bill, I just remember you referring to
4 the King's law. That's all I -- and
5 this was during the conference with
6 Judge Faulkner.

7 Q. I would just direct your attention to
8 the last -- next to the last paragraph.
9 Where it was our position that we had
10 fully complied with our obligations
11 under the Mutual Release and Settlement
12 Agreement. Do you see that?

13 A. "Per the request in your letter, please
14 be advised that the Personal
15 Representative does not intend to go to
16 the expense of having the Deed recorded
17 in the Bahamas, because he did not
18 bargain or agree to do so."

19 Q. And then the next to the last paragraph
20 is that --

21 A. That is the last paragraph. Oh, the
22 next to the last?

23 Q. "Thus we have complied fully with our
24 obligations under Mutual Release and
25 Settlement Agreement."

1 A. "Thus we," well, yes. "Thus we have
2 complied fully with our obligations."

3 Q. So the hearing in December --

4 MR. BANNISTER: All right. Let me
5 mark that.

6 (Thereupon the court reporter
7 marked the pertinent document as
8 RESPONDENT'S EXHIBIT-NUMBER-TWENTY-
9 THREE.)

10 Q. The hearing in December, the issue on
11 the Bahamas lots, was simple. If we
12 had to pay for it under the
13 requirements, or you had to pay for it.

14 A. No, sir, it was not simple.

15 Q. Well, do you consider that a complex
16 issue?

17 A. I consider knowing the step-by-step
18 process, and what the law in a foreign
19 jurisdiction required, in order to
20 transfer property, not complex, but
21 something that required due diligence.

22 Q. What it took to transfer the lot in the
23 Bahamas was not an issue. Isn't that
24 correct? The issue was, is who was
25 going to pay for whatever it took to

1 transfer the lots?

2 A. I disagree, sir. I believe that the
3 opening of probate was an issue, in
4 order to transfer the lots.

5 Q. Now, would you tell me anywhere in the
6 Order of December the 19th there was
7 any discussion of the difficulty of
8 what had to be done to file? Just to
9 file. Do you want to review the Order?
10 It had nothing in that Order about
11 anything to do with the Bahamas. Just
12 who was going to pay for it, and who
13 was going to do it.

14 A. I can read it for you.

15 Q. Well, you don't have to read it out
16 loud, I've read it enough. I don't
17 believe that --

18 A. (Witness reviews document.) "The Court
19 ordered the Personal Representative
20 shall be responsible for paying all
21 taxes, liens, or encumbrances affecting
22 the lots prior to the transfer. Once a
23 Deed of Conveyance is properly recorded
24 in the Bahamas, a copy of the recorded
25 Deed must then be filed with this

1 court." The Court ordered that it
2 properly be recorded. In order for it
3 to be properly recorded, which was what
4 you and I disagreed about, is it had to
5 open probate, and the procedures for
6 opening probate and identifying the
7 property, those were complicated.

8 Q. Ms. Patterson, you're telling me that
9 you researched -- as part of this bill,
10 you researched how difficult it was to
11 transfer the property in the Bahamas,
12 that that was part of your research?

13 A. Part of my research was how to obtain
14 an effective transfer of property for
15 my client, yes, sir.

16 Q. And that was done prior to the hearing
17 in December?

18 A. That was done through our counsel in
19 the Bahamas. Identifying counsel, and
20 --

21 Q. Well, let me ask you this question: If
22 you were aware at that time that it was
23 going to be a difficult process, which
24 you say you were, because you talked
25 with your counsel in the Bahamas, why

1 didn't you tell The Court that, so that
2 the date of February the 1st would not
3 be imposed on Mr. Trippe, when you knew
4 he couldn't possibly comply?

5 A. Sir, you're putting words in my mouth.
6 That's not what I said. I said that we
7 had three issues before The Court. And
8 those were the issues that I dealt
9 with. Identifying the property,
10 finding how the decedent owned the
11 property, and then understanding
12 whether we had to go through probate.
13 The whole issue of what you did to go
14 through probate, I did not get into.
15 But how to transfer a Deed, apparently
16 is very complicated. You can't just
17 walk down to the Register of Deeds
18 Office and record a Deed.

19 Q. And you had that knowledge in December?

20 A. I had the knowledge that "yes," we
21 would have to go through their process
22 to record a Deed; correct.

23 Q. And you did not advise The Court that
24 this February the 1st date was going to
25 be virtually impossible?

1 A. I can't advise The Court on something I
2 don't know. I did not realize that it
3 would not be possible.

4 Q. You --

5 A. If I did, I would have told The Court
6 what we found. But I did not --

7 Q. Do you --

8 A. -- have that information.

9 Q. Sorry. Do you recognize now that it is
10 a difficult process?

11 A. It is a -- it appears to be a difficult
12 process, but one that is -- that can be
13 accomplished so long as an individual
14 stays on it, and gets it completed.

15 Q. And you've reviewed these
16 documentation. Have the responses in
17 your opinion as a lawyer been prompt
18 and dribbled --

19 A. I'm still --

20 Q. -- to get these lots transferred?

21 THE COURT: Are we still on fees,
22 Bill?

23 MR. BANNISTER: No, ma'am.

24 THE COURT: Are we on willfulness?

25 MR. BANNISTER: I'm just asking

1 her that.

2 THE COURT: Okay.

3 MR. BANNISTER: I wish you would
4 let me ask her.

5 THE COURT: She's up here about
6 fees. So I can't turn her into a
7 witness on the merit.

8 A. I don't mind answering that question,
9 Bill.

10 THE COURT: Go ahead and answer
11 it.

12 A. No --

13 THE COURT: If you want to just --

14 A. -- it's not. The Court asked you to --

15 Q. Just wait a minute. What is not?

16 A. You have not acted promptly. The Court in
17 June advised you to promptly seek the
18 transfer. And we -- all of these letters
19 back and forth, we advised that we needed
20 recorded Deeds of Distribution. You did
21 not retain your counsel until March, after
22 the February 1st date. You initially
23 reached out, but you did not retain your
24 counsel. And the work actually did not get
25 accomplished until March, when we received

1 our first correspondence. It's not that I
2 don't think you won't complete it now, but
3 it's that the Conservator has had to stay
4 on you to get it completed so that we can
5 get what we are due under the Settlement
6 Agreement. Any more questions regarding
7 fees, sir?

8 Q. Not regarding the effort that has been
9 made.

10 MS. PATTERSON: Am I --

11 MR. BANNISTER: I think that's all
12 the questions I have for her.

13 THE COURT: Okay. Thank you, Ms.
14 Patterson.

15 MS. PATTERSON: Thank you.

16 THE COURT: All right. If there's
17 nothing further I will take these
18 matters, and I will get you an
19 Order in a week or two.

20 **(HEARING ADJOURNED)**

1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF GREENVILLE)

4 I, TREASA HIX, a Notary Public, duly
5 commissioned and qualified in and for the
6 State of South Carolina, do hereby certify
7 that the Probate Court hearing was taken
8 before me on April 24, 2013, commencing at
9 1:15 p.m., and concluding at 3:01 p.m.; that
10 said Witnesses were duly sworn; that their
11 testimonies were transcribed by me; and that
12 this transcript is a true record of said
13 proceedings. I further certify that I am
14 not of kin or counsel to the parties in this
15 case, am not in the regular employ of
16 counsel for any of said parties, nor am I
17 interested in the results of this case.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and affixed my official seal this
20 _____ day of _____, 2013.

21 _____

22 Notary Public for South Carolina

23 My Commission Expires: 07/17/19

24

1 STATE OF SOUTH CAROLINA)
2) IN THE PROBATE COURT
3 COUNTY OF GREENVILLE) **COPY**
4 IN THE MATTER OF:

5 JAMES A. TRIPPE, III, Deceased

6 CASE NUMBER:

7 2009ES2300707.

8 GENE D. MORIN, Conservator for Katelin T [REDACTED],
9 Petitioner.

10 JAMES TRIPPE, JR./PR,
11 Respondent.

12 - - - - -

13 Probate hearing taken in the aforementioned
14 matter was heard before the Honorable Judge
15 Debora A. Faulkner, taken before Donna B.
16 Friddle, Court Reporter and Notary Public,
17 at Probate Court, Greenville County Square,
18 301 University Ridge, Greenville, South
19 Carolina, on the 21st day of August, 2013,
20 commencing at the hour of 4:06 o'clock, p.m.

21 - - - - -

1 APPEARANCES:

2 **JACQUELINE H. PATTERSON, Esquire**

3 **NATHAN FARMER, Esquire (Not Present)**

4 Patterson & Coker, P.A.

5 1088 North Church Street

6 Greenville, South Carolina 29601

7 Attorneys for Petitioner.

8 **MICHAEL COULTER, Esquire**

9 Clarkson, Walsh, Terrell & Coulter, P.A.

10 1164 A Woodruff Road (29607)

11 Post Office Box 6728

12 Greenville, South Carolina 29606

13

14 **O. W. BANNISTER, Esquire**

15 Bannister & Wyatt, LLC

16 401 Pettigru Street

17 Greenville, South Carolina 29601

18 Attorneys for Respondent.

19 ALSO PRESENT: Greg Ross.

20

- - - - -

21

INDEX OF EXAMINATION

22

PAGE

23

COLLOQUY BETWEEN THE COURT AND

3

24

COUNSEL

25

- - - - -

1

INDEX OF EXHIBITS

2

PAGE

3

THERE WERE NO EXHIBITS INTRODUCED.

4

- - - - -

5

6

7

8

9

10

(In the following transcript, a dash [--] is used to indicate an unintentional or purposeful interruption in a sentence, or to indicate halting speech or an unfinished sentence in dialogue.)

- - - - -

1 THE COURT:

2 We're on the record here in the Estate
3 of James A. Trippe, III, deceased,
4 09707. This matter here is the -- this
5 is a Motion for Reconsideration. This
6 if filed on behalf of the estate, Mr.
7 Coulter?

8 MR. COULTER:

9 Mr. Bannister did file it on behalf of,
10 I believe, the Personal Representative.

11 THE COURT:

12 How is that --

13 MR. COULTER:

14 Who was found in contempt. Correct?

15 THE COURT:

16 Well, I have you as representing the
17 estate, and we've already made a ruling
18 about conflict of interest. So are you
19 here to argue on behalf of the estate?

20 MR. COULTER:

21 Judge, that will be fine.

22 THE COURT:

23 Okay. I'll be glad to hear from you.

24 MR. COULTER:

25 Judge, as I think you recall from the

1 previous hearing I believe that the
2 ruling for the contempt had to do with
3 the issue of the transfer of the
4 Bahamian properties and how quickly
5 they were actually presented in terms
6 of to the beneficiary in the case.

7 THE COURT:

8 Uh-huh.

9 MR. COULTER:

10 All right. And, as I understand it, as
11 you may recall the first issue that we
12 had was whether or not Mr. Trippe had
13 failed to contact the people in the
14 Bahamas about having the title
15 transferred. And initially he did not
16 do that other than to provide a Deed of
17 Distribution to the beneficiary as it
18 was his belief that that was sufficient
19 in terms of his responsibility as the
20 PR. That was the initial delay in
21 actually having the transfer was his
22 belief that doing the Deed of
23 Distribution was sufficient. There was
24 a hearing on that, and Your Honor ruled
25 that that wasn't sufficient, and so

1 after that had happened he then took
2 the position to contact the attorneys
3 in the Bahamas, do what needed to be
4 done, or start moving towards that
5 direction, and lo and behold we find
6 out when we had the hearing for the
7 initial contempt is that the
8 Conservator had indicated that he had
9 not provided everything necessary to
10 actually make the transfer. So my
11 point, Judge, is that my client, Mr.
12 Trippe, first was delayed because of
13 his belief, mistaken belief, that the
14 Distribution Deed was sufficient; and,
15 secondly, that he didn't have all the
16 information necessary to transfer. And
17 The Court, despite that, held him in
18 contempt. And what I respectfully
19 point out to The Court is that -- and
20 I'm sure The Court is aware -- for
21 contempt it's a willful act for the
22 purposes of contempt. There's one done
23 voluntarily and intentionally with
24 specific intent to do something the law
25 forbids, or the specific intent to fail

1 to do something the law requires to be
2 done, that's to say with bad purpose
3 either to disobey or disregard the law.
4 And so I guess my point being, Judge, I
5 don't believe the initial delay, based
6 on his belief that the Deed of
7 Distribution was sufficient is willful.
8 And the fact that the titles have not
9 transferred aren't completely his
10 responsibility or his fault because the
11 information necessary to transfer had
12 not yet been provided to him. So I
13 would argue to you, Judge, that's not
14 willful. And so my point is, I believe
15 everything he had done in regards to
16 this distribution was not willful, may
17 have been mistaken, but certainly not
18 willful. And I'm not even certain at
19 this point whether he has received
20 necessary information from the
21 Conservator, which he certainly did not
22 have, and was admitted on the stand at
23 the time of the previous contempt
24 hearing. So that's why we would ask
25 The Court to consider it because I

1 don't believe Mr. Trippe has done
2 anything willful in the case. He is
3 trying to get the estate of his
4 deceased son closed. He is using money
5 out of his own pocket to try to get
6 that done, and now The Court has
7 ordered him to pay more money based on
8 a belief that he was acting willfully,
9 which I submit to you just wasn't the
10 case.

11 THE COURT:

12 Any other grounds that you are wanting
13 to bring forth on your --

14 MR. COULTER:

15 Your Honor, I think that's it.

16 THE COURT:

17 Okay.

18 MR. COULTER:

19 Thank you.

20 THE COURT:

21 Ms. Patterson.

22 MS. PATTERSON:

23 If it please The Court, Your Honor. We
24 have argued this point over, and over,
25 and over again, and to be very clear so

1 that everybody understands, this Court
2 provided ten letters prior to your
3 ruling in December requesting that the
4 Personal Representative provide a
5 recorded Deed of Distribution. The
6 December ruling was not -- did not come
7 out of left field. They knew, and they
8 were told over and over that we want a
9 recorded Deed of Distribution. This
10 Court provided it to him ten different
11 writings. So for them to say that it
12 was not willful, I'm not sure if I
13 understand that. Secondly, the
14 information that they requested that
15 the Conservator provide to the attorney
16 in the Bahamas was not required of my
17 Conservator until the end of the
18 probate process and was made very clear
19 to us. However, we provided that
20 information as soon as possible. When
21 we provided our information, which was
22 necessary to close the estate probate
23 in the Bahamas, the Personal
24 Representative still had not provided
25 theirs. In fact, you will see that in

1 their filing in their Motion to
2 Reconsider there is a letter from Mr.
3 Bannister's office to the attorney in
4 the Bahamas, and he is once again
5 saying, "Once I've been supplied all
6 the paperwork and support." That is
7 dated April 25th. The timeline here is
8 that you requested on December 21st
9 that the lots be transferred by
10 February 1st. We had no filing, no
11 information from the Personal
12 Representative. February 1st comes.
13 On February 7th we file with The Court,
14 another Rule to Show Cause. The
15 Bahamas attorney was not hired until
16 March of 2013, well after you had
17 requested that the Bahamas lots be
18 transferred. There was no movement.
19 We received no information. They made
20 absolutely no attempt. The hearing was
21 scheduled on the 24th, and then on the
22 25th there's an E-mail from Mr.
23 Bannister to the Bahamian attorney
24 asking for what is the length of the
25 process of the probate. That is in the

1 record. At the same time we have
2 served discovery, which is not
3 answered, was not given to us prior to
4 the hearing so that we could bring
5 forth that evidence of what had
6 occurred between Bahamian counsel and
7 the Personal Representative. On April
8 29th then Mr. Bannister, after our
9 hearing, filed a Motion for an
10 extension based on the information
11 after retaining counsel in the Bahamas.
12 So from the time of your Order to
13 February 1st when you asked them to
14 have this completed, we have no
15 evidence that anything was done until
16 we filed our Rule. We feel like your
17 Order fully satisfies what we're asking
18 for, which is either our lots, or the
19 value of our lots, which we have waited
20 for for a year and a half now after our
21 settlement agreement, and we would like
22 this Court to grant us the attorney's
23 fees, which we do feel meet the Baron
24 standard of reasonableness, and that
25 there is no rule that they have to be

1 set out in a Court Order, and we would
2 like The Court to Order a postjudgment
3 interest.

4 THE COURT:

5 Is that not in the Order?

6 MS. PATTERSON:

7 It is, Your Honor.

8 THE COURT:

9 Okay. All right. Okay. Mr.
10 Bannister, are you still representing
11 James, IV? That's what I've got in my
12 file. It seems like you're doing a lot
13 of estate work on the side, but I've
14 got you down as James, IV.

15 MR. BANNISTER:

16 All right.

17 THE COURT:

18 And that's how I've got the court
19 records have you down as attorney for
20 James, IV, which I think -- is that the
21 brother of Katelin?

22 MS. PATTERSON:

23 That's Katelin's brother.

24 THE COURT:

25 Okay. Okay.

1 MR. BANNISTER:

2 Your Honor, as I have stated before I
3 have represented Mr. Trippe, who is the
4 Personal Representative for a lot of
5 stuff prior to the death of his son,
6 who I also represented, so I am trying
7 to help Mr. Trippe, who is the Personal
8 Representative get the estate closed.

9 THE COURT:

10 Well, tell me this, and maybe I'm
11 missing something. You've been
12 practicing law a long time, but maybe
13 I'm missing it. I know we had this
14 issue come up before about having a
15 conflict, and I issued an Order, and I
16 said, you know, Mr. Coulter is going to
17 do the estate. Mr. Bannister has got
18 -- you know, he's representing other
19 members of the family. But yet, I get
20 Motions that I just discovered are
21 signed by you as attorney for him as
22 PR, and obviously you're helping out
23 when there's an obvious conflict of
24 interest. What am I missing?

25 MR. BANNISTER:

1 There's no conflict of interest between
2 Mr. Trippe, who is the Personal
3 Representative, and his son.

4 THE COURT:

5 But Katelin. Katelin --

6 MR. BANNISTER:

7 I don't represent Katelin.

8 THE COURT:

9 No. But Katelin is an heir to this
10 estate, and the Personal Representative
11 is not supposed to do anything that
12 would diminish her inheritance or delay
13 her inheritance. He is supposed to be
14 trying to find out ways to maximize her
15 inheritance, and, instead, he's delayed
16 it over the course of this thing.
17 There was a Deed of Distribution he
18 filed, as I recall, giving shares to
19 Paul, and Paul wasn't even an heir.
20 He's gotten into a -- there was a
21 dispute about what went to James, IV
22 and Katelin, which is a clear
23 violation, I mean, or conflict right
24 there. Katelin has a right to have a
25 PR who is looking out to maximize her

1 interest and her inheritance, and not
2 see how you can get out of doing it, or
3 delay it, or increase all these fees.
4 She's a child, and was a child of this
5 decedent, and I understand, I think, as
6 I recall, I think there's something in
7 here you may have represented the
8 deceased against her mother in a
9 divorce, and maybe there's ill will
10 against the mother, and Katelin's
11 having to pay the price. I don't know.
12 But this child needs her inheritance,
13 and there's no way that all of this is
14 complying with the fiduciary duty that
15 a Personal Representative has in
16 probate law to maximize the assets,
17 maximize the inheritance, keep the
18 overhead low, and do it in a timely
19 fashion. It's just -- it's always been
20 like this the whole way, and it's -- I
21 don't understand it, and I don't
22 understand how you can't see how Mr.
23 Trippe, Jr. has taken an adversarial
24 position against Katelin, it seems.

25 MR. BANNISTER:

1 Well, Judge, let me -- what you're
2 asking me about --

3 THE COURT:

4 I mean, I don't get it.

5 MR. BANNISTER:

6 Okay. There was an agreement made that
7 Judge Sauvain approved. Part of that
8 agreement was is that they would
9 transfer these lots in the Bahamas.
10 That was part of the settlement
11 agreement.

12 THE COURT:

13 Yes. That was in April, I think, of
14 2012.

15 MR. BANNISTER:

16 Correct. And there were other things
17 that had to be transferred.

18 THE COURT:

19 Right.

20 MR. BANNISTER:

21 Those are just administerial things,
22 Judge, for lack of a better word
23 "getting it done." For example, the
24 transfer of the vehicle. You've got to
25 get the title. The title has to be

1 executed. It has to be sent over. The
2 car has to be delivered.

3 THE COURT:

4 Right. But the --

5 MR. BANNISTER:

6 There's no conflict there to see to
7 tell Mr. Trippe, "Mr. Trippe, get the
8 title. Sign it. Here is where you
9 sign it."

10 THE COURT:

11 But didn't they have to file a contempt
12 action right after that and had to come
13 back here to make him give a payment to
14 Katelin that he agreed to pay?

15 MR. BANNISTER:

16 They did. And --

17 THE COURT:

18 And transfer Styles property that he
19 agreed to do.

20 MR. BANNISTER:

21 And there were funds that they had to
22 pay the estate.

23 THE COURT:

24 That he agreed to pay.

25 MR. BANNISTER:

1 That's right. He had to borrow the
2 money.

3 THE COURT:

4 Well, he should have known that before
5 he agreed to it.

6 MR. BANNISTER:

7 He did. He just didn't know how
8 difficult it was going to be to borrow
9 the money.

10 THE COURT:

11 Well, he should have known that.

12 MR. BANNISTER:

13 Well --

14 THE COURT:

15 It was a Court Order.

16 MR. BANNISTER:

17 If -- if --

18 THE COURT:

19 So a child who is relying on that
20 agreement had to spend money on have a
21 Conservator to force him to come in to
22 pay what he said he would pay in an
23 agreement and what The Court said he
24 would pay. How is that in her
25 interest?

1 MR. BANNISTER:

2 Well, you make an assumption that I
3 maybe don't actually agree with you. I
4 do not believe Mr. Trippe was aware of
5 how difficult it was going to be to
6 borrow the money.

7 THE COURT:

8 He had a duty to be aware. Whether or
9 not he was is irrelevant.

10 MR. BANNISTER:

11 Well, Judge --

12 THE COURT:

13 He is the fiduciary, and he had
14 lawyers, and he's supposed to know what
15 he's doing. He signed on to this.

16 MR. BANNISTER:

17 When you borrow money from a third
18 party, you are dealing with somebody
19 who is outside of Mr. Trippe's ability
20 to control. All during the process of
21 borrowing the money for Mr. Trippe's
22 sake we tried to keep the Conservator
23 in the loop as to how difficult it was
24 being and what the timing was. Finally
25 it got done, and the money was paid.

1 THE COURT:

2 But he didn't even transfer the real
3 estate though. The Styles property.
4 Forget the Bahamas. He didn't even do
5 that.

6 MR. BANNISTER:

7 Yes, he did.

8 THE COURT:

9 After the contempt action he did.

10 MR. BANNISTER:

11 Well, that's been done. That's --

12 THE COURT:

13 But my point to you is you said, "I
14 don't see how there's a conflict." He
15 has a fiduciary duty to make sure that
16 Katelin gets what's supposed to be
17 hers. There was an agreement. He's
18 not supposed to be coming up with
19 excuses. Okay, so he can't get the
20 money. He can do the transfer of the
21 Styles property. You know, there's no
22 reason for -- he is supposed to be
23 anxious for her to get her share, not
24 trying to delay it. So that was a
25 contempt action number one. And then

1 -- I don't know how many there have
2 been. I know that the last one was
3 two. There may be more. I don't know.

4 MR. BANNISTER:

5 Judge, how would it be a conflict for
6 me to assist Mr. Trippe in
7 accomplishing what The Court has
8 ordered him to do?

9 THE COURT:

10 Because -- it is a conflict, Mr.
11 Bannister, because Katelin is a
12 beneficiary of this estate, and she has
13 a right to have a Personal
14 Representative protect her interests
15 and not use information that he may
16 have against her. And if you're
17 representing him, and you've
18 represented his son, the decedent's
19 son, who is obviously not the son of
20 Katelin's mother, who has a
21 distribution which was contested;
22 you've also represented Paul, who Mr.
23 Coulter's office filed the Deed of
24 Distribution trying to get him 500
25 shares of J.A.T., and he's not even an

1 heir to this estate. I don't know what
2 information you may have known from the
3 divorce that may have given you special
4 knowledge, but none of that -- none of
5 the times have you-all been here have
6 you-all said or we ended this with
7 "Let's get Katelin -- what can we do
8 for Katelin today as her PR?" That's
9 never been the attitude. It's always
10 been, "We can't do this. We can't do
11 that. They want this, but we can't do
12 that. He didn't know he was supposed
13 to do that. I know he agreed to it,
14 but he didn't know, he didn't
15 understand." All that, and here we
16 are, what is this, 2013, four years
17 later.

18 MR. BANNISTER:

19 Judge, I was not involved with anybody
20 at the time that the original
21 distribution of stock to Paul was made.
22 I was not involved in that.

23 THE COURT:

24 Well, there are Notices in here that
25 were sent to you as his attorney.

1 MR. BANNISTER:

2 For distribution?

3 THE COURT:

4 For Notices, Certificates of Service,
5 and such as that.

6 MR. BANNISTER:

7 I don't believe I got involved until
8 after that had taken place.

9 THE COURT:

10 Okay. So you've never represented Paul
11 then?

12 MR. BANNISTER:

13 I didn't say that.

14 THE COURT:

15 Okay.

16 MR. BANNISTER:

17 What I said was at the time that you
18 cited there was some stock transferred
19 to Paul I was not involved.

20 THE COURT:

21 Well, that came from Mr. Coulter's
22 office.

23 MR. BANNISTER:

24 Well, I know that. That's through Mr.
25 Coulter's place, not mine.

1 THE COURT:

2 Right. But I'm just saying you've
3 represented the PR's brother. You've
4 represented the PR's other biological
5 son -- I mean, the decedent's
6 biological son who has an interest
7 adverse to Katelin. You've represented
8 the decedent in a divorce against
9 Katelin's mother. And I've already
10 made a finding in some Order that I
11 found there was a conflict, so -- but
12 yet, you're still involved. So I guess
13 -- I don't know if Mr. Coulter -- I've
14 gotten -- I don't know. Every document
15 it's like musical chairs here, and I
16 don't know if you-all are trying to
17 game it, or what are you-all trying to
18 do with this thing. We just need to
19 get this estate closed, property
20 transferred, money paid, and I'm just
21 really confused on if this is a
22 strategy or what, because it just
23 doesn't make sense to me. I was just
24 looking at it today. We have given you
25 guys 17 extensions, 17, and you've

1 missed 21 deadlines since this thing
2 was opened. And one of the
3 continuances that we had was because
4 Mr. Coulter didn't show up one day,
5 and, you know, you tried to help him
6 out, and take it over, and I wouldn't
7 let you because I said you've got a
8 conflict. How is that being a good
9 fiduciary for this child? It's
10 ridiculous.

11 MR. BANNISTER:

12 Judge, I wish there was some way to
13 wave a magic wand and get an ancillary
14 proceeding in the Bahamas to register
15 these deeds in the Conservator's name
16 for Katelin, but I will be honest with
17 you, I don't know any way to do it or
18 to assist anybody else to do it.

19 THE COURT:

20 Pay her \$25,000. That's the other
21 option. That's what your guy said
22 those lots were worth. Pay her. Let
23 him worry about the transfer, and I
24 won't be involved with that. He won't
25 have to answer to me. It will -- it

1 will be whoever else gets it.

2 MR. BANNISTER:

3 Well, Your Honor, that's not my
4 decision to make. It's not mine.

5 THE COURT:

6 Well, it's a Court Order. I mean, and
7 I know you're going to appeal it, but,
8 I mean, the Order said do it, I gave
9 him till July, or pay her the value of
10 that, of her inheritance, and then your
11 client, or whoever is going to get this
12 property, they can work that out after
13 we close the estate, and, you know --

14 MR. BANNISTER:

15 Judge, I believe the agreement that was
16 worked out was that she would get these
17 two lots. That's the Court Order
18 that's present now. That he was to
19 transfer these two lots. Well, I take
20 that back. He was to transfer the lots
21 to the Guardian, which he tried to do,
22 if you recall. He gave a Deed of
23 Distribution and said, "Okay." There
24 was never an argument that what had to
25 be done. It was a question of who was

1 going to have to do it. He didn't
2 think he was the one who was going to
3 have to do it, but you ruled in
4 December that he had to do it, and you
5 told him to do it by February.

6 THE COURT:

7 It's basic probate. And I mean, he
8 entered into this agreement in March of
9 2012. He didn't hire a lawyer to do
10 anything about this transfer till March
11 of 2013.

12 MR. BANNISTER:

13 That is because, Judge, he did not --
14 once the Deed of Distribution was sent
15 he thought he had complied with the
16 agreement made by --

17 THE COURT:

18 Mr. Bannister, people come in here all
19 the time thinking they know the law.
20 Thinking, "Oh, well I thought I did."
21 If I took that every time, I never
22 would close an estate. He has a duty
23 when he signed on to know what the law
24 is. He can't just agree to do
25 something and then come in later,

1 "Well, I thought the law was this," or
2 "I thought I could do that." He has to
3 do his due diligence, and to say that
4 now, I ruled on that a long time ago.
5 He should have known that when he
6 entered into the agreement. He had
7 from March of 2012 to -- okay. We've
8 got to transfer this property. Okay.
9 That's probate. We've got to do an
10 ancillary proceeding in the Bahamas.
11 We've got to make sure the property
12 gets transferred in the Bahamas. He
13 could have had that done, you know.
14 That would have been a year till March
15 the 3rd of 2013, but he never did, and
16 we kept having extensions after
17 extensions. We had one Mr. Coulter
18 would rise and say, "Well, we're just
19 having a time -- if you'll just give us
20 90 more days, we will have this
21 finished." And that was one of his
22 requests. I've got a letter in my
23 file, "Ninety days we will have this
24 wrapped up, and we'll have the property
25 done." That went by, came and went.

1 The next time we've got several more.
2 "Yeah, we're going to get this wrapped
3 up. We think we've got it done." And
4 then the next thing I'm seeing is a
5 contempt. I don't -- I don't get it.
6 It doesn't make sense. Good lawyers
7 don't practice that way. I don't get
8 it, Bill. I mean I just don't get it.

9 MR. BANNISTER:

10 Well, just make allowances for us being
11 bad lawyers, but, Judge, I will tell --

12 THE COURT:

13 No, you're not bad lawyers. That's why
14 I don't understand.

15 MR. BANNISTER:

16 I will tell you I have done all I can
17 do to get the lawyer in the Bahamas to
18 get on the stick and get this done,
19 including have Mr. Trippe pay him.
20 I've harassed him. And as a matter of
21 fact, every communication I've had with
22 him I've tried to keep Ms. Patterson
23 aware of what was going on as -- as
24 well as I think I sent them to you.

25 THE COURT:

1 It's just a very curious estate. It is
2 an estate that is -- it had -- it is an
3 epic failure in estate administration
4 is what it is. And I've got attorneys
5 with conflicts of interest who still
6 keep working on the estate for I can't
7 understand why. I've got a person who
8 entered into an agreement, made perfect
9 sense, March of 2012. April it was
10 approved by The Court. He didn't hire
11 a lawyer to do that till March of 2013.
12 So I gave him till July to do this
13 transfer, and then that didn't happen.
14 Had another contempt. So I would say,
15 "Okay. You either do it, or you pay
16 her the \$25,000. You get to keep your
17 lots. This child gets her \$25,000."
18 But we keep coming back to the lots,
19 the lots, the lots. Just pay her. And
20 if it's going to be -- you know, I just
21 don't understand why this estate has
22 taken such a horrible turn and used up
23 so much of my time, and your time,
24 Patterson's time, Gene's time, Mr.
25 Coulter's time for a simple matter. I

1 do estates more complicated than this
2 all the time. I have property that's
3 in Japan and all these other places.
4 Lawyers seem to do ancillary estates.
5 They are not a problem. And so I don't
6 get this. Surely you-all don't have an
7 animus against a child. She is a
8 child. Surely this isn't a
9 continuation of a divorce bad feeling -

10 MR. BANNISTER:

11 I can assure --

12 THE COURT:

13 -- coming from your PR because none of
14 this makes sense to me.

15 MR. BANNISTER:

16 Well, I can assure you, Judge, that he
17 does not have -- Mr. Trippe has no
18 animus toward his granddaughter. None.

19 THE COURT:

20 Well, the way he's handling this estate
21 is not helping that child and is
22 causing her to not get the benefit of
23 her inheritance, and is causing her
24 Conservator to rack up fees for no good
25 reason, no good reason. I mean, I just

1 -- I did everything I could to try to
2 come have -- and not have Mr. Trippe go
3 to jail. He's been -- like I said, I
4 don't remember how many contempts, but
5 I have tried to be as understanding as
6 I know how to be because it seems to me
7 that reasonable people should be able
8 to handle this, but it just seems like
9 he is just wanting to push the envelope
10 and doesn't think the horns will hook.

11 MR. BANNISTER:

12 Judge, he has had absolutely no input
13 -- I mean, I'll represent to you he has
14 had absolutely no input in dealing with
15 the lawyer in the Bahamas other than to
16 pay everything I've told him to pay
17 him.

18 THE COURT:

19 Well --

20 MR. BANNISTER:

21 And I have been the contact with that,
22 and I just -- I mean, I can't really --

23 THE COURT:

24 Well, if you think I'm going to let a
25 Bahamas lawyer keep that child from

1 getting her inheritance, you are sorely
2 mistaken.

3 MR. BANNISTER:

4 Judge, the Bahamas lawyer, as far as I
5 know, is working as hard as anybody to
6 get the ancillary estate filed and get
7 the lots deeded to her.

8 THE COURT:

9 I'm sure he's working on it every day
10 first thing every day.

11 MR. BANNISTER:

12 I don't understand why it takes so long
13 either, and I have asked, "What does it
14 take?" And I attached his E-mail in
15 response back.

16 THE COURT:

17 Well, but for the fact that your client
18 hadn't done such a -- he's done such a
19 horrible job in his estate
20 administration, as I said, I've got 21
21 missed deadlines and about 17
22 extensions, and I've even got a Motion
23 from you right now wanting another
24 extension.

25 MR. BANNISTER:

1 Based on what the attorney tells me,
2 Judge. That's all I can do.

3 THE COURT:

4 \$25,000, and that problem is cured.
5 And that is, you know, that is part of
6 the Order that's in effect right now,
7 which we are here to reconsider. But I
8 had to just get that off my chest. I
9 mean, I read through this thing this
10 afternoon, and it is just abysmal the
11 way this thing has been handled.
12 Anything else?

13 MR. BANNISTER:

14 I don't believe the Motion stated it
15 all, Judge, but --

16 THE COURT:

17 Well, the Motion, I think, Mr. Coulter,
18 you had in there, since you wrote the
19 Motion, even though Mr. Coulter should
20 have, I don't know who is getting --
21 well, about her fees. You don't think
22 her fees were -- met the standards in
23 the Order. What was it -- you believe
24 that her fees weren't justified or
25 didn't go down through all the factors

1 in the last Order, and I have not -- I
2 mean, I've read over the last Order,
3 and it just said that she's entitled to
4 fees from Mr. Trippe. Are you still,
5 Mr. Coulter, are you wanting to pursue
6 that?

7 MR. COULTER:

8 I agree with Mr. Bannister that
9 everything we wanted to pursue was just
10 contained in the Memorandum.

11 THE COURT:

12 All right. Ms. Patterson, have you got
13 a Fee Affidavit?

14 MS. PATTERSON:

15 Your Honor, I have engaged a separate
16 counsel to review all my time on this
17 matter on the several contempt actions
18 to provide to this Court the
19 reasonableness of my fees. He hasn't
20 had time to review that. We'll submit
21 it next week.

22 THE COURT:

23 All right. And I think the last time
24 you were here did you get examined
25 about your fees?

1 MS. PATTERSON:

2 I believe I did.

3 THE COURT:

4 Didn't they ask you --

5 MS. PATTERSON:

6 Yes. Yes, Your Honor.

7 THE COURT:

8 Weren't you sitting up here? Mr.

9 Bannister went through your time sheets
10 and why was this, and why was that?

11 MS. PATTERSON:

12 Yes, Your Honor, and I think you made a
13 ruling thereafter, but out of an
14 abundance of caution, which is what
15 I've had to do in this case over and
16 over again, I have engaged counsel to
17 review it all and provide to this Court
18 an Affidavit of separate counsel as to
19 the reasonableness.

20 THE COURT:

21 Well, once I receive that, if you'll
22 copy opposing counsel with it. What I
23 may do, I may have you amend the Order
24 just to include a separate section on
25 the fees, and once I get your -- once I

1 get your Fee Affidavit I will send you
2 and opposing counsel an E-mail on what
3 I want you to do as far as amending the
4 Order, if anything.

5 MS. PATTERSON:

6 Yes, Your Honor. Just so the record is
7 clear, I -- I am as well confused about
8 whether or not this Motion is a true
9 Motion because it's signed by a
10 beneficiary who is not a real party in
11 interest to the action because the
12 action was the Conservator against the
13 Personal Representative to close this
14 estate. The James, IV was never a
15 named party, however, Mr. Bannister
16 showed up at every hearing, but never
17 -- never filed to be a party to this
18 action. So, just for the record, to
19 make it clear, I don't think he has
20 standing. I don't think he's a real
21 party interest. He did not follow Rule
22 24. I feel like this is a Rule 11
23 frivolous action, and we're asking The
24 Court, again, for our fees, and we
25 would like our fees to stop, we really

1 would, because we would like this to
2 come to an end, and we would like the
3 25,000, and we would like postjudgment
4 interest.

5 THE COURT:

6 Mr. Coulter?

7 MR. COULTER:

8 Just final, Judge. If The Court would
9 like me to sign that Motion, I would be
10 happy to do that, one. Two, and I
11 understand The Court's position on
12 this, but we would just like to note
13 for the record, with all due respect,
14 we would object to the admission of any
15 additional evidence regarding fees at
16 this time since all evidence was
17 presented during the last hearing, but
18 I just want to make that note.

19 MS. PATTERSON:

20 Your Honor, we will have additional
21 fees for this hearing.

22 MR. COULTER:

23 I'm sorry. I was just referring to an
24 Affidavit by another attorney talking
25 about the reasonableness of the fees.

1 That's what I was referring to as far
2 as additional evidence and objection
3 to. Thank you.

4 THE COURT:

5 Okay. All right. Well, the Motion to
6 Reconsider is denied. It's denied,
7 first of all, because it wasn't filed
8 by the estate attorney. Second of all,
9 even if it were filed by the estate's
10 attorney, for the reasons I've already
11 discussed I find that the Order as
12 issued should stand. Ms. Patterson has
13 asked for fees for today's hearing.
14 I'm going to hold that in abeyance
15 until I get her Affidavit fees, and
16 I'll make a ruling on that when I get
17 it. And, counsel, if you have any
18 objection to her fees, send me
19 something, and let me know why you
20 object, and I'll make a ruling on that
21 on the Pleadings. Okay.

22 **(HEARING ADJOURNED)**

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF GREENVILLE)

4 I, DONNA B. FRIDDLE, a Notary Public, duly
5 commissioned and qualified in and for the
6 State of South Carolina, do hereby certify
7 that the Probate Court hearing was taken
8 before me on August 21, 2013, commencing at
9 4:06 p.m., and concluding at 4:40 p.m.; that
10 said hearing was transcribed under my
11 direction; and that this transcript is a
12 true record of said proceedings. I further
13 certify that I am not of kin or counsel to
14 the parties in this case, am not in the
15 regular employ of counsel for any of said
16 parties, nor am I interested in the results
17 of this case.

18 IN WITNESS WHEREOF, I have hereunto set my
19 hand and affixed my official seal this
20 _____ day of _____, 2013.

21

22 Notary Public for South Carolina

23 My Commission Expires: 01/30/16

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS
2013-CP-23-05389GENE D. MORIN, CONSERVATOR)
FOR KATELIN [REDACTED])
PLAINTIFF,)

vs.)

TRANSCRIPT OF RECORD

JAMES TRIPPE, JR.,)
INDIVIDUALLY AND AS PERSONAL)
REPRESENTATIVE OF THE ESTATE)
OF JAMES A. TRIPPE, III,)
DEFENDANT.)**ORIGINAL**February 18, 2014
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE.

A P P E A R A N C E S:

NATHANIEL C. FARMER, ESQ.
JACQUELINE H. PATTERSON, ESQ.
Attorneys for the PlaintiffO.W. BANNISTER, ESQ.
Attorney for the DefendantHOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: This is Morin v. Trippe, 2013-CP-23-5389.
It's an appeal from probate court.

Okay. Good morning.

MR. BANNISTER: Good morning, Judge.

Judge, it probably would be efficient if we take the
issue of whether or not I can be here representing
Mr. Trippe, Jr. That's one of the issues on appeal. And
that's the subject of the motions filed by Mrs. Patterson.

THE COURT: Okay.

MR. BANNISTER: If I -- if we could take that up and
you determine that issue, then that may resolve some of
the other issues.

Number one, Judge, by way of background, James
Trippe, Jr., who's here in the Court, is the father of the
deceased, who's James Trippe, III. James Trippe, III, had
two children, James Trippe, IV, and a daughter, Katelin,
who is a minor, who's represented by Mrs. Patterson, and
Mr. Farmer, and by a guardian ad litem.

There was a dispute about how to resolve some of the
assets in the estate. At that point, James Trippe, IV,
and Katelin were the two heirs. And I represented James
Trippe, IV. They entered into an agreement, which was
approved by the probate court in April of 2012, which
settled how the estate was to be distributed to include

1 two Bahamian lots.

2 The problem with the Bahamian lots is there were no
3 deeds. And the Bahamian system of land recording does not
4 have a central registry. So you can't have notice to the
5 public of who owns a particular piece of property. It's
6 borne out primarily by the deed.

7 THE COURT: I thought that was settled by the
8 English. Wasn't it a colony of England at one time?

9 MR. BANNISTER: They were.

10 THE COURT: And the English didn't with their typical
11 ruthless efficiency install a land recording system?

12 MR. BANNISTER: They did not, according to the
13 lawyers in the Bahamas that I've talked to.

14 THE COURT: Okay.

15 MR. BANNISTER: So I can just tell you that it's a
16 difficult process to work without the actual deed, and to
17 have the ancillary estate open because the Bahamians move
18 at their own pace.

19 So this agreement occurred in April of 2012. And
20 then there was a dispute that was settled in December of
21 2012 as to how these deeds -- who's to pay for these deeds
22 being distributed.

23 Now, at that point, Judge, Jamie Trippe, IV, agreed
24 that Katelin [REDACTED] would get the Bahamian deeds. Katelin
25 [REDACTED], through her guardian ad litem, agreed that she

1 would get the Bahamian deeds.

2 James Trippe, Jr., who's the personal representative,
3 also, agreed that she would get the -- that Katelin [REDACTED]
4 would get these two Bahamian deeds. Mr. Trippe, Jr.'s,
5 personal representative hired me personally out of his own
6 pocket after the December 2012 hearing to get the two
7 deeds transferred over to Katelin [REDACTED]

8 That is the basis that the probate court and
9 Mrs. Patterson and Mr. Farmer claim that there is a
10 conflict of interest, that somehow the interest of Jamie
11 Trippe, IV, is diametrically opposed to the interest of
12 Katelin [REDACTED] in having these deeds transferred to
13 Katelin [REDACTED] James Trippe, IV, agrees to it, James
14 Trippe, Jr., agrees to it, and Katelin [REDACTED] agrees to
15 it. How there can be a diametrically opposed conflict of
16 interest in me trying to help James Trippe, Jr., get the
17 deeds transferred is -- I'm sorry. But I don't see it.
18 It doesn't make logical sense and isn't reasonable.

19 I appeared at the rule to show cause hearing for
20 Mr. Trippe, Jr. The auction -- the citation is in the
21 record where I advised the Court that I was there at
22 probate court representing Mr. Trippe, Jr., on the
23 contempt. Because I had tried to help him get these two
24 Bahamian deeds transferred over to Katelin [REDACTED] so the
25 estate could be closed.

1 The Judge ordered the -- in December ordered the lots
2 to be transferred by the 1st of February, or to be held in
3 contempt. So on February the 7th, here comes the rule to
4 show cause asking to hold him in contempt and asking for
5 attorneys fees.

6 Well, I participated in the hearing in April of 2013.
7 And the Judge seemed to recognize that I was there
8 representing him personally and that, certainly, did not
9 present a conflict of interest, at least, at that hearing.

10 Subsequently, she issued an order saying that I had a
11 conflict of interest, which is one of the issues on
12 appeal. Of course, Mr. Trippe, Jr., certainly, has a
13 right -- a fundamental right to a lawyer of his choosing.
14 If there is a conflict of interest, I have -- the record
15 doesn't reflect it. And I have failed, quite frankly, to
16 see where there would be any conflict of interest in me
17 assisting Mr. Trippe carry out the Court order.

18 If there is no conflict of interest and I am
19 permitted to represent Mr. Trippe in that event, then the
20 next issue is a motion filed by Mrs. Patterson to strike
21 the motion to reconsider filed by Mr. Trippe, Jr., by me
22 asking her to reconsider.

23 Her theory is that the Judge disqualified me from
24 representing him. Therefore, the notice to reconsider is
25 ineffectual, meaning that the time for appeal then is out

1 because I can't put my name as representing Mr. Trippe,
2 Jr., on a notice to reconsider, which was timely filed.

3 Finally, that brings us down to the appeal itself
4 which is a -- he's held in contempt, sentenced to 90 days,
5 unless he could get the deeds transferred by July the
6 25th. Unfortunately, getting these deeds transferred is
7 in Mr. Trippe, Jr.'s, interest. But he is not able to
8 control what the Bahamian authorities do.

9 Because we have been on a quest for these deeds, and
10 how to get around the fact that we don't have any deeds,
11 and how to get the ancillary -- or to get the ancillary
12 proceedings opened in the Bahamas to get the deeds
13 transferred.

14 Mr. Trippe, Jr., has done that at his own expense, no
15 expense to the estate. He's paid the Bahamian lawyers.
16 He's paid me to get it done. The record is replete with
17 documents and information that we have sent to the
18 Bahamian authorities to get it done. It's just been a
19 slow process. It's not that he's intentionally
20 disregarding the order. He's trying his best to comply.

21 I can go on with the rest of the appeal.

22 As an alternative, Your Honor, to getting lots
23 transferred -- probate court ordered as an alternative
24 that Mr. Trippe could pay \$25,000, presumed, to Katelin
25 [REDACTED] for her interest in the lots. That doesn't resolve

1 two issues. Number one, where the money comes from.
2 Because the estate -- if the estate has to pay the money,
3 then that means that the other heir, Trippe, IV, is
4 deprived of \$25,000 to which he has not agreed to, and
5 sets aside the agreement in the Court order as to how the
6 assets would be divided.

7 And, second of all, Your Honor, the \$25,000, even if
8 paid, doesn't get the deeds transferred, which is part of
9 the reason he's being held in contempt. Because,
10 according to the probate court, we've got to have the
11 transfer of these deeds in order to close the estate.

12 So it leaves the estate open and leaves us still
13 trying to get the two deeds transferred, even if they're
14 transferred back to James Trippe. So, given that, Your
15 Honor, the effort made by Mr. Trippe, Jr., to get the
16 deeds transferred, he should not be held in willful
17 contempt of court civilly. And that should be set aside.

18 That brings us down to the attorneys fees, which is a
19 separate issue. If you reverse any of the Court's
20 findings, then the issue of attorneys fees -- which it's
21 about \$20,000 now, for what, basically, was a very simple
22 rule to show cause. He hasn't had the deeds transferred.
23 Why not? That's a fairly simple question. It, certainly,
24 doesn't generate \$20,000 in attorneys fee. That should be
25 remanded back to the probate court as well.

1 Thank you, Your Honor.

2 THE COURT: Thank you, Mr. Bannister.

3 MR. FARMER: Your Honor, may it please the Court.

4 I am Nathan Farmer. I'm here on behalf of Gene
5 Morin.

6 I do have some documents. I know the record is
7 pretty thick. It usually is pretty thick when it comes
8 from the probate court. And so I'll try to simplify as
9 much as possible.

10 Mr. Bannister was right that there are several issues
11 before you today. There are the merits of the appeal,
12 which he did go into. But, really, the first issue before
13 this Court is whether or not the appeal was proper. And
14 in our motion and memorandum to dismiss, which we filed on
15 the 4th -- I don't know if you have received a copy. If
16 you have not, I do have an extra copy, if you would like.

17 But we're moving to dismiss this on the grounds that
18 the appeal was untimely, because the notice of appeal was
19 not filed within the 10-day time limit of 62-1-308. As
20 you're aware, an untimely notice of appeal would dismiss
21 the action, unless it was stayed by a proper post-trial
22 motion. The estate did not file a post-trial motion, Your
23 Honor, nor did it file a notice of appeal within that time
24 period.

25 The post-trial motion, which was filed by Attorney

1 Bannister is not proper before the Court. As I'm going to
2 show, Mr. Bannister does not and has not represented the
3 Appellant. His client is James, IV. James, IV, is not a
4 party to this action, was not a party to the contempt
5 proceeding, and did not have standing to file a motion.
6 To the extent Mr. Bannister claims that he represented the
7 estate, the Court orders are very clear that he did not.
8 And not only did he did not, he could not, based upon a
9 conflict of interest.

10 As this Court is well aware, an unchallenged ruling
11 of the Court becomes the law of the case. The law of the
12 case back on November 20th of 2012, clearly, stated that
13 Mr. Bannister could not represent the Appellant.

14 Your Honor, just by way of background, I know
15 Mr. Bannister has gone into some of this. He was right
16 that the decedent did die on March 26th, 2009. He is
17 survived by his two children. His two children are James,
18 IV, and Katelin [REDACTED] Katelin [REDACTED] is a minor. And
19 that's why Mr. Morin is here today representing as the
20 conservator for the minor. The Appellant is the father of
21 the decedent.

22 The original deadline for filing this estate, Your
23 Honor, was April the 16th, 2010. So, now, we're four
24 years, 17 extensions, 21 missed deadlines, one court
25 removal action, four contempt actions, and one appeal

1 later, and I'm not sure we're any closer to closing this
2 estate than when we began.

3 On June the 6th, one year after the original deadline
4 to close the estate, we filed an action to remove the PR.
5 As part of that action, a settlement was reached. The
6 only party respondent in that action was Mr. Trippe, the
7 Appellant. James, IV, and JAT, Inc., which is a company
8 owned by the decedent, were involved in the settlement
9 negotiations. They -- and so they signed as part of the
10 settlement agreement.

11 However, in the verified petition which we filed, the
12 only action which we were seeking as far as this appeal
13 today was for the transfer of certain lots in the Bahamas.
14 As such, James, IV, was never a party to that action
15 because we weren't seeking any relief. As such,
16 Mr. Bannister should not have been involved in that, based
17 upon the ruling of probate court.

18 Your Honor, I've given you a notebook. And in the
19 back of the notebook, you're going to see that on
20 April 27th, 2012, there was an order approving the
21 settlement agreement. Before the ink was even dry on that
22 settlement agreement, the Appellant had, actually,
23 breached the terms of it.

24 So on June the 15th, 2012, approximately two months
25 after we had filed a settlement, they found the Appellant

1 to be in contempt of court. He was found to be in
2 contempt of court again in December of 2012. At that
3 time, the Court extended him a little more leniency, which
4 it already had done to transfer these lots. So he had
5 until February the 1st, 2012 -- excuse me, 2013 to
6 transfer those lots.

7 On February the 7th, we filed a third contempt
8 action. That third contempt action, I have the verified
9 pleading under number six of your tabs. And as you can
10 see from that -- the verified petition, the only
11 respondent there was the personal representative for the
12 estate.

13 On June the 25th, the Court did find Mr. Trippe to be
14 in contempt of court again for failing to transfer these
15 lots. But not only did he not transfer, he didn't make
16 any legitimate efforts to transfer. Ms. Patterson will
17 argue that issue as far as the merits of the appeal. But,
18 right now, I just want to focus on the issue before the
19 Court as to the dismissal.

20 According -- as I mentioned, 62-1-308 required a
21 10-day requirement to file the notice of appeal. That
22 wasn't filed by the estate. Instead, they're relying on a
23 motion to reconsider filed by Mr. Bannister. But Attorney
24 Bannister, as I told you, represents James, IV, who is a
25 beneficiary of this estate.

1 And I would draw your attention, Your Honor, to the
2 first five tabs, which are all orders of the probate
3 court. You see the first one is a June 15th, 2012,
4 contempt order. On the second page, you'll see about the
5 third line down -- and I tried to highlight this for
6 everyone to see, O.W. Bannister, attorney for James
7 Trippe, IV. You'll see in tab two, it's an order for
8 continuance. It's highlighted, O.W. Bannister represents
9 James Trippe, IV.

10 You'll see on the December -- under tab three the
11 December 2012 order, attorney for James Trippe, IV, O.W.
12 Bannister. June 25th, tab four, O.W. Bannister James --
13 represents James Trippe, IV. Tap five, September 30th,
14 2013, again, O.W. Bannister represents James Trippe, IV.
15 Your Honor, not in any of these orders are you going to
16 see where he represents the Appellant.

17 And, Your Honor, I've cited in my memo an order from
18 November the 20th, 2012, which, apparently, was
19 inadvertently omitted from this hand-out. But you'll see
20 that there -- on November 20th, 2012, there was an issue
21 that came before the Court where Mr. Coulter did not
22 appear for a hearing. He had instructed Mr. Bannister to
23 represent the estate on his behalf.

24 When he did that, the Court refused to allow it. And
25 it stated in its ruling -- and this is in my memo, It is

1 obvious that Mr. Bannister has a conflict of interest
2 having represented individuals with interest directly
3 opposed to Katelin [REDACTED] Mr. Bannister cannot now use
4 the knowledge he gained from that representation to effect
5 or appear to effect Katelin [REDACTED]'s distribution from
6 this estate. As an heir, she has a right to a personal
7 representative and an estate attorney, both who receive
8 compensation from the Court, whose concern is only with
9 the proper administration of the estate and meeting the
10 fiduciary obligations thereto. See the South Carolina
11 probate code.

12 Your Honor, as you're aware, that became the law of
13 the case once the judge entered that order.

14 THE COURT: Where -- now, where are you reading from?

15 MR. FARMER: Your Honor, that's the November 20th,
16 2012, order. And, apparently, that was omitted from my
17 notebook. I could try to find it in my file, if you would
18 give me a minute, or if you want me to keep going, I can
19 try to find it shortly.

20 THE COURT: That was dated in 2012?

21 MR. FARMER: November the 20th, 2012.

22 THE COURT: Well, I thought you said up to that point
23 it was clear to everybody that Mr. Bannister only
24 represented James Trippe, IV.

25 MR. FARMER: Your Honor, that is correct. He did

1 only represent James Trippe, IV.

2 THE COURT: So why would the probate court need to
3 make those findings?

4 MR. FARMER: Because when Mr. Coulter did not show up
5 for the hearing, Mr. Coulter had sent a message through
6 Mr. Bannister that Mr. Bannister would represent the
7 estate at that hearing. And the Court said that he could
8 not.

9 THE COURT: Okay. So the issue, though, really is
10 whether or not Mr. Bannister could act as attorney for the
11 estate and file the motion for reconsideration at the June
12 25th, 2013 order, though, isn't it?

13 MR. FARMER: Yes, Your Honor.

14 THE COURT: What authority do you have for the
15 principle that an attorney -- or that a motion for
16 reconsideration filed by a lawyer who has been found in
17 another order that is not subject to the motion to have a
18 conflict renders the motion for reconsideration of the
19 subsequent order void?

20 MR. FARMER: Your Honor, there is no case law on
21 point. That is a unique issue here in South Carolina.

22 There is authority which says that a proper
23 post-trial motion does not toll the statute of
24 limitations. That is in a somewhat different context.
25 It's not as in a conflict of interest. But it's with

1 regard to whether a Rule 59 motion is proper.

2 Here, we're saying that because the motion for
3 reconsideration is not proper like it was not proper in
4 these other contexts, then that means it doesn't toll the
5 statute of limitations. There is some subsequent law out
6 there in Illinois, Kansas, also, that does state that each
7 party must defend its own rights and assert its own
8 rights. You can't assert the rights of another party.

9 So what we're saying is he, as James, IV, attorney,
10 couldn't assert rights on behalf and they can't really tag
11 team each other.

12 THE COURT: Well, it's the client, though, that's got
13 the choice of his counsel; right?

14 MR. FARMER: Your Honor, I don't deny that a client
15 has the choice of counsel, but, here, not when the law of
16 the case has already said he could not do that. If it's
17 an unappealed ruling, it is the law of the case, whether
18 it's right or wrong.

19 THE COURT: But that goes back to my earlier
20 question. How does it make the motion for reconsideration
21 void? I mean, you're trying to kick the appeal out on
22 jurisdictional grounds; correct?

23 MR. FARMER: Yes, Your Honor.

24 THE COURT: So what authority is there for doing that
25 on the basis that in another order the attorney was found

1 to be subject to a conflict?

2 MR. FARMER: Your Honor, if you do look at the -- and
3 I've cited this here. I've cited it -- I think it's under
4 number seven, contrary to the order, what he says is he is
5 filing on behalf of the estate. It's very clear that he's
6 doing that.

7 As far as what law there is, I mean, that is a unique
8 issue in South Carolina. But a non-party just cannot come
9 in and, actually, file a motion. I mean, that's,
10 essentially, what's happening is a person that's not a
11 party to this case is coming in and filing a motion --

12 THE COURT: Who is that?

13 MR. FARMER: Your Honor, his client was not a party
14 to this proceeding.

15 THE COURT: To what proceeding?

16 MR. FARMER: To the contempt proceeding.

17 THE COURT: Well, this is a motion to reconsider,
18 June 25th, 2013. It says that -- the order itself says
19 that James Trippe, Jr., and James Trippe, III, were
20 respondent, singular.

21 MR. FARMER: Your Honor, he represented the fourth.

22 THE COURT: What?

23 MR. FARMER: He represented the fourth, not James
24 Trippe.

25 THE COURT: Okay. But James Trippe -- who filed the

1 motion to reconsider?

2 MR. FARMER: Mr. Bannister.

3 THE COURT: Who's the party?

4 MR. FARMER: Who's the party?

5 THE COURT: That filed the motion to reconsider.

6 MR. FARMER: Your Honor, it is the estate. But it's
7 not -- he didn't have any authority to act on the estate.

8 THE COURT: Yes. But you're trying to equate
9 Mr. Bannister with a party, aren't you?

10 MR. FARMER: Your Honor, he couldn't represent him.

11 THE COURT: You're not answering my question.

12 MR. FARMER: To a certain extent, I see where you're
13 going. And I understand that. And I'm not trying to
14 equate him. But he couldn't act on behalf of the estate.

15 THE COURT: How does that effect the jurisdictional
16 basis for the appeal. I'm having a hard time following
17 that. I mean, the parties have got the right to appeal.
18 That's pretty harsh medicine for a party to kick him out
19 of court on the ground that, well, you hired the wrong
20 lawyer.

21 MR. FARMER: Yes, Your Honor.

22 But he had his own lawyer. He was represented.

23 THE COURT: Who?

24 MR. FARMER: The Appellant was represented.

25 THE COURT: Who is the Appellant? Who are you

1 talking about?

2 MR. FARMER: The estate. It was represented already
3 by Mr. Coulter, who's sitting over there.

4 THE COURT: Well, so the -- do you have authority
5 for or any precedence that says that jurisdictional time
6 for an appeal depends on you keeping the same lawyer you
7 had in the previous order?

8 MR. FARMER: Your Honor --

9 THE COURT: I mean, lawyers -- clients change lawyers
10 routinely after decisions that they appeal from. I mean,
11 that's pretty routine, isn't it?

12 MR. FARMER: It is routine. It is very routine.
13 But, at the same time, there was already that order that
14 was there.

15 THE COURT: Okay.

16 MR. FARMER: Your Honor, I mentioned to you that
17 there are a -- the law of the case is that he could not
18 represent him. There was, also, in the actual order for
19 the motion to reconsider, it was deemed improper. That
20 was never an appealed issue. That's not -- you're not
21 going to find that in the grounds for appeal.

22 So, according to the law of the case, the motion was
23 improper. And that's what the argument is is that because
24 it was an improper motion, you can't appeal -- or because
25 it was an improper motion, the law of the case already

1 says that. And that's why those cases would apply to the
2 Rule 59 cases where it says an improper motion does not
3 toll the statute.

4 THE COURT: So if a lawyer is found disqualified due
5 to a conflict of interest in a trial court order, then
6 that means he can't act as the lawyer in moving to
7 reconsider that order or appealing the order because it's
8 the law of the case. Is that your position?

9 MR. FARMER: Yes, Your Honor.

10 THE COURT: Well, that would be one good way for a
11 trial court judge to get rid of a lawyer, wouldn't it?

12 MR. FARMER: I could see that.

13 THE COURT: Okay. Thank you, sir.

14 MR. FARMER: Thank you.

15 MR. BANNISTER: May I just address briefly, Judge?

16 THE COURT: Yes, sir.

17 MR. BANNISTER: The issue in December of 2012 that
18 was before the probate court was the issue of who was
19 going to have to pay for the opening of the estate in the
20 Bahamas, the ancillary proceeding based on the agreement
21 that was made between the parties. The judge said I had a
22 conflict of interest in that, and Mr. Coulter argued.

23 Once that issue was decided that the estate had to
24 open the ancillary proceeding and had to pay for it,
25 whatever conflict there was then evaporated, especially in

1 view of the fact that the Court then attempted to hold
2 Mr. Trippe in civil contempt. It's an entirely different
3 issue. The issue of who was going to pay for it never
4 arose again. It was determined by the Court and it's the
5 law of the case the estate has to pay for it, fine.
6 Mr. Trippe said I'll get it done. There's no conflict
7 there.

8 And I would like to correct, if I may just address
9 it. According to the rule, the notice of appeal Rule
10 203(E), to be effective, the motion for reconsideration
11 has to have the name of the Court, the judge, the Court
12 from which the appeal is taken, the docket number, the
13 date of the order, the subject name of the party taking
14 the appeal, name and address of the attorney representing
15 the parties.

16 What he's saying is that although all of the
17 requirements were met except Mr. Coulter's name didn't
18 appear that that reconsideration motion should be thrown
19 out. And, Judge, that just can't be equitable and fair.

20 THE COURT: Okay. And let's see.

21 Ms. Patterson, you were going to argue the merits of
22 the appeal; is that correct, ma'am?

23 MS. PATTERSON: Yes, Your Honor.

24 THE COURT: Okay. Yes, ma'am.

25 MS. PATTERSON: May it please the Court.

1 Your Honor, the standard of review is that the order
2 of the probate court can only be reversed if there was an
3 abuse of discretion, or if the evidence did not support
4 the Court's order. In this case, the facts simply do not
5 support that.

6 The probate court gave the estate -- the estate being
7 the personal representative, Mr. Trippe, Jr. And there
8 are a lot of Trippe's here. So I'm going to call him the
9 personal representative for reference.

10 The April 2012 settlement agreement said that upon
11 the effective date of this agreement, the personal
12 representative will transfer two lots in the Bahamas. We
13 went back to court in June. And there was an order issued
14 in June because the lots weren't transferred and some
15 payments weren't made.

16 At that time, the probate court gave the personal
17 representative additional time to transfer saying --
18 taking into consideration the jurisdictional issues of a
19 foreign jurisdiction transferring property. That was June
20 of 2012, Your Honor. The Court said, please, transfer
21 these properties as soon as possible. December 21st,
22 2012, the lots still haven't been transferred to the minor
23 child. We go back to court. The Court says, you know
24 what, we're going to give you some more time. Get them
25 transferred by February 1st, 2013.

1 Now, we are far beyond the 60 days of the settlement
2 agreement, Your Honor. In the record, you will find that
3 the Bahamian counsel was not even retained until March of
4 2013. There was no effort made to even attempt to
5 transfer these lots. We -- as the minor child's
6 attorneys, we reached out to the Bahamas, hired counsel.
7 We went through the process. There is a process down
8 there. And it does not take over a year to get these lots
9 transferred, Your Honor. We did the research. We went
10 back and we supported our position to the probate court.

11 And in June of -- June 25th of 2013, the Court found
12 him in contempt. Because there was no effort made on
13 their part to transfer these lots, Your Honor, until that
14 last contempt action was filed in February of 2013. And,
15 Your Honor, these lots are still not transferred. It is
16 now almost two years after they agreed to transfer these
17 lots. Not only that, a finding of contempt may be
18 predicated on a violation of the settlement agreement. So
19 here, Judge Faulkner's order should stand and be affirmed
20 on the contempt action.

21 Secondly, the attorneys fees, Your Honor. The
22 standard of review and abuse of discretion is reversed
23 only if there's an error of law or the evidence does not
24 support it. Judge Faulkner in her order at tab five, Page
25 5, specifically, walks through the Baron [phonetic]

1 factors, and goes into some detail about the
2 contentiousness of this case. This case has been going on
3 for years, Your Honor. We have been trying to protect the
4 interest of a minor child.

5 And what has not been said today is that
6 Mr. Bannister -- the reason Mr. Bannister cannot represent
7 the estate is he represented the uncle who the company was
8 transferred to after the decedent passed away. The
9 company, which is the largest asset of this estate, was
10 supposed to go to the two children because there was no
11 will. And his client received a transfer of this company.

12 My client, Katelin [REDACTED], her interests were never
13 protected by the personal representative or
14 Mr. Bannister's client. And that is why the probate court
15 was very firm that he could not represent this estate.

16 So back to these attorneys fees, Your Honor. Again,
17 a very contentious issues. We have been fighting with
18 Mr. Coulter and Mr. Bannister to protect this minor
19 child's interest.

20 The -- there was a subpoena out there for evidence of
21 any action taken to transfer these lots. Mr. Bannister
22 did not answer the subpoena. We went to court. He tried
23 then to bring in all this evidence, which he had not
24 provided to us. The Court -- we objected. The Court
25 sustained. He proffered the evidence. And even in the

1 Court's order, she states that the proffered evidence
2 indicates that there was no effort until after the
3 February contempt hearing was filed to even transfer or
4 even hire counsel to transfer these lots in the Bahamas.

5 The attorneys fees are not excessive. They were very
6 necessary. And, unfortunately, we have now filed our
7 fourth contempt action. We are back in the probate court
8 because more payments have not been made.

9 Your Honor, Mr. Bannister requested the right to
10 cross-examine -- or examine my attorney's fees, which I
11 offered testimony. I answered all his questions. The
12 Court had it on the record. She had our itemized time
13 listing. And, based on the record, she approved our
14 attorneys fees. And you'll see that, clearly, set forth
15 on Page 5 of tab five of her order.

16 THE COURT: Thank you.

17 MR. BANNISTER: May I just briefly reply, Judge?

18 The record reflects an effort made by Mr. Trippe,
19 Jr., that's cited in the -- Mr. Coulter's brief. And I
20 was hired in January of 2013 to obtain the deed and
21 transfer of the lots. That's in the transcript.

22 The record reflects a letter was sent on January the
23 30th to the Bahamian attorney requesting information for
24 costs of transferring the lots. We got a reply on
25 February the 6th of what actions were needed.

1 A letter was sent to Katelin [REDACTED]'s attorneys dated
2 February the 25th, 2013, conveying that information. How
3 she can stand up here and say nobody communicated with her
4 about the efforts being made to get these lots transferred
5 is beyond me. That's in the record.

6 Then on January -- on March 6th, the fees were paid
7 and the attorney was hired. That's the one they all seize
8 on, aha, you didn't do anything until March the 6th,
9 despite the fact that the information was sent to her back
10 in February.

11 She even responded on March the 21st, reflecting the
12 information requested by the February 25th letter to the
13 Bahamian attorney. How can she stand up here and say I
14 didn't know what was going on, nobody told me anything?
15 She supplied the documents to the Bahamian attorney.

16 In April, the Bahamian attorney reflected the
17 personal representative had completed and furnished the
18 application, fiduciary letters, inventory appraisal,
19 inventory, amended inventory, second amended settlement
20 agreement recognized by the Court order, certified copies
21 of death certificate, tax notices, which is what they
22 require. He requested they be sent by courier on April
23 the 2nd, and they were sent on April 4th. They couldn't
24 get them much faster than that.

25 But there was an additional letter on April the 18th

1 from the Bahamian attorney as to certain things that were
2 needed. A letter on April 22nd regarding the affidavit.
3 A letter from April 23rd regarding the documents
4 requested.

5 I am fairly certain that all of those were
6 transmitted to Mrs. Patterson. But I can find letters
7 from Mrs. Patterson to me in February talking about
8 Mr. Morin's personal information being sent directly to
9 the Bahamian attorney. So how she can say she didn't know
10 an effort was being made is just beyond belief. And I
11 might add that's some of her basis for these attorneys
12 fees.

13 Thank you, Your Honor.

14 THE COURT: Thank you.

15 MS. PATTERSON: Your Honor, may I reply?

16 The lots were supposed to be transferred on
17 February 1st. What he is referring to is after they were
18 not -- the lots were not transferred on February 1st. We
19 filed, yet another, contempt action on the 7th. That then
20 motivated Mr. Bannister, who doesn't represent the estate,
21 to file -- to reach out to the Bahamian counsel and,
22 actually, make some effort. But that was after he was
23 ordered to transfer these lots by February 1st. So, yes,
24 he did take action. But those action -- that action was
25 done after the Court had given him another 45 days to

1 transfer.

2 The December order -- after the December order, he
3 should have taken action on the estate, through
4 Mr. Coulter, should have taken action to transfer these
5 lots. That was not done. They did not meet the deadline
6 on February 1st. And the standard of review here is
7 whether or not Judge Faulkner abused her discretion based
8 on the record.

9 THE COURT: Okay. Well, thank you for your
10 arguments.

11 I'm going to review the record in light of what I've
12 heard here today. And I'll let you know my decision as
13 soon as I can, hopefully, within the next 10 days.

14 Thank you.

15 *****END OF TRANSCRIPT OF RECORD*****
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

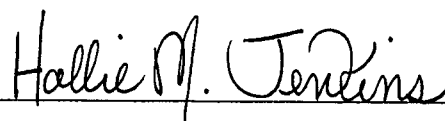
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 18th day of February, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 16, 2014

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

PROBATE COURT

IN THE MATTER OF Estate of James A. Trippe, III

CASE NUMBER 2009-ES-23-00707

FILED

MAY 27 2011

**Greenville County
Probate Court**

DEED OF DISTRIBUTION

WHEREAS, the decedent died on the 26th day of March, 2009 and

WHEREAS, the estate of the decedent is being administered in the Probate Court for Greenville
County, South Carolina in File # 2009-ES-23-00707; and,

WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has
granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release to:

Name: Paul Trippe

Address: 5135 Locust Hill Road

Travelers Rest, SC 29690

the following described property:

500 shares of JAT, Inc.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises/Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Paul Trippe
 their heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 26th day of May, 20 11.

SIGNED, SEALED AND DELIVERED
 IN THE PRESENCE OF

Estate of: James A. Trippe, III

by Signature: James A. Trippe, III

Witness: Virginia L. Kane

Witness: Jane M. Tyler

STATE OF SOUTH CAROLINA
 COUNTY OF

)
)

PROBATE

PERSONALLY appeared before me Virginia L. Kane

and made oath that he/she saw the within named

Personal Representative(s) sign, seal, and as their act and deed, deliver the within written Deed, and that he/she with

Jane M. Tyler

witnessed the execution thereof.

SWORN to before this 26th day of
May, 20 11

Witness Signature:

Virginia L. Kane

Duffin J. Hammitt
 Notary Public for South Carolina
 My Commission Expires: 7/16/19

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

PROBATE COURT

IN THE MATTER OF Estate of James A. Trippe, III

CASE NUMBER 2009-ES-23-00707

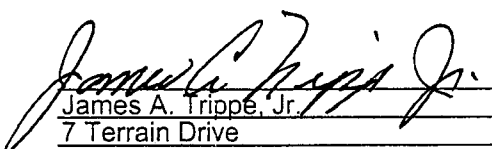
PROPOSAL FOR DISTRIBUTION

Personal Representative(s): James A. Trippe, Jr.

FILED
MAY 27 2011
Greenville County
Probate Court

Name and Address of Distributee	Amount or Item
Paul Tippe 5135 Locust Hill Road Travelers Rest, SC 29690	500 shares of JAT, Inc.

Executed this 20th day of May, 2011.

Signature: 

Name: James A. Trippe, Jr.

Address: 7 Terrain Drive

Greenville, SC 29605

Telephone (O): _____

(H): 864-270-2028

Signature: _____

Name: _____

Address: _____

Telephone (O): _____

(H): _____

STATE OF SOUTH CAROLINA

COUNTY OF: GREENVILLE

IN THE MATTER OF: James A. Trippe, III,
deceased)
)
)
)
)

IN THE PROBATE COURT

DEED OF DISTRIBUTION

) CASE NUMBER: 2009-ES-23-00707

WHEREAS, the decedent died on March 26, 2009; and,WHEREAS, the estate of the decedent is being administered in the Probate Court for Greenville County, South Carolina in File #2009-ES-23-00707; and,

WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter;
and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted bargained, sold and released, and by these Presents does grant, bargain, sell and release to:

Name: Gene Morin, Conservator for Katelin [REDACTED] a minorAddress: 36 Stilwood DriveGreenville, SC 29607

the following described property:

Lots 4 and 5, Block 67, Section I, Eleuthera Island Shores Subdivision, Eleuthera, Commonwealth of the Bahamas.

TOGETHER with all and singular the Rights Members Hereditaments and Appurtenances to the said Premises/Property belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Gene Morin, Conservator for Matelin Trippe, a minor, their heirs and assigns forever.

IN WITNESS WHERE OF the undersigned as Personal Representative of the estate of the decedent has executed this Deed, on this 18 day of July, 2012

SIGNED, SEALED AND DELIVERED

Estate of: James A. Trippe, III

IN THE PRESENCE OF

by Signature: James A. Trippe, III

Witness:

Amy M. Price

Witness:

Jan B. Brown

STATE OF SOUTH CAROLINA)

PROBATE

COUNTY OF GREENVILLE)

PERSONALLY appeared before me Amy M. Price and made oath that he/she saw the within named Personal Representative(s) sign, seal, and as their act and deed, deliver the within written Deed, and that he/she with Jan B. Brown witnessed the execution thereof.

SWORN to before me this 18 day of

Witness Signature:

July, 20 12

Jan B. Brown

Nargo A. Green

Notary Public for South Carolina

My Commission Expires: 01-24-2021



Office of the Probate Court

Debora A. FaulknerProbate Judge for Greenville County
Greenville, South Carolina

www.greenvillecounty.org/probate

RECEIVED
AUG - 6 2012
CLERK OF COURT

August 3, 2012

Mr. Michael T. Coulter
Attorney at Law
P. O. Box 6728
Greenville, SC 29606

Mr. O. W. Bannister
Attorney at Law
P. O. Box 10007
Greenville, SC 29603

RE: Estate of James A. Trippe, III, Deceased
Probate Court File No. 2009ES2300707

Dear Mr. Coulter:

Now that the litigation is resolved in the above estate, the Personal Representative may proceed to complete the probate. We will need:

- Release of claim from Wells Fargo Dealer Services
- Copy of transfers for mobile home, boat/motor/trailer, vehicle, ATV (not required if accounting reflects liquidation)
- Copy of recorded deeds of distribution for Bahamas property (Item 1 on 12/12/11 inventory) and JAT real estate (Item 4 on 12/12/11 inventory)
- Possibly an agreement – Deed of distribution for 5163 Locust Hill Road (Item 3 on 12/12/11 inventory) reflects James Trippe IV but estate is intestate
- Application for settlement
- Final Accounting - last accounting went through 5/23/11 (possible correction of prior accountings as 1st accounting should have started with initial beginning balance of zero or at least the value of estate assets but instead it lists a figure that deducted the encumbrances; 2nd accounting begins with the date of 7/16/10 but prior accounting ended 6/15/10)
- Beneficiary Receipt/Releases from James A. Trippe IV and Conservator of Katelin Trippe

We will look forward to receiving these items within 30 days.

Sincerely,

Judicial Assistant
Estate Division
(864) 467-7179

Estate Division • 301 University Ridge, Suite 1200, • Greenville, SC 29601 • (864) 467-7170
Protective Proceedings Division • 301 University Ridge, Suite 5600, • Greenville, SC 29601 • (864) 467-7404
Mental Health Division • 301 University Ridge, Suite 5600, • Greenville, SC 29601 • (864) 467-7085
Marriage License Division • 301 University Ridge, Suite 5600, • Greenville, SC 29601 • (864) 467-7171



Office of the Probate Court

Debora A. Faulkner
 Probate Judge for Greenville County
 Greenville, South Carolina

www.greenvillecounty.org/probate

September 17, 2012

Mr. O. W. Bannister
 Attorney at Law
 P. O. Box 10007
 Greenville, SC 29603

RE: Estate of James A. Trippe, III, Deceased
 Probate Court File No. 2009ES2300707

Dear Mr. Bannister:

As you will recall, the other day you called to request additional time for closing the above estate. At that time we granted a 30-day extension, meaning the closing requirements are now due October 4.

There seems to be some question regarding the Bahamas property. As noted in our prior letter, a copy of the *recorded* deed of distribution is one of the closing requirements. I have reviewed this specific item with Judge Faulkner, and she confirms that we require the Personal Representatives in all cases to provide a copy of the recorded deed of distribution (or equivalent for out of state/country property) prior to issuing the closing order for the estate.

If you have any questions, please let us know.

Sincerely,

Judicial Assistant
 Estate Division
 (864) 467-7179

cc: Jacqueline H. Patterson

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT)

COUNTY OF GREENVILLE)

Case No. 2009-ES-23-00707

FILEDIN THE MATTER OF)
JAMES A. TRIPPE, III Deceased)

JAN 25 2013

Gene D. Morin, Conservator)
for Katelin [REDACTED])**GREENVILLE COUNTY
PROBATE COURT**

Petitioner,)

**PETITIONER'S MOTION
FOR ATTORNEY'S FEES AND COSTS**

v.)

James Trippe, Jr., individually and as)
Personal Representative of the Estate of)
James A. Trippe, III,)

Respondent.)

PLEASE TAKE NOTICE that the undersigned Attorneys for Petitioner Gene D. Morin, Conservator for Katelin [REDACTED] ("Conservator"), do hereby move before the Probate Court for Greenville County for an Order Awarding Attorney's Fees and Costs as provided for in the Settlement Agreement incorporated into an Order of this Court on April 27, 2012. Specifically, the undersigned Attorneys move for an Order granting them costs and fees associated with the enforcement of Paragraph 4 of the Settlement Agreement.

This Motion is based on the pleadings in this matter, the Affidavits filed herewith, the records on file with the Court in this matter, the arguments of counsel, and on such laws and facts as are appropriate and applicable. The grounds for this Motion are as follows:

(1) Decedent James A. Trippe, III ("Decedent") died on March 26, 2009. James Trippe, Jr. ("PR") was appointed as Personal Representative of Decedent's Estate on April 6, 2009.

(2) The PR retained Michael Coulter to serve as the Estate's counsel during administration of the Estate.

(3) On June 6, 2011, Petitioner Gene D. Morin as Conservator for Katelin ~~Tripp~~, a minor child, filed a Petition seeking, among other things, the removal of the PR.

(4) On or about March 26, 2012, Petitioners and Respondents James Trippe, IV and James Trippe, Jr., individually and as PR, reached an agreement resolving the issues set forth in the Petition.

(5) The settlement was reduced to writing and the written Settlement Agreement was incorporated into an Order of this Court on April 27, 2012.

(6) Paragraph 4 of the Settlement Agreement states:

Bahamas Lots. Within sixty (60) days following the execution of this Agreement, Respondent PR shall transfer to Petitioner the two (2) lots located in the Bahamas (the "Lots") and identified on Schedule A.1. of the Second Supplemental Inventory and Appraisement dated December 9, 2011. The Lots shall be transferred free and clear of all liens, mortgages or other encumbrances. In connection herewith, **Respondent PR shall perform all acts and execute all documents required by the Greenville County Probate Court to transfer the Lots to Petitioner.** (Emphasis added)

(7) By letters dated August 3, 2012 and September 17, 2012, the Greenville County Probate Court informed the Personal Representative that copies of the recorded deeds of distribution for the Bahamas lots must be filed with the Court prior to closing Decedent's Estate.

(8) On October 4, 2012, Petitioner filed a Petition seeking an Order of this Court compelling the PR to perform his duties in accordance with S.C. Code Ann. § 62-3-1001(a) (2012) by transferring the Bahamas lots to Petitioner and by filing copies of the recorded deeds of distribution with this Court.

(9) A hearing was set in this matter for November 20, 2012. The PR's attorney, Michael Coulter, failed to appear at this hearing.

(10) On November 20, 2012, the Court entered an Order which provided, in pertinent part, the following:

The failure of Mr. Coulter to appear without proper notice to the court wasted . . . the time of the litigants, witnesses, attorneys and the Court Reporter. . . . In addition, **the failure to appear caused the clients of Mr. Bannister and Ms. Patterson to incur unnecessary attorneys' fees/costs**, and it has caused an unnecessary delay of this case and a further delay in the closing of the estate. (Emphasis added)

(11) Because of Mr. Coulter's failure to appear, the hearing was re-set for December 19, 2012.

(12) As stated in this Court's Order dated December 21, 2012, this Court found that the PR's "failure to effectively transfer the Lots to Petitioner in proper form, free and clear of all liens and encumbrances, [was] a breach of his duties under Paragraph 4 of the Settlement Agreement." As a result, the Court ordered the PR to "file all documents necessary to close this Estate, including but not limited to a recorded copy of the Bahamas deed, no later than February 1, 2013."

(13) Paragraph 14 of the Settlement Agreement states:

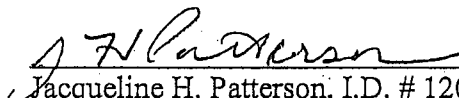
Attorneys' Fees. If an action is commenced to enforce any provision of this Settlement Agreement, the prevailing party as determined by a final court judgment shall be entitled to recover from the other party such reasonable attorneys' fees and costs incurred in the action as the court may award.

(14) Based upon Paragraph 14 of the Settlement Agreement and other applicable law, Petitioner would allege and show that it is entitled to recover attorney's fees and costs resulting from (i) the failure of Respondent PR and counsel to appear at the November 20, 2012 hearing and (ii) the failure of Respondent PR to comply with his duties under Paragraph 4 of the Settlement Agreement. Affidavits of Attorney's Fees are attached hereto as Exhibit A and Exhibit B and incorporated herein by reference.

This Motion shall be supported by the applicable laws of the State of South Carolina, whether common or statutory, and any supporting affidavits or memoranda as may be filed with the Court prior to the hearing. Based upon the foregoing, Petitioner respectfully requests an Order of this Court awarding Petitioner its costs and attorney's fees.

Pursuant to Rule 11, SCRCP, counsel affirms that they have attempted in good faith to resolve this issue prior to filing this Motion.

Respectfully Submitted,


Jacqueline H. Patterson, I.D. # 12090
Nathaniel C. Farmer, I.D. #75976
PATTERSON & ASSOCIATES, P.A.
1088 N. Church Street
Greenville, SC 29601
(864) 370-4159
Attorneys for Petitioner

January 23, 2013
Greenville, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT)

COUNTY OF GREENVILLE)

Case No. 2009-ES-23-00707)

IN THE MATTER OF:

JAMES A. TRIPPE, III, Deceased

Gene D. Morin, Conservator
for Katelin Trippe,

Petitioner,

v.

James Trippe, Jr., individually and as
Personal Representative of the Estate of
James A. Trippe, III,

Respondent.

**AFFIDAVIT OF
ATTORNEY'S FEES AND COSTS
RELATING TO ENFORCEMENT OF
SETTLEMENT AGREEMENT**

PERSONALLY appeared before me the undersigned, Jacqueline H. Patterson, who, being duly sworn, deposes and states as follows:

1. I am a licensed practicing attorney with Patterson & Associates, P.A. and have been practicing law in Greenville County since 1997.

2. That I am a member in good standing of the South Carolina Bar and its Association.

3. That I have been retained by Petitioner in the above-referenced matter.

4. That I incorporate herein Rule 1.5 as contained in Rule 407, South Carolina Appellate Court Rules, which contains the Canons of Ethics concerning the setting of attorney's fees. That I further call the attention of the Court to the numerous decisions of the South Carolina Supreme Court and the Court of Appeals concerning the factors and criteria which should be considered in the setting of attorney's fees. That I rely upon the discretion of this Court in the

determination of the amount of fees, based, among other things, upon this affidavit and the Court's file herein, which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, and the other factors which are set forth in the Canons of Ethics and the case law decisions of this State including the criteria set forth in *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989).

5. In support of Petitioner's Motion for Attorney's Fees and Costs, I would state that my standard hourly rate of \$300.00 per hour is customary within this locality. Furthermore, the standard hourly rate of \$195.00 per hour for work done by my associate, Nathaniel C. Farmer, is also customary within this locality.

6. That I charge a standard hourly rate of \$65.00 per hour for work done by my paralegals.

7. That, upon review of the time records, the following time has been recorded and services rendered solely in connection with the hearing set for November 20, 2012, in the representation of Petitioner in connection with the transfer of the two Bahamas lots:

<u>Attorney</u>	<u>Hours</u>	<u>Rate</u>	<u>Fee</u>
Jacqueline H. Patterson	2.25	\$300 / hour	\$ 675.00
Nathaniel C. Farmer	0.50	\$195 / hour	\$ 97.50
Paralegal	2.10	\$65 / hour	\$ 105.00 (fee reduced)
			\$ 877.50

8. That in connection with the November 20, 2012 hearing, Deponent has expended on behalf of Petitioner the following costs:

Postage Expense	\$2.90

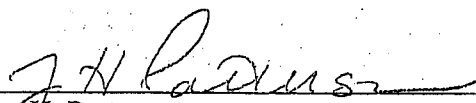
9. That taking all relevant facts into consideration, the additional time necessary for the completion of the proceedings, the nature, extent, and difficulty of the legal services rendered, the Deponent believes a reasonable fee for legal services performed to be:

TOTAL COSTS AND FEES:

\$ 888.40

FURTHER AFFIANT SAYETH NOT.

By:


Jacqueline H. Patterson
Patterson & Associates, P.A.
1088 North Church Street
Greenville, SC 29601
(864) 329-0548
Attorney for Petitioner

Sworn to and subscribed before me
this 23rd day of January, 2013.

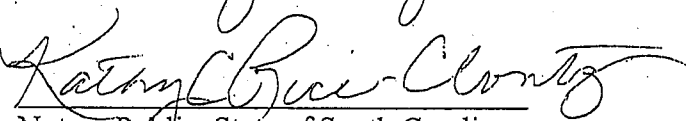

Kathryn Bice Clontz
Notary Public, State of South Carolina
My Commission Expires: 3/8/2014

EXHIBIT B

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF GREENVILLE)

Case No. 2009-ES-23-00707

IN THE MATTER OF:
JAMES A. TRIPPE, III, DeceasedGene D. Morin, Conservator
for Katelin ~~Tripp~~,

Petitioner,

v.

**AFFIDAVIT OF ATTORNEY'S FEES
RELATING TO NOVEMBER 20, 2012
HEARING**James Trippe, Jr., individually and as
Personal Representative of the Estate of
James A. Trippe, III,

Respondent.

PERSONALLY appeared before me the undersigned, Jacqueline H. Patterson, who,
being duly sworn, deposes and states as follows:

1. I am a licensed practicing attorney with Patterson & Associates, P.A. and have
been practicing law in Greenville County since 1997.

2. That I am a member in good standing of the South Carolina Bar and its
Association.

3. That I have been retained by Petitioner in the above-referenced matter.

4. That I incorporate herein Rule 1.5 as contained in Rule 407, South Carolina
Appellate Court Rules, which contains the Canons of Ethics concerning the setting of attorney's
fees. That I further call the attention of the Court to the numerous decisions of the South Carolina
Supreme Court and the Court of Appeals concerning the factors and criteria which should be
considered in the setting of attorney's fees. That I rely upon the discretion of this Court in the

determination of the amount of fees, based, among other things, upon this affidavit and the Court's file herein, which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, and the other factors which are set forth in the Canons of Ethics and the case law decisions of this State including the criteria set forth in *Baron¹ Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989).

5. In support of Petitioner's Motion for Attorney's Fees and Costs, I would state that my standard hourly rate of \$300.00 per hour is customary within this locality. Furthermore, the standard hourly rate of \$195.00 per hour for work done by my associate, Nathaniel C. Farmer, is also customary within this locality.

6. That I charge a standard hourly rate of \$65.00 per hour for work done by my paralegals, but only charged \$50.00 per hour for work performed in this matter.

7. That, upon review of the time records, the following time has been recorded and services rendered in connection with Petitioner's efforts to enforce Paragraph 4 of the Settlement Agreement (exclusive of the hearing set for November 20, 2012):

<u>Attorney</u>	<u>Hours</u>	<u>Rate</u>	<u>Fee</u>
Jacqueline H. Patterson	12.65	\$280-300 / hour	\$3,697.00
Nathaniel C. Farmer	14.40	\$195 / hour	\$2,808.00
Paralegal	15.80	\$50 / hour	<u>\$ 790.00</u>
			\$7,295.00

This fee includes, but is not limited to, the following services rendered: (i) legal research for and preparation of the Petition; (ii) research regarding the transfer of the Bahamas Lots; (iii) correspondence and telephone conferences with Bahamian counsel regarding procedure for properly transferring the Lots under Bahamian jurisdiction, the inability to find unrecorded deeds, tax implications and liens and encumbrances which may affect title to the Lots; (iv)

correspondence with opposing counsel attempting to resolve this dispute; (v) trial preparation; and (vi) preparation of a final order.

8. That a \$1,500.00 retainer was paid to Bahamas counsel.

9. That in connection with Petitioner's efforts to enforce Paragraph 4 of the Settlement Agreement (exclusive of the hearing set for November 20, 2012), Deponent has expended on behalf of Petitioner the following costs:

Postage/Overnight Expense:	\$ 22.38
Wire Expense to Bahamas counsel:	\$ 20.00
Courier Expense:	\$ 20.00
Transcript from Contempt Hearing:	\$ 163.25
	<u>\$ 225.63</u>

10. That taking all relevant facts into consideration, the retention of Bahamian counsel, the additional time necessary for the completion of the proceedings, the nature, extent, and difficulty of the legal services rendered, the Deponent believes a reasonable fee for legal services performed to be:

TOTAL COSTS AND FEES: \$9,020.63

FURTHER AFFIANT SAYETH NOT.

By:

J. H. Patterson
 Jacqueline H. Patterson
 Patterson & Associates, P.A.
 1088 North Church Street
 Greenville, SC 29601
 (864) 329-0548
 Attorney for Petitioner

Sworn to and subscribed before me
 this 23rd day of January, 2013.

Kathy C. Rice-Clontz
 Notary Public, State of South Carolina
 My Commission Expires: 3/8/2014

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE PROBATE COURT

Case No. 2009-ES-23-00707

IN THE MATTER OF:
JAMES A. TRIPPE, III, Deceased

Gene D. Morin, Conservator)
for Katelin [REDACTED],)

Petitioner,)

v.)

James Trippe, Jr., individually and as)
Personal Representative of the Estate of)
James A. Trippe, III,)

Respondent.)

**SUPPLEMENTAL AFFIDAVIT OF
ATTORNEY'S FEES AND COSTS
RELATING TO ENFORCEMENT OF
SETTLEMENT AGREEMENT**

PERSONALLY appeared before me the undersigned, Jacqueline H. Patterson, who, being duly sworn, deposes and states as follows:

1. On or about January 23, 2013, I filed a Motion and two affidavits seeking recovery of attorney's fees and costs for services rendered in connection with Petitioner's efforts to enforce Paragraph 4 of the Settlement Agreement executed by the parties in the above-captioned matter.

2. I make this affidavit in supplement to the two Affidavit of Fees filed on January 23, 2013.

3. That, upon review of the time records from January 23, 2013 through present, the following time has been recorded and services rendered in connection with Petitioner's efforts to enforce Paragraph 4 of the Settlement Agreement:

<u>Attorney</u>	<u>Hours</u>	<u>Rate</u>	<u>Fee</u>
Jacqueline H. Patterson	3.50	\$300 / hour	\$1,050.00
Nathaniel C. Farmer	7.70	\$195 / hour	\$1,501.50
Paralegal	2.00	\$65/ hour	<u>\$ 130.00</u>
			\$2,681.50

This fee includes, but is not limited to, the following services rendered: (i) preparation of Verified Petition; (ii) production of documents to Respondent; (iii) preparation of subpoena; (iv) preparation for hearing; (v) status conferences; and (vi) court hearing.

4. That, from January 23, 2013 through present, in connection with Petitioner's efforts to enforce Paragraph 4 of the Settlement Agreement, Deponent has expended on behalf of Petitioner the following costs:

Process Server Fee:	<u>\$ 30.00</u>
	\$ 30.00

5. That I estimate an additional hour of my time for the hearing scheduled April 24, 2013.

6. That taking all relevant facts into consideration, the additional time necessary for the completion of the proceedings, the nature, extent, and difficulty of the legal services rendered, the Deponent believes a reasonable fee for legal services performed from January 23, 2013 through present to be **\$3,011.50.**

7. That taking all relevant facts into consideration as more fully set forth in the two fee affidavits filed with the Court on or about January 23, 2013, Deponent seeks to recover attorney's fees and costs in the amount of **\$12,920.53.**

FURTHER AFFIANT SAYETH NOT.

By:

JH Patterson
Jacqueline H. Patterson
Patterson & Associates, P.A.
1088 North Church Street
Greenville, SC 29601
(864) 329-0548
Attorney for Petitioner

Sworn to and subscribed before me
this 24 day of April, 2013.

Cherith Whitaker
Notary Public, State of South Carolina
My Commission Expires: 4/1/21

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT)

COUNTY OF GREENVILLE)

Case No. 2009-ES-23-00707

IN THE MATTER OF:
JAMES A. TRIPPE, III, Deceased**FILED****AUG 27 2013**Gene D. Morin, Conservator
for Katelin [REDACTED],**GREENVILLE COUNTY
PROBATE COURT**

Petitioner,

v.

**SUPPLEMENTAL AFFIDAVIT OF
ATTORNEY'S FEES AND COSTS**James Trippe, Jr., individually and as
Personal Representative of the Estate of
James A. Trippe, III,

Respondent.

PERSONALLY appeared before me the undersigned, Jacqueline H. Patterson, who, being duly sworn, deposes and states as follows:

1. On or about January 25, 2013, I filed a Motion and two affidavits seeking recovery of attorney's fees and costs for services rendered in connection with Petitioner's efforts to enforce Paragraph 4 of the Settlement Agreement executed by the parties in the above-captioned matter.

2. On or about April 24, 2013, I filed a third fee affidavit seeking recovery of attorney's fees and costs for services rendered in connection with Petitioner's continued efforts to enforce Paragraph 4 of the Settlement Agreement.

3. I make this affidavit in supplement to the three fee affidavits referenced in the foregoing paragraphs.

4. That, upon review of the time records from April 24, 2013 through present, the following time has been recorded and services rendered in connection with Petitioner's efforts to enforce Paragraph 4 of the Settlement Agreement:

<u>Attorney</u>	<u>Hours</u>	<u>Rate</u>	<u>Fee</u>
Jacqueline H. Patterson	6.00	\$300 / hour	\$1,800.00
Nathaniel C. Farmer	22.00	\$195 / hour	\$4,290.00
Paralegal	1.00	\$65/ hour	\$ 65.00
			<u>\$6,155.00</u>

This fee includes, but is not limited to, the following services rendered: (i) additional time relating to the April 24, 2012 hearing above and beyond that which was estimated in the April 24, 2013 affidavit; (ii) legal research relating to contempt hearing; (iii) correspondence to Bahamian counsel; (iv) preparation of contempt Order; (v) legal research relating and in response to Motion to Reconsider filed by Attorney Bannister; (vi) preparation of Return to Motion; (vii) preparation for hearing; (viii) hearing and (ix) preparation of supplemental Order.

5. That, upon review of the time records from April 24, 2013 through present, 11.25 hours of attorney time was expended in connection with the contempt hearing (see i, ii and iv in Paragraph 4 above) and 16.25 hours of attorney time was expended in response to the Motion for Reconsideration filed by Attorney Bannister (see v-ix in Paragraph 4 above).

6. That, from April 24, 2013 through present, in connection with Petitioner's efforts to enforce Paragraph 4 of the Settlement Agreement, Deponent has expended on behalf of Petitioner the following costs:

Postage Expense:	<u>\$ 4.18</u>
	<u>\$ 4.18</u>

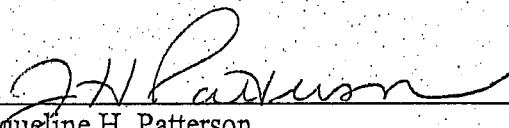
7. That taking all relevant facts into consideration, the additional time necessary for the completion of the proceedings, the nature, extent, and difficulty of the legal services

rendered, the Deponent believes a reasonable fee for legal services performed from April 24, 2013 through present to be \$6,159.18.

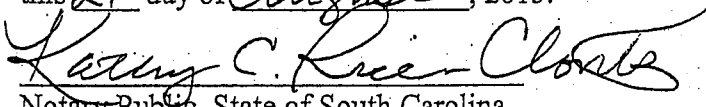
8. That taking all relevant facts into consideration as more fully set forth in the three fee affidavits filed with the Court, Deponent seeks to recover attorney's fees and costs in the total amount of \$19,079.71.

FURTHER AFFIANT SAYETH NOT.

By:


Jacqueline H. Patterson
Patterson & Associates, P.A.
1088 North Church Street
Greenville, SC 29601
(864) 329-0548
Attorney for Petitioner

Sworn to and subscribed before me
this 27 day of August, 2013.


Notary Public, State of South Carolina

My Commission Expires: 3/8/2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE CIRCUIT COURT
 THIRTEENTH JUDICIAL CIRCUIT

IN THE MATTER OF)
 JAMES A. TRIPPE, III Deceased)

APPEAL FROM THE
 GREENVILLE COUNTY
 PROBATE COURT

Gene D. Morin, Conservator
 for Katelin ~~Trippe~~)

Case No. 2013-CP-23-05389

Respondent,)

v.)

**AFFIDAVIT OF
 ATTORNEY'S FEES AND COSTS**

James Trippe, Jr., individually and as
 Personal Representative of the Estate of
 James A. Trippe, III,)

Appellant.)

PERSONALLY appeared before me the undersigned, Jacqueline H. Patterson, who,
 being duly sworn, deposes and states as follows:

1. I am a licensed practicing attorney with Patterson & Associates, P.A. and have been practicing law in Greenville County since 1997.
2. That I am a member in good standing of the South Carolina Bar and its Association.
3. That I have been retained by Respondent in the above-referenced matter and the pending matter in the Greenville County Probate Court.
4. That I incorporate herein Rule 1.5 as contained in Rule 407, South Carolina Appellate Court Rules, which contains the Canons of Ethics concerning the setting of attorney's fees. That I further call the attention of the Court to the numerous decisions of the South Carolina Supreme Court and the Court of Appeals concerning the factors and criteria which should be considered in the setting of attorney's fees. That I rely upon the discretion of this Court in the

determination of the amount of fees, based, among other things, upon this affidavit and the Court's file herein, which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, and the other factors which are set forth in the Canons of Ethics and the case law decisions of this State including the criteria set forth in *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989).

5. In support hereof, I would state that my standard hourly rate of \$300.00 per hour is customary within this locality. Furthermore, the standard hourly rate of \$195.00 per hour for work done by my associate, Nathaniel C. Farmer, is also customary within this locality.

6. That I charge a standard hourly rate of \$65.00 per hour for work done by my paralegals.

7. That, upon review of the time records, the following time has been recorded and services rendered in connection with Respondent's efforts to defend this Appeal:

<u>Attorney</u>	<u>Hours</u>	<u>Rate</u>	<u>Fee</u>
Jacqueline H. Patterson	5.75	\$300 / hour	\$1,725.00
Nathaniel C. Farmer	31.80	\$195 / hour	\$6,276.00
Paralegal	0.25	\$65 / hour	<u>\$ 16.25</u>
			\$7,942.25

This fee includes, but is not limited to, the following services rendered: (i) legal research for and preparation of the Memorandum and Motion to Dismiss; (ii) legal research for and preparation of Respondent's Brief; (iii) correspondence to/from opposing counsel; (iv) hearing preparation; and (v) estimated time for preparation of a final order.

8. That in connection with this Appeal, Deponent has expended on behalf of Respondent the following costs:

Postage/Overnight Expense:	\$ 5.00
Courier Expense:	\$ 20.00

Transcript from Contempt Hearings: \$ 2.50
 \$ 27.50

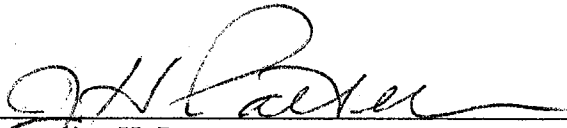
9. Deponent estimates that an additional 1.0 hours of time for Attorney Jacqueline H. Patterson and 1.5 hours of time for Attorney Nathaniel C. Farmer will be necessary to complete these proceedings, said time including but not limited to today's hearing and preparation of a final court order.

10. That taking all relevant facts into consideration, the retention of Bahamian counsel, the additional time necessary for the completion of the proceedings (estimated 1.5 hours), the nature, extent, and difficulty of the legal services rendered, the Deponent believes a reasonable fee for legal services performed to be:

TOTAL COSTS AND FEES: **\$ 8,562.25**

FURTHER AFFIANT SAYETH NOT.

By:



 Jacqueline H. Patterson
 Patterson & Associates, P.A.
 1088 North Church Street
 Greenville, SC 29601
 (864) 329-0548
Attorney for Respondent

Sworn to and subscribed before me
 this 18 day of February, 2014.



 Notary Public, State of South Carolina
 My Commission Expires: 4/1/21