

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2014-002410

RECEIVED

MAY 13 2015

SC Court of Appeals

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JUN 02 2015

SC Court of Appeals

Raymond D. Hobby

vs.

Mary T. Hobby

vs.

Frances B.B. Knowlton, individually and as Trustee

Respondent

Appellant

Respondent

RECORD ON APPEAL
Volume I

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STATE OF SOUTH CAROLINA

2012CV3610100450
CIVIL CASE NUMBER

COUNTY OF NEWBERRY

IN THE MAGISTRATE'S COURT
NOTICE TO QUIT PREMISES

Raymond Hobby
11795 Bush River Road
Kinards, SC 29355
(803) 924-0015

PLAINTIFF(S)

Vs

Mary T. Hobby
544 Crowder Road
Kinards, SC 29355

DEFENDANT(S)

Upon an affidavit filed by the plaintiff which states you:

Mary T. Hobby NEEDS TO VACATE THE PROPERTY

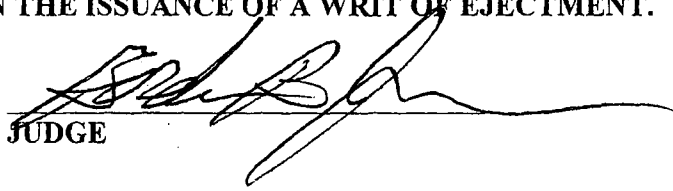
defendant(s), are a trespasser(s) and are occupying the premises at **544 Crowder Road, Kinards, SC 29355** without permission of the owner of said premises. You are required to immediately vacate the premises or contact the:

**Newberry Central Traffic Court Court
3239 Louis Rich Drive
Newberry, SC 29108
Phone: (803) 321-2144 Fax: (803) 321-2172**

within five (5) days to show cause, if any you can, why you should not be ejected from these premises.

FAILURE TO VACATE THE PREMISES OR TO CONTACT THIS OFFICE WITHIN FIVE (5) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

Dated: May 2, 2012


JUDGE

PERSONALLY appeared before me, the undersigned deponent, who being duty sworn, says that s/he served the herein Notice to Quit Premises/Rule to Show Cause on _____

20____ at _____ ☐ AM ☐ PM _____ on the _____ day of _____,

Sworn to and subscribed before me
this _____ Day of _____, 20____

Sheriff's Deputy or Constable

NOTARY PUBLIC or JUDGE
My Commission Expires: _____

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Raymond D. Hobby,

Plaintiff,

v.

Mary T. Hobby,

Defendant.

) IN THE COURT OF COMMON PLEAS
)
) FOR THE EIGHTH JUDICIAL CIRCUIT
)
)
)

Civil Action No. 2013-CP-36-0193

**ORDER DENYING MOTION FOR
SUMMARY EJECTMENT OF
TRESPASSER AND DENYING MOTION
FOR TEMPORARY INJUNCTION**

FILED
NEWBERRY COUNTY
2013 JUN 6
JACOB E. SMITH
CLERK OF COURT

This matter came before the Court for hearing on Plaintiff's Motion for Summary Ejectment of Trespasser and Motion for Temporary Injunction. Present at the hearing were Benjamin C. Bruner, attorney for the Plaintiff, and Pope D. Johnson, III, attorney for the Defendant.

Based on the affidavits, arguments presented by counsel at the hearing, and applicable law, this Court DENIES the Plaintiff's Motion for Summary Ejectment; and DENIES the Plaintiff's Motion for Temporary Injunction.

Motion for Summary Ejectment

Plaintiff seeks an Order of the Court pursuant to Chapter 67 Title 15 of the South Carolina Code of Laws directing the Defendant, Mary T. Hobby, to vacate the property at issue in this action within, upon the following grounds:

1. The property at issue in this case is the former marital home located at 544 Crowder Road in Kinards, South Carolina (the "Property");
2. Plaintiff and Defendant were divorced on October 8, 2010;
3. Defendant conveyed the Property into a liquidating trust pursuant to the divorce decree;



4. Plaintiff purchased the property from the trust on April 19, 2012, as evidenced by the quitclaim deed attached to the Verified Complaint;
5. Although she conveyed the property away, Defendant never moved out of the home on the Property;
6. After he bought the Property, Plaintiff demanded the Defendant move out, but she refused;
7. Plaintiff commenced an action in the Magistrate's Court and served Defendant with a notice to quit the property on May 14, 2012;
8. On May 15, 2012, Defendant obtained an Emergency Order temporarily enjoining Plaintiff from pursuing ejectment;
9. On January 7, 2013, the Family Court entered an Order granting Plaintiff's Motion to Dismiss and releasing the temporary injunction against Plaintiff;
10. Plaintiff subsequently attempted to reschedule the hearing in Magistrate's Court, but the Magistrate has declined, citing jurisdictional concerns; and
11. Plaintiff further alleges he is the owner of the property and Plaintiff has no colorable claim of possession to the property, yet she remains on the property and refuses to move out or pay for her use of the Property.

The Defendant has moved to dismiss the Motion for lack of subject matter jurisdiction upon the grounds that the Motion for Summary Ejectment of Trespassers is a statutory claim within the jurisdiction of the magistrate court. This Court agrees.

ANALYSIS

Article V, Section 11 of the South Carolina Constitution states that "[t]he Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law. Summary Ejectment of Trespasser actions are controlled by S.C. Code Ann. § 15-67-610 through 640. S.C. Code Ann. § 15-67-610 provides that:

If any person shall have gone into or shall hereafter go into possession of any lands or tenements of another without his consent or without warrant of law, the owner of the land so trespassed upon may apply to any **magistrate** to serve a notice on such trespasser to quit the premises, and if, after the expiration of five days from the personal service of such notice, such trespasser refuses or neglects to quit then such **magistrate** shall issue his warrant to any sheriff or constable requiring him forthwith to eject such trespasser, using such force as may be necessary. (emphasis added)

S.C. Code Ann. § 15-67-610 et seq. specifically grant the magistrate court the authority to issue warrants pursuant to this section. Further, S.C. Code Ann. § 15-67-640 specifically provides that "Either party to these proceedings shall have the right of appeal....pending the determination of his appeal by the circuit court." "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 147-48, 694 S.E.2d 525, 529 (2010). Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009).

Here, the statute's language is plain, unambiguous, and conveys a clear, definite meaning. The legislature intended to grant the magistrate the exclusive jurisdiction to hear motions and issue warrants pursuant to this section, and intended the Circuit Court to have appellate

jurisdiction. Therefore, pursuant to Article V, Section 11 of the South Carolina Constitution, this Court lacks jurisdiction and declines to hear this matter.

Motion for Temporary Injunction

Plaintiff seeks a Temporary Injunction pursuant to Rule 65, SCRPC, restraining the Defendant from continuing to trespass on the property at issue in this action. This Court declines to grant the Temporary Injunction.

An Injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). To obtain an injunction, the plaintiff must allege facts sufficient to constitute a cause of action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct.App.2002). To establish a cause of action for injunction, the plaintiff must show "(1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2005) (Citing *Scratch Golf*, 361 S.C. at 121, 603 S.E.2d at 908).

A. Irreparable Harm

The Defendant argues Plaintiff has not suffered irreparable harm entitling her to injunction relief because the harm he alleges can be remedied by monetary damages alone. This Court agrees. The Plaintiff alleges the Defendant has been trespassing on the Property in excess of one year. The Plaintiff also alleges the Defendant has sold or attempted to sell Plaintiff's personal property. If the Plaintiff prevails, monetary damages will remedy the harm alleged.

B. Success on the Merits

This Court finds that the Plaintiff has made a prima facie showing entitling the plaintiff to injunctive relief.

C. Inadequate Remedy at Law

The Defendant argues the Plaintiff has an adequate remedy at law because he can recover money damages for his injuries. This Court agrees.

The purpose of an injunction is the preservation of the status quo. *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2005). A temporary injunction is used to preserve the subject of controversy in the condition which it is at the time of the order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation. *Id.*

Plaintiff alleges the Property was transferred to him by general warranty deed on or about April 11, 2012, and that Defendant has been trespassing on the property for more than one year. It further appears from the record before this Court that the Defendant has been living on the Property since at least 2005 when the parties initially separated. To preserve the status quo during the pendency of the litigation requires the Defendant remain on the property until a full investigation can be had on the matter. For these reasons, Plaintiff's Motion for Temporary Injunction is DENIED.

IT IS THEREFORE ORDERED that the Plaintiff's Motion for Summary Ejectment is DENIED.

IT IS FURTHER ORDERED that the Plaintiff's Motion for Temporary Injunction is DENIED.

AND IT IS SO ORDERED.



R. Knox McMahon
Presiding Judge,
Eighth Judicial Circuit

Newberry, South Carolina
May 31, 2013

STATE OF SOUTH CAROLINA

)

2012CV3610100450

)

CIVIL CASE NUMBER

COUNTY OF NEWBERRY

)

RAYMOND D. HOBBY

)

)

IN THE MAGISTRATE OFFICE

PLAINTIFF

)

)

VS

)

JUDGMENT

)

MARY T. HOBBY

)

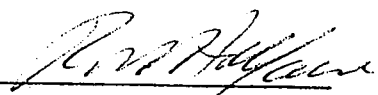
DEFENDANT

)

THE ISSUES IN THIS ACTION WERE TRIED BEFORE A MAGISTRATE AT NEWBERRY
COUNTY CENTRAL COURT BEFORE JUDGE JOHNSON/HALFACRE IN A JURY/NON-
JURY PROCEEDING, ON THE ____ 28TH DAY OF JUNE 2013 AT WHICH TIME, A
VERDICT FOR THE PLAINTIFF/DEFENDANT (CIRCLE ONE) WAS RENDERED
EVICTION/OR NO EVICTION (CIRCLE ONE).

DATED: _____

6-28-13


MAGISTRATE

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE PROBATE COURT
CASE FILE #2013-GC-3600016

RAYMOND D. HOBBY

PLAINTIFF

V.

MARY T. HOBBY,

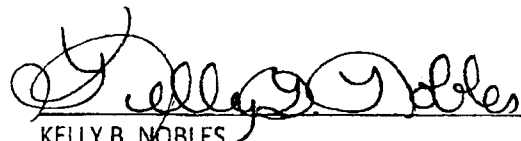
DEFENDANT.

ORDER FOR REMOVAL

This action is commenced by the Complaint filed in this Court on September 4, 2013. This matter is being removed to Circuit Court pursuant to SC Code Ann 62-1-302 (6) (c). It appears to this Court that removal under this section is proper.

THEREFORE, IT IS ORDERED that this matter is hereby removed to the Court of Common Pleas for Newberry County.

AND IT IS SO ORDERED.


KELLY B. NOBLES
JUDGE OF PROBATE

September 4, 2013

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER **2013CP3600193**

Raymond D Hobby

Mary T Hobby

Frances B Knowlton

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

Pl's motion for partial summary judgment is stayed pending a hearing on the Trustee's ST motion.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Date _____

This judgment was entered on September 4, 2013, and a copy mailed first class or placed in the appropriate attorney's box on September 5, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Pope D. Johnson III PO Drawer 11209 Columbia, SC 29211
R. Davis Howser PO Box 12009 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Jackie S Bowers - Clerk of Court

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[illegible]

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby,)

C/A No.: 2013-CP-36-193

Plaintiff,)

v.)

Mary T. Hobby,)

Defendant/Third-Party Plaintiff,)

v.)

Frances B. Knowlton, individually)
and as Trustee,)

Third-Party Defendant.)

ORDER

FILED
NEWBERRY COUNTY
2014 MAY 12 PM 12 30
JACKIE S. BOWERS
CLERK OF COURT

THIS MATTER came before the Court on March 12, 2014 on multiple cross-motions for summary judgment, namely, Defendant/Third Party Plaintiff Marry Hobby's (hereinafter "Wife") Motion for Summary Judgment, Third-Party Defendant Frances Knowlton's (hereinafter "Trustee") Motion for Summary Judgment, and Plaintiff Raymond Hobby's (hereinafter "Husband") Motion for Partial Summary Judgment on the issue of Wife's liability. For the reasons set forth below, the Court grants Husband's Motion for Partial Summary Judgment and the Trustee's Motion for Summary Judgment. Wife's motion for Summary Judgment is denied.

FACTS

Having carefully considered the evidence in the record and the arguments of counsel in the light most favorable to Wife, the Court finds no genuine issue as to the following facts.

[Handwritten signature]

Husband and Wife divorced in 2010 pursuant to a Final Order and Divorce Decree ("Divorce Order") dated October 8, 2010.¹ As part of the divorce settlement, they created a liquidating trust ("Trust"), the purpose of which was to facilitate equitable distribution. The Trust was created pursuant to the Divorce Order. (Trust Agreement, Article I(a)). Husband and Wife hired a third-party, the Trustee, to administer the Trust. He remains the trustee today. The explicit provisions of the Trust granted the Trustee wide discretion in selling trust assets. Trustee could sell trust property to either Husband or Wife if the transaction was fair, reasonable, and for market value, or if the beneficiaries mutually agreed to other terms. Trust Agreement, Article IX, (a)(xxxii). In addition, the trust terms gave Wife sole, exclusive, rent-free use of the marital home ("the House") until the Trustee sold it or she vacated it. (Def's Resp. to Pl.'s First Requests for Admissions ¶ 2; Trust Agreement, Article XII, (f).) It is undisputed that the House was a trust asset.

On December 8, 2011, Wife submitted an offer to the Trustee to buy the House based on a valuation of \$225,000. She offered to pay the Trust \$127,231, which represented Husband's 57.5% share of \$225,000.² On January 3, 2012, Husband made a counteroffer to purchase the House based on a valuation of \$325,000.00. He offered to pay \$138,125.00 in cash, representing Wife's 42.5% share of \$325,000. After receiving Husband's offer, the Trustee relayed it to Wife and gave her time to respond.

The Trustee made both Husband and Wife aware of the Trust's immediate need for cash to pay its pending debts. On January 27, 2012, the Trustee wrote Wife and her attorney to notify them that he intended to accept Husband's offer on January 31st unless she made a better offer.

¹ The Divorce Order was issued by the Honorable Joseph W. McGowan, III, Judge of the Family Court for the Eighth Judicial Circuit.

² For purposes of equitable distribution, the Family Court held Wife entitled to 42.5% of marital property; Husband's share is 57.5%.

On January 31, 2012, the Trustee again wrote Wife and her attorney informing them that the Trust's mortgage payments (on various trust assets) were becoming due and that the Trustee could not wait more than a day or two for her to make a better offer. Two days later, on February 2nd, the Trustee advised Wife's attorney that the Trust could not meet its obligations and needed an immediate cash infusion of \$56,000 to service its debts. On February 7, 2012, the Trustee advised Wife and her attorney that he had a check in hand for \$56,000 from Husband as an advance on the purchase of the House. The Trustee told Wife he would have to accept Husband's offer unless she made a materially better offer by close of business that day. Two days later, on February 9, 2012, the Trustee notified Wife and her attorney that he had accepted Husband's offer and was using the cash advance to service the Trust's debts. The Trustee deposited Husband's check and used the money to allow the Trust to continue operating. On March 14, 2012, Husband advanced another \$56,000 toward his purchase of the House to allow the Trust to continue operating.

Despite repeated attempts by the Trustee to get Wife to convey the House to the Trust as required by the Trust Agreement, she did not do so until April 11, 2012. Eight days later, on April 19, 2012, the Trustee and Husband closed on the sale of the House, and the Trustee delivered a quitclaim deed to Husband. The deed appears valid on its face. In all, Husband paid the Trustee cash in the amount of \$138,125.00 and gave note payable on demand secured by a purchase-money mortgage for the remainder of the \$325,000 purchase price.

After closing, Husband gave Wife proper notice to move out of the House, but she refused. Husband commenced an ejectment action in the Magistrate's Court, and later filed suit in this Court seeking damages in excess of the Magistrate's jurisdictional limit. On September 4, 2013, in response to Wife's objection to subject-matter jurisdiction, Husband filed an identical

complaint in the Newberry County Probate Court and removed that action to this Court. The Court then consolidated the two cases under the single caption appearing above.

Currently before this Court are Husband's damages claim,³ Wife's counterclaim for a declaratory judgment, and Wife's third-party claims against the Trustee for breach of fiduciary duty. Three (3) cross-motions for summary judgment are pending before the Court. First, Husband moves for partial summary judgment as to liability on his claims for trespass, holdover tenant, breach of contract and *quantum meruit* because Husband asserts there is no factual issue that he owns the House and that Wife has continued to live there unlawfully. Second, Trustee argues he is entitled to summary judgment because the Trust Agreement unambiguously gives him authority to sell the House in the manner he did and because the record lacks any evidence that he breached any fiduciary duty to Wife. Finally, Wife contends she is entitled to summary judgment because the Trustee acted outside the scope of his authority when he conveyed the House to Husband and breached his fiduciary duties, including his duty of impartiality to Husband and Wife as co-beneficiaries.

STANDARD

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCF; see also *Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005); *Eagle Container Co., LLC v. County of Newberry*, 366 S.C. 611, 622 S.E.2d 733 (Ct. App. 2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004).

³ Husband pursued his claim for possession separately in the Magistrate's Court. That matter is currently before the Court of Appeals.

When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Rife*, 363 S.C. at 214, 609 S.E.2d at 568.

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)); *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 593 S.E.2d 183 (Ct. App. 2004).

DISCUSSION

I. Trustee's Motion for Summary Judgment

Trustee moves for summary judgment because the Trust Agreement unequivocally gave him the authority to sell the marital home and because there is no evidence that he failed to act reasonably and prudently in doing so. The Court agrees.

In order to prove her claim for breach of fiduciary duty, Wife must present some evidence that the Trustee breached his fiduciary duty. Wife has failed to present any such evidence. The Court finds that, as a matter of law, the Trust Agreement granted the Trustee the authority to sell the House. No material, factual issue exists as to this question. Nor is there any

evidence or inference that the Trustee failed to act reasonably and prudently in selling the home, or that he favored one beneficiary over the other.

The explicit provisions of the Trust Agreement granted the Trustee wide discretion in selling trust assets. He could sell trust property to either beneficiary if the transaction was fair, reasonable, and for market value, or if the beneficiaries could mutually agree on other terms. See Trust Agreement, Article IX, (a)(xxxii). Moreover, the terms of the Trust Agreement enabled the Trustee to sell trust property to one beneficiary without obtaining the consent of the other beneficiary.⁴ See *id.* Simply stated, because the House was an asset of the Trust, the Trustee had the power to sell it, and he clearly acted with due diligence and in a prudent manner when he did so. Both parties made an offer on the House, and Husband's \$325,000 offer was timely and superior to that of Wife. Wife was given ample time to respond to Husband's offer, yet she failed to do so despite several inquiries sent from the Trustee to Mr. McDougall, Wife's lawyer.

Further, both Husband and Wife were given notice of the Trust's immediate need for a cash infusion to pay its pending debts. Circumstances required the Trustee to act swiftly and make a decision which was in the best interest of the Trust and its beneficiaries, and the Trust was best served by accepting a legitimate, timely offer which allowed it to service urgent financial obligations. Significantly, South Carolina law states quite clearly that "compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight." S.C. Code Ann. § 62-7 -933(G) (Supp. 2008).

⁴ Although Wife argues that Article IX (a)(xxxii) of the Trust Agreement required the Trustee to obtain her consent prior to selling the House to Husband, such an interpretation is inconsistent with the provision's plain language. Moreover, such an interpretation would frustrate the purpose of the Trust as a liquidating trust.

Although Wife claims she was experiencing medical issues which inhibited her from making a counteroffer, the Court finds no basis to excuse her from making a timely counteroffer within the time frame dictated by circumstances and required by the Trustee. Essentially, Wife maintains that she was suffering from a pinched nerve which kept her from making a timely counteroffer. The Court finds that her condition, while undoubtedly painful, would not have rendered her incapable of corresponding with the Trustee over the 18-day time span she had to make an offer. In fact, by the time Wife submitted a counteroffer, fifty-seven (57) days had elapsed since she had received notice of Husband's offer.

Importantly, when she did eventually make a counteroffer, there is no question the Trustee had accepted Husband's offer roughly a month earlier, thereby binding the Trust and subjecting it to a suit for specific performance had the Trustee attempted to renege and take Wife's untimely counteroffer. Finally, nowhere in the record can it be shown that the Trustee breached his duty of impartiality. The Trustee at all times acted impartially toward Husband and Wife with respect to the sale of the House. As described above, both parties made offers to buy the marital home and ample time was given to Wife to make a counteroffer. The Trust needed an immediate infusion of cash, and Husband presented a significantly better offer than Wife's original offer. It was reasonable and prudent for the Trustee to accept the best offer before him at the time in order to avoid the risk of the Trust defaulting on its debts. *See Ex parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 836 (Ct. App. 2009) (holding that the personal representative of a decedent's estate did not breach her fiduciary duties by accepting an offer for the sale of the decedent's residence without considering a substantially higher offer submitted by another prospective purchaser after the offer was accepted).

Even if Wife's counteroffer could be considered timely or otherwise valid, Wife offered the same sum as Husband, and the Court is strained to see how any favoritism could be shown by accepting a timely offer by one party in an amount equal to another party's untimely counteroffer. Accordingly, not only does the record fail to demonstrate a scintilla of evidence that the Trustee breached his fiduciary duties, it proves that he acted within them when he sold the marital home to Husband.

As alternate sustaining grounds, the Court finds the Trustee acted in reasonable reliance on the terms of the Trust as expressed in the Trust Agreement when he sold the House to Husband. See S.C. Code § 62-7-1006 (trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance).

Finally, Wife's effort to create a material factual issue, by offering the affidavit of her attorney in the underlying domestic action, John McDougall, is unavailing; the plain language of the trust is unambiguous and capable of only one reasonable interpretation. In short, this Court is not required to find the possibility of ambiguity or fiduciary breach, where clearly none exists, simply because an affidavit is filed, and in this case, Mr. McDougall represented Wife in the underlying negotiations concerning the sale of the house. Accordingly, Wife's attorney affidavit regarding the trust represents, at best, an effort to create a factual issue where no such issue is actually in doubt. See generally *Higgins v. Medical University of South Carolina*, 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997) (factual statements of counsel will normally not be considered in determining where issue of material fact exists precluding summary judgment).

Accordingly, the Trustee's Motion for Summary Judgment is granted.

II. Husband's Motion for Partial Summary Judgment

Husband moves for partial summary judgment on the issue of liability on four of his causes of action: trespass, holdover tenant, breach of contract, and *quantum meruit*. He argues summary judgment is proper as to liability because there is no genuine issue of material fact that the Trustee sold the House to him and that Wife has continued to live there without his permission. The Court agrees.

A. Trespass

“Trespass is any intentional invasion of the plaintiff’s interest in the exclusive possession of his property.” *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 357, 559 S.E.2d 327, 337 (Ct. App. 2001). “To prove a trespass, a party must establish: (1) that he was in legal possession of the property; (2) that the defendant [or his agent] voluntarily entered upon the plaintiff’s property; and (3) that such entry was made without the plaintiff’s permission.” Ralph King Anderson, Jr., *South Carolina Requests to Charge – Civil*, 2002 § 4-43; see also Michael G. Sullivan, *Elements of Civil Causes of Action* 245-48 (2000). “For a trespass action to lie, ‘the act must be affirmative, the invasion of the land must be intentional, and the harm caused by the invasion of the land must be the direct result of that invasion.’ ” *Hawkins v. City of Greenville*, 358 S.C. 280, 297, 594 S.E.2d 557, 566 (Ct. App. 2004) (quoting *Mack v. Edens*, 320 S.C. 236, 240, 464 S.E.2d 124, 127 (1995)). See also *Coll. of Charleston Found. v. Ham*, 585 F. Supp. 2d 737, 750 (D.S.C. 2008) and *West v. Newberry Elec. Co-op.*, 357 S.C. 537, 544, 593 S.E.2d 500, 503 (Ct. App. 2004). “The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means of entry, or the extent of damage. The entry itself is the wrong.” Anderson, *S.C. Requests to Charge – Civil* § 4-43.

Even viewing the evidence and inferences therefrom in the light most favorable to Wife, there is no question that she is liable to Husband for trespass. As discussed above, Trustee’s sale

of the house to Husband by quitclaim deed was a valid sale and did not breach any fiduciary duty. Consistent with the terms of the Trust, Wife admits she was allowed to live in the House until it was sold. (Def's Resp. to Pl.'s First Requests for Admissions ¶ 2.) She further concedes that the Trustee sold the house to Husband prior to April 20, 2012. (*Id.* at ¶¶ 6, 7, 8.) In addition, Wife admits the Trustee sold it and delivered a quitclaim deed to the Husband. (*Id.* at ¶¶ 1, 10.) The Court sees no title defect in the record. A deed valid on its face is presumed to be valid. *See Cummins v. Varn*, 307 S.C. 37, 454 S.E.2d 829, 834 (1992). Moreover, Wife has failed to present any evidence affecting Husband's title to the house. There is no genuine issue of material fact that Husband owns the house or that Wife has been living there unlawfully since April 19, 2012. Accordingly, there is no question that Wife is liable to Husband for trespass.

B. Holdover Tenant

Husband's claim against Wife as a holdover tenant is based on the South Carolina Residential Landlord and Tenant Act ("RLTA" or "Act"). The RLTA applies to all "rental agreement[s]...for a dwelling unit located within this State." S.C. Code Ann. § 27-40-110. The Court finds the Act applies in this case because the Wife's right to continue using and occupying in the House rent-free arose from the Trust Agreement. *See* S.C. Code Ann. § 27-40-210(3), (12). Therefore, she was a tenant under the Act. *See* S.C. Code Ann. § 27-40-210(15). When the Trustee sold the House to Husband, Wife's right to continue living in the House terminated pursuant to the trust terms. In addition, Husband assumed all rights and remedies of the landlord. *See* S.C. Code Ann. § 27-35-50 (purchaser of real estate subject to lease becomes the landlord *ipso facto* and is entitled to all rights as original landlord).

As discussed above, there is no question that Husband owns the House or that Wife has lived there without his permission since April 20, 2012. Nor does the record present any

question that Wife knew her right to live there rent-free terminated when the House was sold. Accordingly, the Court finds no question that Wife is liable to Husband for actual damages and reasonable attorney's fees pursuant to S.C. Code Ann. § 27-40-750. The court further finds no material, factual issue that Wife's refusal to move out was not in good faith and was a willful violation of the RLTA and the trust agreement. *See* S.C. Code Ann. § 27-40-770(c). The only factual issues remaining to be determined are the Husband's actual damages, including the reasonable monthly rental rate, and reasonable attorney's fees. *Id.*

C. Breach of Contract

Husband is also entitled to summary judgment as to liability on his breach of contract claim. In order to recover for breach of contract, a party must prove "the existence of a contract, its breach, and the damages caused by such breach." *S. Glass & Plastics Co., Inc. v. Kemper*, 399 S.C. 483, 492, 732 S.E.2d 205, 209 (Ct. App. 2012), *reh'g denied* (Sept. 20, 2012) (citing *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)). There is no question that the terms of the parties' Trust Agreement are clear and unambiguous. It gave Wife the right to continue living in the House rent-free "until such property [was] sold, or until vacated by her." (Trust Agreement, Article XII, (f).) By agreeing that her right to live in the House expired when the Trustee sold the House, Wife also agreed to move out when it was sold. The evidence is uncontested that she refused to move out and that she is still living in the House today.

Accordingly, the Court finds no factual issue that precludes the Court from entering summary judgment in Husband's favor on the issue of Wife's liability as a holdover tenant. The only issue that remains to be determined is Husband's damages.

D. Quantum Meruit

Finally, Husband moves for judgment as to liability on his claim for *quantum meruit*. “The elements of a *quantum meruit* claim are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value.” *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616-17, 703 S.E.2d 221, 225 (2010).

As discussed above, Wife does not dispute that she has lived in the House since April 19, 2012, when the Trustee closed the sale to Husband. Nor does Wife claim she has paid Husband for living in the House. The only reasonable conclusion based upon the record in this case is that Wife has lived in the House for nearly two (2) years unlawfully without paying any rent. As a result, there is no genuine issue of fact that Wife has received and retained a benefit from Husband under circumstances that make it unjust for him to retain it without paying its value. *See id.* The Court finds, therefore, that there is no genuine issue of material fact that Wife is liable to Husband for the value of the benefit she received. The only issue remaining for a fact-finder is to quantify that value.

III. Wife’s Motion for Summary Judgment

Wife contends she is entitled to summary judgment because the Trustee acted outside the scope of his authority when he conveyed the House to Husband. The Court disagrees, as discussed above, and denies her motion.

The Trustee did not act outside of the scope of his authority when he deeded the marital residence to Husband. The Trustee’s authority is set forth in the Trust Agreement. A court’s primary concern when interpreting and construing a trust instrument is to discern the settlor’s intent. *Holcombe-Burdette v. Bank of Am.*, 371 S.C. 648, 658, 640 S.E.2d 480, 484-85 (Ct. App. 2006). “In ascertaining a settlor’s intent, if the language of the trust instrument is perfectly plain

and capable of legal construction, such language determines the force and the effect of the instrument.” *Id.*(internal citation omitted). When interpreting the meaning of the language of a trust agreement and ascertaining the intent of the settlor, the court must consider the trust document as a whole. *See id.* at 657, 640 S.E.2d at 484. Only if the Settlor’s intent cannot be ascertained and the trust instrument is ambiguous will the courts turn to parol or extrinsic evidence. 76 Am.Jur.2d *Trusts* § 31.

Here, the Trust Agreement clearly sets forth the powers of the Trustee. Specifically, Article IX, Paragraph (a)(xxxii) gives the Trustee the power to “sell any Trust Asset to [Husband or Wife] provided the sale and terms of sale are reasonable, fair, and reflect fair market value **and any other terms mutually agreeable by the parties.**” Trust Agreement, Article IX, (a)(xxxii) (Emphasis added). Wife argues the use of the conjunctive “and” preceding the clause “any other terms mutually agreeable by the parties,” indicates that the Trustee is required to obtain consent to the terms of any sale of trust property to Husband. However, this is a strained reading of this provision and inconsistent with its plain language. The Court finds the language in Article IX, along with the Trust’s language as a whole, unambiguous and subject to only one reasonable, legal interpretation. Therefore, the Court need not look beyond the Trust Agreement’s express terms in determining the scope of the Trustee’s powers. Under the plain language of Article IX, (a)(xxxii), the Trustee could sell trust property to Husband or Wife without the consent of the other where the sale and terms of the sale are reasonable, fair and reflect market value. Although the trust provisions state that the parties were free to agree mutually to other or additional terms, here, the parties plainly did not agree on other or additional terms. In light of the evidence before the Court, the only reasonable conclusion to be reached is that the terms of the sale of the House to Husband were fair, reasonable and reflected fair market

value. Therefore, the sale of the House to Husband was expressly authorized under the Trust Agreement.⁵

Finally, Wife argues that discovery is incomplete; however, the Court finds that further discovery would be unavailing in that no party has identified how conducting more discovery would uncover additional relevant evidence and create a genuine issue of material fact. *See Dawkins v. Fields*, 354 S.C. 58, 71, 580 S.E.2d 433, 439-40 (2003); *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54-55, 677 S.E.2d 32, 36 (2009). No material fact is in dispute. The quitclaim deed the Trustee delivered to Husband is valid and resulted in a transfer of the property to Husband. Accordingly, Wife's motion for summary judgment is denied.

CONCLUSION

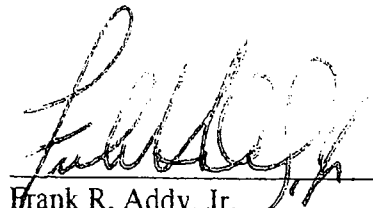
The Court fully appreciates the contentiousness of Husband's and Wife's divorce which, at the time, seemed to necessitate the creation of the Trust, and this Court does not relish the obligation of ruling upon a dispute which would have best been resolved in the Family Court when the parties initially sought their divorce. That Wife has continued to file actions in every conceivable Court in a thinly veiled effort to relitigate these issues has not gone unnoticed by this Court, but these procedural attempts at delay have no bearing on this Court's application of black letter law. That Wife desires to keep the former marital home is understandable. That the Trust was land rich/cash poor is regrettable. That Wife failed to timely respond to the Trustee cannot be excused under these facts. In short, this Court is called upon to apply the law to an instrument

⁵ Even if Article IX, (a)(xxii) were held to be ambiguous, the Court finds that it was the intent of the parties to not require the consent of both beneficiaries to effect a sale of trust property to a beneficiary. This is the only way to interpret this provision without frustrating the very purpose of the Trust as a liquidating trust. Allowing one beneficiary to have unconstrained veto power over a commercially reasonable and fair sale of trust property would frustrate the Trustee's obligation to sell trust assets "in a timely, prudent and efficient manner." Trust Agreement, Article I (c).

lacking any uncertainty concerning its terms, and no material fact is in dispute. Accordingly, the Trustee's and Husband's motions are granted, and Wife's motion is denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Third-Party Defendant Frances B. Knowlton's Motion for Summary Judgment is hereby GRANTED and that judgment shall be entered in his favor on all of Defendant/Third-Party Plaintiff Mary Hobby's claim against him; that Plaintiff's Raymond D. Hobby's Motion for Partial Summary Judgment on the issue of liability is GRANTED; and that Defendant/Third-Party Plaintiff Mary Hobby's Motion for Summary Judgment is DENIED.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Circuit Court Judge

May 6, 2014
Greenwood, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-36-00193

RAYMOND D. HOBBY

MARY T. HOBBY

DEFENDANT(S)/THIRD-PARTY
PLAINTIFF

FRANCES B. KNOWLTON, AS TRUSTEE

PLAINTIFF(S)

THIRD PARTY DEFENDANT

Submitted by:

Attorney for
Defendant

☐ Plaintiff

☐ Self-Represented Litigant

Disposition Type (Check One)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

This matter came before the court on October 17, 2014 pursuant to Defendant Mary Hobby's Motion to Reconsider the Court's Order dated May 6, 2014. After reviewing all relevant materials on file and considering testimony of the parties at the above referenced hearing, Defendant's motion to reconsider is denied.

Defendant's motion to reconsider is **denied** and the Order dated May 6, 2014 shall stand.

Order Information

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

Complete if judgment requires payment of a sum of money or affects title to real or personal property

JUDGMENT AGAINST PLAINTIFF:

Judgment Amount	\$ _____
Taxable Costs	\$ _____
Attorney's Fees	\$ _____

JUDGMENT AGAINST DEFENDANT:

Judgment Amount	\$ _____
Taxable Costs	\$ _____
Attorney's Fees	\$ _____

Interest	\$	Interest	\$
Other:	\$	Other:	\$
Total Amount to be Enrolled:	\$	Total Amount to be Enrolled:	\$

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interests or costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2159

10/17/2014

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 20th day of October, 2014 and a copy mailed first class this 21st day of October, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Benjamin Bruner

P.O. Box 61110

Columbia, SC 29260

ATTORNEY(S) FOR THE PLAINTIFF(S)

Pope Johnson

1230 Richland Street
Columbia, SC 29201

Davis Howser

P.O. Box 12009 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

Jackie S. Bowers
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Raymond D. Hobby,)
)
Plaintiff,)
)
v.)
)
Mary T. Hobby,)
)
Defendant.)
_____)

C/A No.: 2013-CP-36- 193

VERIFIED COMPLAINT

(Non-Jury)

1. Ejectment of Trespasser
2. Trespass
3. Unjust Enrichment

FILED
NEWBERRY COUNTY
2013 APR 26 AM 10:25
JACKIE S. BOWEN
CLERK OF COURT

Plaintiff Raymond D. Hobby ("Plaintiff"), complaining of Mary T. Hobby ("Defendant"),
alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a citizen of South Carolina and a resident of Newberry County.
2. Defendant is a citizen of South Carolina and a resident of Newberry County.
3. The subject of this complaint is the Defendant's past, present and continued trespass on real property located on Crowder Road in Newberry County ("the Property"), which is owned in fee simple by the Plaintiff.
4. Jurisdiction and venue in this Court are proper.

FACTUAL ALLEGATIONS

5. Defendant and Plaintiff were married on June 24, 1978, and divorced by a Final Order and Divorce Decree ("Divorce Decree") filed October 8, 2010 in Docket No. 2005-DR-36-56.
6. The Divorce Decree required the parties to create a liquidating trust and transfer the vast majority of their marital assets into the trust. By the terms of the Divorce Decree, certain provisions were ordered to be included to the trust.

7. In compliance with the Divorce Decree, Plaintiff and Defendant created and signed the Hobby Family Liquidating Trust Agreement (the "Trust") on December 6, 2010 and December 9, 2010, respectively.

8. One of the assets the Divorce Decree required to be transferred to the Trust is the Property, which was the marital home and included three (3) surrounding acres.

9. At the time of the entry of the Divorce Decree, the Property was titled solely in the Defendant's name.

10. By the terms of the Trust, the Trustee is granted various powers, including but not limited to the power to "sell or dispose of . . . any property, real or personal, constituting a part of the Trust Estate . . . , for cash or on credit . . . at such times and upon such terms and conditions as it may deem best. . . ." (*See* Trust, Article IX(a)(vi)).

11. By operation of its own terms, the Trust is a liquidating trust, so that assets and debts owned by it are managed and controlled and disposed of in the manner directed by the Trustee, with distributive benefits flowing to Plaintiff and Defendant in accordance with the terms of the Trust.

12. Beginning in December, 2011, over a year after the entry of the Divorce Decree, Plaintiff and Defendant individually negotiated with the Trustee for the purchase of the property after the Trustee gave notice of an intention to sell the Property.

13. Defendant submitted an offer to the Trustee to purchase the Property, and the Trustee rejected that offer.

14. Plaintiff then submitted an offer to the Trustee to purchase the Property, and the Trustee accepted that offer on or about February 9, 2012.

15. On April 11, 2012, the Defendant transferred the Property to the Trust by general

warranty deed.

16. On April 19, 2012, the Trustee transferred the Crowder Road property to Plaintiff by quitclaim deed after Plaintiff paid the Trust in accordance with the offer accepted by the Trustee. A copy of the quitclaim deed is attached as **Exhibit A**.

17. Although she conveyed her entire interest in the Property to the Trust and held no interest in the Property, possessory or otherwise, Defendant continued to live on the Property.

18. Because he had paid for and received title to the Property, Plaintiff requested that Defendant vacate the Property, however she refused.

19. On May 2, 2012, Plaintiff filed a notice to quit the Property in the Magistrate's Court for Newberry County, C/A No.: 2012-CV-36-10100450, ("Ejectment Case") seeking to have Defendant removed from the Property.

20. On May 14, 2012, Plaintiff served Defendant with the notice to quit the Property.

21. On May 15, 2012, Defendant filed suit in the Family Court for Newberry County, C/A No. 2012-CP-36-194, ("Family Court Case") seeking (1) alimony (as permitted by the Divorce Decree), (2) a declaration that the Trustee's Deed to Plaintiff for the Crowder Road Property was void ab initio, (3) a determination of whether Plaintiff or Defendant should be allowed to purchase the Crowder Road Property, (4) exclusive possession of the property until all of the Trust assets are liquidated, (5) an order prohibiting Plaintiff from pursuing eviction proceedings against Plaintiff during the pendency of the case, (6) discovery rights, and (7) attorney's fees and costs.

22. Also on May 15, 2012, the Family Court issued an Emergency Order, at Defendant's request, prohibiting Plaintiff from pursuing the Ejectment Case.

23. According to the Defendant's notarized financial declaration, which she filed in the Family Court Case, the reasonable rental value for the Property is \$1,787 per month. A true and accurate copy of the financial declaration is attached as **Exhibit B**.

24. Plaintiff is informed and believes the reasonable monthly rental value of the Property is \$1,750. A copy of Plaintiff's Affidavit is attached as **Exhibit C** and is incorporated herein by reference.

25. On January 7, 2013, the Family Court entered an Order dismissing the Family Court Case claims related to the Property. A copy of the Court's Order is attached hereto as **Exhibit D**.

26. Defendant's subsequent motion to reconsider was also denied, and Plaintiff is informed and believes no appeal has filed or served.

27. After learning the Family Court Case had been dismissed, the Plaintiff asked the Magistrate reschedule a hearing in the Ejectment Case to have Defendant vacate the Property.

28. Upon information and belief, the Magistrate declined to reschedule the hearing based on jurisdictional concerns.

29. As a direct result of the Defendant's intentional, wanton and wrongful conduct, Plaintiff has been denied any use of his Property for over one year.

30. From April 19, 2012, to present, Defendant has wrongfully and unlawfully exercised exclusive possession over Property she does not own, denied Plaintiff any use of Property he purchased and owns, and failed to pay Plaintiff any compensation for living on the Property.

31. Accordingly, Plaintiff is entitled to have Defendant ejected from the Property immediately.

32. Furthermore, according to Plaintiff's attached Affidavit, he is entitled to judgment for actual damages in an ascertainable sum in excess of \$21,000, plus other damages as may be discovered and incurred during the course of this action.

FOR A FIRST CAUSE OF ACTION

(Summary Ejection of Trespasser – S.C. Code Ann. § 15-67-610)

33. Plaintiff repeats and realleges the allegations above as if restated verbatim here to the extent required by, but not inconsistent with, the following.

34. Plaintiff is the sole owner of the Property.

35. Since April 19, 2012, Defendant has lived on the Property without Plaintiff's consent or permission.

36. S.C. Code § 15-67-610 provides, "if, after the expiration of five days from the personal service of such notice, such trespasser refuses or neglects to quit then such magistrate shall issue his warrant to any sheriff or constable requiring him forthwith to eject such trespasser, using such force as may be necessary."

37. More than five days have expired since Defendant was properly served with the notice to quit, and she continues to live on the Property.

38. Accordingly, Plaintiff is entitled to an immediate warrant directing the Sheriff of Newberry County to eject the trespassing Defendant, using force as may be necessary, in addition to damages in excess of \$21,000.

FOR SECOND CAUSE OF ACTION

(Trespass)

39. Plaintiff repeats and realleges the allegations above as if restated verbatim here to the extent required by, but not inconsistent with, the following.

40. Plaintiff is the sole and exclusive legal owner of the Property.

41. Plaintiff has never given Defendant permission or consent to use or live on the Property after April 19, 2012.

42. Defendant has refused to vacate the Property ever since Plaintiff purchased it.

43. Defendant has voluntarily and intentionally invaded the Plaintiff's interest in the exclusive use of his Property, and she continues to do so today.

44. Defendant knew or should have known her use of the Property invaded Plaintiff's right to exclusive use of it.

45. As a direct and proximate result of Defendant's actions, Plaintiff has suffered damages of at least the monthly rental rate of the Property, or \$1,750 per month since April 19, 2012.

46. Accordingly, Plaintiff is entitled to an Order that Defendant immediately vacate the Property and to judgment against Defendant in excess of \$21,000, in addition to an injunction against Defendant from any continuing or future trespass, together with such other damages as may be discovered in this action.

FOR A THIRD CAUSE OF ACTION
(Unjust Enrichment)

47. Plaintiff repeats and realleges the allegations set forth above as if restated verbatim here to the extent required by, but not inconsistent with, the following allegations.

48. Defendant has received and retained the benefit of living on Plaintiff's Property since April 19, 2012 without paying any rent or giving any other valuable consideration to Plaintiff.

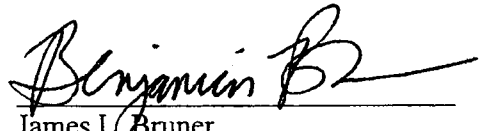
49. It would be inequitable for Defendant to retain that benefit without paying for it.

50. The reasonable value Defendant has received and continues to receive is \$1,750 per month.

51. Accordingly, Plaintiff is entitled to judgment against Defendant for an amount in excess of \$21,000.

WHEREFORE, Plaintiff prays for relief as follows:

- (1) That the Court immediately issue a Rule to Show Cause directing the Defendant to appear and show cause why she should not be ordered to vacate the Property and pay Plaintiff reasonable rent in the amount of \$1,750.00 per month from April 19, 2012 to the date she vacates the premises;
- (2) That the Court order the Defendant to vacate the Property within five (5) days and, if she fails to do so, issue a warrant for the Sheriff of Newberry County to enter the Property and remove the trespassing Defendant and her personal property from the Property, using force if necessary;
- (3) That judgment be entered for Plaintiff against Defendant for actual damages in excess of \$21,000, plus such other damages as may accrue and be discovered during this action, plus prejudgment interest and costs as allowed by law; and
- (4) That the Defendant be enjoined from any continuing and future trespass on the Property.


James L. Bruner
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Attorneys for the Plaintiff

April 25, 2013

Columbia, South Carolina

NEWBERRY COUNTY
ASSESSOR

TAX MAP # 96-12

PART OF MAP # _____

TAX YEAR 2013

Mary C. Amos

201200011322
Filed for Record in
NEWBERRY COUNTY, SC
JACKIE S. BOWERS, CLERK OF COURT
04-19-2012 At 11:01 am.
DEED 10.00
STATE 845.00
COUNTY 357.50
Book 1619 Page 118 - 119

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

QUIT-CLAIM DEED

TO ALL WHOM THESE PRESENTS MAY COME:

COPY

WHEREAS, an action (Docket No. 2005-DR-36-56) was initiated by Mary T. Hobby in the Newberry County Family Court for the Eighth Judicial Circuit seeking, among other relief, a divorce from Raymond D. Hobby, and in conjunction with such relief, the equitable apportionment of the marital assets;

WHEREAS, in connection with the equitable apportionment of the marital assets, Raymond D. Hobby and Mary T. Hobby, each of whom are citizens and residents of Newberry County, South Carolina, have agreed and are required to transfer various items of real and personal property, as encumbered, to The Hobby Family Liquidating Trust (the "*Liquidating Trust*") created pursuant to that certain Final Order and Divorce Decree dated October 8, 2010 by the Honorable Joseph W. McGowan, III, Judge of the Newberry County Family Court, Eighth Judicial Circuit (the "*Divorce Decree*");

WHEREAS, the Property (as defined below) was among the items of real property to be transferred to the Liquidating Trust pursuant to the Divorce Decree;

WHEREAS, the Liquidating Trust desires to convey any interest in the Property which the Liquidating Trust may have or have had to Raymond D. Hobby; and

WHEREAS, the Liquidating Trust has agreed to issue this Quit-Claim Deed in order to convey its interest in the Property, if any, and Raymond D. Hobby has agreed to accept this Quit-Claim Deed.

NOW, THEREFORE, for and in consideration of the foregoing recitals, and also in consideration of the sum of Three Hundred Twenty-Five Thousand and 00/100 Dollars (\$325,000.00), the receipt and sufficiency of such consideration being hereby acknowledged, to the extent the Liquidating Trust is vested or may hereinafter become vested, by virtue of a conveyance from Mary T. Hobby or otherwise, in any interest in the Property, the Liquidating Trust, as Grantor, has remised and forever quit-claimed unto Raymond D. Hobby, as Grantee, and by these presents, Grantor does hereby remise, release and forever quit-claim unto the Grantee, his heirs, successors and assigns, all its right, title and interest in and to the following (the "*Property*");

All that certain piece, parcel and lot of land with the improvements thereon, situate, lying and being located on Crowder Road, in the County of Newberry, State of South Carolina, being shown and designated as containing 2.75 acres, more or less, on plat of survey prepared for Raymond D. Hobby, by Adtech Surveying, Inc., PLS 11072, dated May 26, 2005, recorded in Plat Book C122

FILED
NEWBERRY COUNTY
JACKIE S. BOWERS
CLERK OF COURT
APR 26 PM 10 26
2012

EXHIBIT A

at Page 4 in the Office of the Clerk of Court for Newberry County. Said plat is incorporated herein for a more full and complete description as to the metes and bounds of said property.

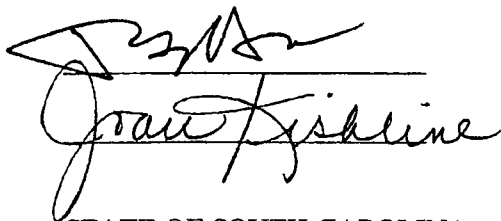
Together with a forty (40') foot right-of-way easement for ingress and egress to said property as shown on said plat.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining.

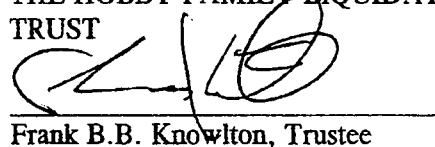
TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Grantee, his heirs and assigns, forever so that neither the said Grantor nor its successors or assigns, nor any other person or persons, claiming under it or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

WITNESS THE HAND AND SEAL of the Grantor's duly authorized signatory authority this 19th day of April, 2012.

Signed, sealed and delivered
in the presence of:


Joan A. Kishline

THE HOBBY FAMILY LIQUIDATING
TRUST


Frank B.B. Knowlton, Trustee

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

ACKNOWLEDGMENT

I, Joan A. Kishline, Notary Public for the State aforesaid, do hereby certify that the above-named Frank B.B. Knowlton, as Trustee of The Hobby Family Liquidating Trust, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 19 day of April, 2012.

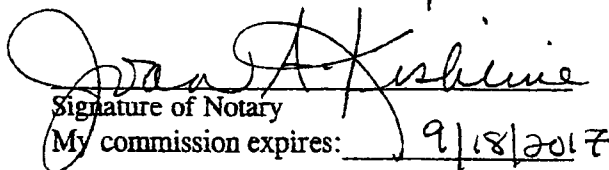

Signature of Notary
My commission expires: 9/18/2017

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Mary T. Hobby,
Plaintiff,
Vs.

Raymond D. Hobby,
Defendant.

IN THE FAMILY COURT FOR THE
EIGHTH JUDICIAL CIRCUIT

FINANCIAL DECLARATION
OF
MARY T. HOBBY

Docket No: 2012-DR-36-194

FILED
 NEWBERRY COUNTY
 2013 APR 26 AM 10 26
 JACKIE S. BOWENS
 CLERK OF COURT

HUSBAND/FATHER:

Address:
Age:
Occupation:
Employer:
Employer
Address:

WIFE/MOTHER:

Address: 544 Crowder Road, Kinards, SC 29355
Age: 60
Occupation: Unemployed
Employer:
Employer
Address:

Gross Monthly Income	Husband/Father	Wife/Mother
Principal Earnings from Employment ¹		
Overtime, Tips, Commission, Bonuses ²		
Pensions, Retirement, and Annuities income		
Additional Employment income		
Social Security Benefits (SSA) and VA Benefits		
Disability and Worker's Compensation Benefits		
Unemployment and AFDC		
Spousal or Child Support (from prior relationship)		
Dividends, Interest, Trust Income, and Capital Gains		
Rental Income and Business Profits		\$200.00
Other (Specify):		
TOTAL GROSS MONTHLY INCOME		\$200.00
Payroll Deductions from Monthly Income	Husband/Father	Wife/Mother
Federal Income Tax ³		
State Income Tax		
Social Security and Medicare Tax (FICA)		
Self-Employment Tax		
Health and Dental Insurance (Adult)		
Health and Dental Insurance (Child)		
Union Dues		
Voluntary Retirement Contributions (401(k), 457, IRA)		
Mandatory Retirement Contribution		
Savings Plan		
Other (Specify):		
TOTAL MONTHLY DEDUCTIONS		\$0.00
NET MONTHLY INCOME⁴		\$200.00

Estimate monthly expenses: (Specify which party is the custodial parent and list name and relationship of all members of household whose expenses are included.)

Mary T. Hobby

MONTHLY EXPENSES ⁵			Wife/Mother	Wife/Mother
			MOVING FROM 544 CROWDER RD, KINARDS, SC	LIVING AT 544 CROWDER RD, KINARDS, SC
1	Residential Rent Payment		\$0.00	\$0.00
2	Note or Mortgage Payment on Residence(s) including escrowed taxes and insurance		\$1,787.00	\$0.00
3	Food and Household Supplies ⁶		\$800.00	\$800.00
4	Utilities, Water, and Garbage Collection		\$687.00	\$612.00
5	Telephone and Cellular Phone		\$181.00	\$181.00
6	Medical, Dental and Disability Insurance Premiums (not deducted from paycheck)		\$737.52	\$737.52
7	Life Insurance Premiums (not deducted from paycheck)		\$454.14	\$454.14
8	Child Support (from other relationship)		\$0.00	\$0.00
9	Work Related Day Care		\$0.00	\$0.00
10	Spousal Support (from prior marriage)		\$0.00	\$0.00
11	Auto Payment		\$0.00	\$0.00
12	Auto Insurance, taxes, gasoline, and maintenance		\$769.17	\$769.17
SUBTOTAL:			\$5,415.83	\$3,553.83
13	Real Property Tax on Residence(s) not escrowed in mortgage above		\$39.00	\$218.00
14	Maintenance for household ⁸		\$751.67	\$551.67
15	Adult Clothing		\$250.00	\$250.00
16	Children's Clothing ⁹		\$0.00	\$0.00
17	Cable Television, Satellite, and Internet/Online Services		\$240.00	\$240.00
18	Laundry and Dry Cleaning ¹⁰		\$0.00	\$0.00
19	Medical and Dental Expenses (not paid by insurance)		\$350.00	\$350.00
20	Prescriptions, Glasses, and Contacts (not paid by insurance)		\$155.00	\$155.00
21	Children's incidental expenses ¹¹		\$0.00	\$0.00
22	School lunches, supplies, field trips, and fees ¹²		\$0.00	\$0.00
23	Entertainment ¹³		\$20.00	\$20.00
24	Adult Incidental expenses ¹⁴		\$1,600.50	\$1,600.50
25	All Installment payments ¹⁵		\$857.92	\$857.92
26	Other (Specify): homeowners insurance & Farm Bureau Membership fee		\$2.92	\$151.08
SUBTOTAL:			\$4,267.01	\$4,394.17
TOTAL MONTHLY EXPENSES			\$9,682.84	\$7,948.00

Installment Loan Payments Section

Creditor	For	Monthly Payment	Balance	Owed by ¹⁶
Fidelity & Gruity Life Insurance -Loan taken by Ray Hobby	interest only	\$857.92	(\$145,577.00)	Wife

Other Debts and Obligations *not* payable in monthly installments

Creditor	For	Date Payable	Balance	Owed by ¹⁶
McDougall & Self	attorney's fees/costs		(\$25,184.12)	Wife
McDougall & Self	attorney's fees/costs owed by Trust		(\$255,565.66)	Trust for Wife
Michael Beal / McNair	attorney's fees/costs		(\$4,800.00)	Wife
McKay & Amos	forsefic accounting		(\$31,076.46)	Wife
Watson Appraisal Services	appraisals		(\$10,225.00)	Wife

Are you currently in Bankruptcy? ☐ YES ☒ NO

Are any obligations listed above, including mortgage and note payments, in arrears? ☒ YES ☐ NO

If yes, please list the obligations in arrears.
See above.

All Marital Property Known to Parties

Assets	Husband/Father	Wife/Mother	Joint
Cash and Money in Checking Account(s) ¹⁷			
Money in Savings Account(s), Credit Union, Money Mkt, or Cert. of Dep. ¹⁷			
Value of Voluntary Retirement Account(s)			
Value of Pension Account			
Value of Publicly Held Stocks, Bonds, Securities, Mutual Funds ¹⁸			
Value of Privately Held Stocks and Other Business			
Value of Real Estate - Net of Mortgage Balances ¹⁹			
Value of All Other Property ²⁰			
TOTAL ASSETS			

Any Non Marital Property Known to Parties

Description of Assets	Title Owner	Date of Acquisition	Source of Funds to Acquirer	Estimated Present Market Value

If total assets are less than \$300,000, sign and have notarized.

If total assets are greater than \$300,000, itemize assets by completing additional sections below and sign and have notarized.

Financial Accounts Section¹⁷

Owner	Name of Institution	Type of Account	Balance
Wife	First Community Bank (Heritage acct)	checking	\$31,192.00
Wife	First Community Bank (Sweep acct)	checking	\$180,425.00
Wife	First Community Bank (Interest acct)	checking	\$25,000.00
Wife	Bank of America	checking	\$100,152.00
Wife	Bank of America	savings	\$976.00

Voluntary Retirement Accounts and Pension Accounts Section

Type of Account	Value
LPL 401k	\$91,833.00
SCRS	\$14,306.00

Publicly Held Stocks, Bonds, Securities, Mutual Funds Section (Non-Retirement)¹⁸

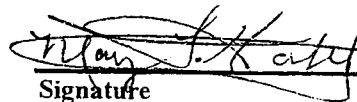
Name of Company	Number of Shares/Type of Account	Value

Real Estate Section¹⁹

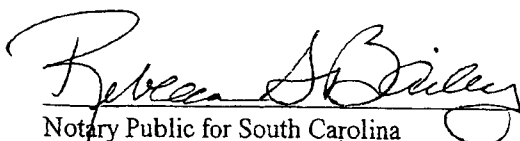
Owner	Address	Value	Mortgage Balance	Equity
Trust	Hobby Liquidating Trust (NOTE: Majority of marital assets held by Trust; Wife has only received 2 distributions from Trust: \$90,000 by way of 12 payments of \$7,500; \$25,000 distribution towards attorney's fees)	TBD	TBD	TBD
Wife	Bishopville Property (212.94 acres with mobile home)	\$350,000.00	\$0.00	\$350,000.00

Other Property Section²⁰

Owner	Description of Asset	Value	Loan Balance	Equity
Wife	2005 Cadillac Escalade	\$11,300.00	\$0.00	\$11,300.00


Signature

Sworn to before me this 12th day of
November, 2012.

 (SEAL)
Notary Public for South Carolina
My commission expires: 1-23-2014

- 1 A recent paystub should be attached to the Financial Declaration. To compute Principal Earnings from Employment, first determine whether you are paid semi-monthly, biweekly, or weekly. If you are paid semi-monthly, multiply the gross amount of your paycheck by two. If you are paid biweekly, multiply the gross amount of your pay check by 26 and then divide by 12. If you are paid weekly, multiply the amount of your paycheck by 52 and divide by 12. Round to the nearest whole dollar.
- 2 To compute Overtime, Tips, Commission, Bonuses, take an average of your monthly earnings from overtime, tips, commission, bonuses, etc. from the past three years or the length of employment if employed less than three years (including this year).
- 3 To compute State, Local, and Social Security Tax deductions, use the same formula used to compute principal earnings in endnote 1 above, or consult or have your attorney consult an accountant.
- 4 Net Monthly Income is equal to Total Gross Monthly Income minus Total Monthly Deductions.
- 5 Do not include any expense in the Monthly Expenses section that has already been included in the Deductions from Gross Monthly Income on page one of the Declaration.
- 6 Food expense is to include the cost of groceries, toiletries, cleaning supplies, and casual eating out.
- 7 Auto Expenses are to include gasoline, oil changes, tune-ups, tire replacement, maintenancce, and related items.
- 8 Maintenance for Household is to include appliance and household repairs, landscaping, house cleaning, pest control, pool service, alarm service, and other related items.
- 9 Clothing Expense is to include shoes and clothing purchases, clothing repair and alterations, and related items.
- 10 Laundry Expense is to include the cost of laundry service, dry cleaning, and related items.
- 11 Children's Incidental Expenses are to include allowance, summer camp, baby sitters, lessons, activities, participatory sports, and related items.
- 12 School Expense is to include tuition, supplies, field trips, dues, tutors, locker rentals, school lunches, and other related items.
- 13 Entertainment is to include movies, theater, vacations, sporting events, compact discs, digital video discs, and related items.
- 14 Adult Incidental Expenses are to include cosmetics, hair and nail care, books, magazines, newspapers, business dues, memberships, pets, charity, religious dues or tithes, gifts, bank charges, hobbies, and related items.
- 15 All Installment Loan Payments is the total amount itemized in Installment Loan Payment Section, which should include all loan payments not already listed as a monthly expense. Examples: home equity loan, credit cards, etc.
- 16 Indicate which spouse legally owes the payment (husband, wife, or joint).
- 17 Itemize Financial Accounts such as checking, savings, credit union, money market, or certificate of deposit accounts in the Financial Accounts Section.
- 18 Itemize Publicly Held Stocks, Bonds, Securities, Stock Options and Mutual Funds (excluding retirement accounts) in the Publicly Held Stocks, Bonds, Securities, Mutual Funds Section.
- 19 Itemize each parcel or Real Estate in the Real Estate Section.
- 20 Other property is to include automobiles (minus loan balance), boats (minus loan balance), furniture, furnishings, china, silver, jewelry, collectibles, and other personal property.

Exhibit C

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Raymond D. Hobby,)
Plaintiff,)
v.)
Mary T. Hobby,)
Defendant.)

C/A No.: 2013-CP-36-_____

**AFFIDAVIT OF
RAYMOND D. HOBBY**

FILED
NEWBERRY COUNTY
2013 APR 26 AM 10 26
JACKIE S. BOWERS
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Raymond D. Hobby, who, being first duly sworn, deposes and says:

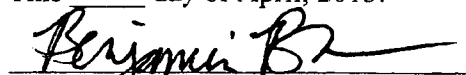
1. I am over 18 years of age.
2. I have personal knowledge of the information contained in this Affidavit.
3. I have reviewed the Verified Complaint, the allegations contained therein and the Exhibits attached thereto, and I know those factual allegations to be true and correct, with the exception of those allegations made upon information and belief, and as to those, I am informed and believe that they are true.
4. The reasonable rental value of the Property which is the subject of this lawsuit is \$1,750.00 per month.
5. After I purchased the Property on April 19, 2012, Defendant Mary T. Hobby refused to move out of the house, and she still lives there today.
6. As of the date of this Affidavit, the Defendant has caused me damages in excess of \$21,000 based on the rental rate for the Property alone.

FURTHER AFFIANT SAYETH NOT.


Raymond D. Hobby

SWORN TO and subscribed before me

This 25th day of April, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 6/30/2014

EXHIBIT D

STATE OF SOUTH CAROLINA)

IN THE FAMILY COURT

COUNTY OF NEWBERRY)

EIGHTH JUDICIAL CIRCUIT

Mary T. Hobby,)

Plaintiff,)

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

vs.)

Raymond D. Hobby,)

Defendant.)

Docket No.: 2012-DR-36-194

Plaintiff's Attorney:

John O. McDougall
Michael B. Brackett

Hearing Date:

November 13, 2012

Defendant's Attorney:

Timothy E. Madden
Winston I. Marosek

Judge:

Deborah Neese

Guardian Ad Litem:

None

Court Reporter:

Angela Berry

FILED
NEWBERRY COUNTY
2013 APR 26 AM 10 26
JACKIE S. BOWENS
CLERK OF COURT

FILED
NEWBERRY COUNTY
2013 JUN -7 P 2 46

This Order addresses the Motion to Dismiss filed by Defendant on July 12, 2012, a hearing on which was held before the undersigned on November 13, 2012. Based on the affidavits, arguments presented by counsel at the hearing, and applicable law, this Court makes the following findings of fact and conclusions of law and enters this Order.

Plaintiff and Defendant are citizens and residents of Newberry County, South Carolina and have so resided for more than one year prior to the commencement of this civil action.

Defendant and Plaintiff were married on June 24, 1978, and divorced by a Final Order and Divorce Decree ("Divorce Decree") filed October 8, 2010 in Docket No. 2005-DR-36-56. The Divorce Decree approved the agreement of the parties. The Divorce Decree required the parties to create a liquidating trust and transfer the vast majority of their marital assets into the

trust. By the terms of the Divorce Decree, certain provisions were ordered to be included to the trust. In compliance with the Divorce Decree, Plaintiff and Defendant created and signed the Hobby Family Liquidating Trust Agreement (the "Trust") on December 9, 2010 and December 6, 2010, respectively.

One of the assets which the Divorce Decree required to be transferred to the Trust is the former marital home and three (3) surrounding acres (the "Crowder Road Property"). At the time of the entry of the Divorce Decree, the Crowder Road Property was titled solely in Plaintiff's name. By the terms of the Trust, the Trustee is granted various powers, including but not limited to the power to:

sell or dispose of . . . any property, real or personal, constituting a part of the Trust Estate . . . , for cash or on credit . . . at such times and upon such terms and conditions as it may deem best . . . (See Trust, Article IX(a)(vi)).

By operation of its own terms, the Trust is a liquidating trust, so that assets and debts owned by it are managed and controlled and disposed of in the manner directed by the Trustee, with distributive benefits flowing to Plaintiff and Defendant in accordance with the terms of the Trust.

Beginning in December, 2011, over a year after the entry of the Divorce Decree, Plaintiff and Defendant individually negotiated with the Trustee for the purchase of the property after the Trustee gave notice of an intention to sell the Crowder Road Property. Both Plaintiff and Defendant presented offers to purchase the Crowder Road Property from the Trust. On or about February 9, 2012, the Trustee accepted Defendant's offer to purchase the Crowder Road Property from the Trust. On April 11, 2012, Plaintiff transferred the Crowder Road property to the Trust by general warranty deed. On April 19, 2012, the Trustee transferred the Crowder Road property to Defendant by quitclaim deed after Defendant paid the Trust in accordance with the offer accepted by the Trustee.

Plaintiff remained in the possession of the Crowder Road Property, and on May 15, 2012, filed this action seeking (1) alimony (as permitted by the Divorce Decree), (2) a declaration that the Trustee's Deed to Defendant for the Crowder Road Property is void ab initio, (3) a determination of whether Plaintiff or Defendant should be allowed to purchase the Crowder Road Property, (4) exclusive possession of the property until all of the Trust assets are liquidated; (5) an order prohibiting Defendant from pursuing eviction proceedings against Plaintiff during the pendency of the case, (6) discovery rights, and (7) attorney's fees and costs.

With the filing of this action, Plaintiff also filed Motion for Temporary Relief in May 15, 2012 seeking (1) an emergency hearing on Defendant's eviction proceedings against Plaintiff; (2) an emergency order prohibiting Defendant from pursuing eviction proceedings against Plaintiff; (3) temporary alimony; (4) sole and exclusive use of the Crowder Road Property during the pendency of this action; (5) discovery rights, and (6) attorney's fees and costs.

On May 15, 2012, the Family Court issued an Emergency Order prohibiting Defendant from pursuing eviction proceedings against Plaintiff regarding the Crowder Road Property.¹ In the Emergency Order, the Court scheduled an expedited hearing for May 18, 2012. Counsel for the parties agreed to continue the hearing until June 4, 2012, and allowed the provision of the Emergency Order prohibiting Defendant from pursuing eviction proceedings against Plaintiff to remain in effect until the next hearing, without prejudice to either party.²

On July 12, 2012, Defendant filed a Motion to Dismiss in which he requested the Court dismiss Plaintiff's Complaint (as it related to the relief requested concerning the Crowder Road

¹ As of the date of the hearing on November 13, 2012, Plaintiff remained in possession of the Crowder Road Property.

² The hearing was continued a second time to November 13, 2012, in the Consent Order of Continuance dated August 30, 2012.

Property) pursuant to Rules 12(b)(1), (6), and (7) of the South Carolina Rules of Civil Procedure.

In summary, Plaintiff contends the Family Court maintains jurisdiction to hear the issues raised in Plaintiff's Complaint concerning the Crowder Road Property based on the language of the Trust, which states:

The parties to this Agreement hereby acknowledge and agree that the exclusive jurisdiction for matters involving this Trust or any matters related thereto is the Family Court for the Eighth Judicial Circuit Newberry County, South Carolina, and waive any right to object or otherwise take issue with the convenience of such forum.

Plaintiff further argues the "subject matter" before the Court concerning the Crowder Road Property involves the equitable division of an asset and the purpose of the Trust provision cited above is to ensure the fair and equitable liquidation of the assets of the Trust. Plaintiff contends the Trustee is the agent of the Family Court for the purpose of equitable apportionment. Plaintiff relies on Thomas v. McGriff, 368 S.C. 485, 629 S.E.2d 359 (2006), for the proposition of concurrent jurisdiction with the Probate Court. Plaintiff also argues the Court has jurisdiction over the contract (the Trust) between the parties and because the Trust apportions marital property, this Court maintains jurisdiction to hear and determine the issues raised by Plaintiff's Complaint.

In summary, Defendant argues the Family Court lacks subject matter jurisdiction over the subject matter of Plaintiff's Complaint because the subject matter does not fall within S.C. Code § 63-3-530 (jurisdiction of the Family Court) and the Probate Court maintains exclusive jurisdiction over matters related to trusts. Defendant further contends the subject matter of Plaintiff's Complaint is not the equitable division of an asset, but rather the administration of an independent Trust.

The Family Court is a court of limited jurisdiction. It maintains exclusive jurisdiction over those matters specified in S.C. Code § 63-3-530 (1976, as amended). Those matters include, but are not limited to:

1. actions under the provisions of the Uniform Interstate Family Support Act;
2. actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney's fees and costs, if requested by either party in the pleadings;
3. actions for and related to the adoption of children and adults; and
4. actions for termination of parental rights, whether such action is in connection with an action for adoption or apart therefrom.

Pursuant to S.C. Code § 62-1-302 (1976, as amended), the Probate Court maintains exclusive original jurisdiction over all subject matter related to trusts.

The subject matter of Plaintiff's Complaint does not fall within S.C. Code § 63-3-530 (1976, as amended). The subject matter of Plaintiff's Complaint as it relates to the Crowder Road Property concerns an independent trust and transactions occurring after the entry of the Divorce Decree and after the formation of the Trust. Specifically, Plaintiff's Complaint as it relates to the Crowder Road Property concerns the actions of the Trustee of the Trust (whether the Trustee's Deed dated April 19, 2012 is null and void; whether Defendant or Plaintiff should be allowed to purchase the Crowder Road Property from the Trust; whether the property should be held in the Trust; and whether Plaintiff should be entitled to exclusive use of the property). The equitable distribution of the marital property was accomplished in the Divorce Decree. While the vast majority of the marital property was transferred into the Trust, the Trustee's powers and duties do not include the equitable distribution of Trust property. The Trust contains

specific provisions concerning the powers and duties of the Trustee as it relates to the property of the Trust. While the Trust contains language concerning the exclusive jurisdiction of the Family Court for matters involving the Trust or any matters related thereto, individual parties cannot confer subject matter jurisdiction upon this Court. November 4, 2008 Bluffton Town Council Election v. Fulgham, 385 S.C. 632, 637, 686 S.E.2d 683, 686 (2009) ("The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court."); State v. Richburg, 304 S.C. 162, 165, 403 S.E.2d 315, 317 (1991) (. . . "parties cannot, by their actions or agreements, confer subject matter jurisdiction upon the trial court . . .").

Upon careful review, this Court does not have jurisdiction to hear and determine so much of Plaintiff's Complaint as it relates to the relief requested concerning the Crowder Road Property (whether the Trustee's Deed dated April 19, 2012 is null and void; whether Defendant or Plaintiff should be allowed to purchase the Crowder Road Property from the Trust; whether the property should be held in the Trust; and whether Plaintiff should be entitled to exclusive use of the property). While the Divorce Decree required the creation of a trust containing certain terms, and also included language by which the Family Court retained jurisdiction to interpret, enforce, and to the extent necessary, effectuate the terms of the Divorce Decree, the parties themselves settled and created the Trust and signed it more than six weeks after the entry of the Divorce Decree. The language in the Divorce Decree which retained jurisdiction for certain purposes is not sufficiently broad to include a retention of jurisdiction to resolve any dispute arising out of the actions or conduct of the Trustee or the administration of the terms of the Trust. After the entry of the Divorce Decree, no marital property was acquired and the Family Court maintains jurisdiction only over marital property. There is no indication the Trust was ever

reviewed by the Family Court. There is no challenge presented by Plaintiff that the Trust is in fact the product of the Family Court Order or that the Trust contains terms or provisions different from those required by the Divorce Decree.

Actions related to the administration of a Trust are within the exclusive jurisdiction of the Probate Court pursuant to S.C. Code § 62-1-302. As such, the Family Court lacks jurisdiction to hear and decide the issues set forth in Plaintiff's Complaint concerning the Crowder Road property.

NOW, THEREFORE, IT IS ORDERED Plaintiff's Complaint filed May 15, 2012, as it relates to the Crowder Road Property is dismissed.

AND IT IS SO ORDERED.

Deborah Neese
Judge of the Family Court

_____, South Carolina

Dated: _____

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby)
Plaintiff,)
vs.)
Mary T. Hobby)
Defendant.)

Civil Action No. 2013-CP-36-193

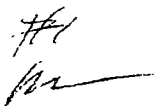
DEFENDANT'S ANSWER

FILED
NEWBERRY COUNTY
2013 MAY 9 AM 11 01
JACKIE S. BOWERS
CLERK OF COURT

The Defendant, subject to the motion to dismiss heretofore made, answers the complaint herein as follows:

FOR A FIRST DEFENSE

1. That the Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted.
2. That the allegations of paragraph 1 and 2 are admitted.
3. That the allegations of paragraph 3 and 4 are denied.
4. That the allegations of paragraphs 5, 6, 7, 8, 9 and 10 are admitted.
5. That the allegations of paragraphs 11, 12 and 13 are denied.
6. That the allegations of paragraph 14 are admitted and that the Plaintiff's offer dated January 3, 2012, is attached as Exhibit No. 1.
7. That the allegations of paragraphs 15 and 16 are admitted.
8. That the allegations of paragraphs 17, 18, 19, 20, 21, 22, 23 and 24 are denied.
9. That the allegations of paragraphs 25 and 26 are admitted.
10. That the allegations of paragraphs 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51 and the remaining allegations of the complaint are denied.



FOR A SECOND DEFENSE

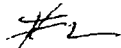
11. That the offer made by the Plaintiff which was accepted included the offer to put the marital residence in the Trust, which would allow Defendant to live there rent free, and as a result, Defendant is not liable to the Plaintiff for any amount.

WHEREFORE, having answered, the Defendant demands that this Complaint be dismissed and for such other and further relief as may be just and proper.



Pope D. Johnson, III
Johnson & Barnette, LLP
P.O. Drawer 11209
Columbia, SC 29211
803-799-9791
803-253-6084 (Fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
May 8, 2013



Frank B. Knowlton
Nelson, Mullins, Riley & Scarborough L.L.P.
Post Office Box 11070
Columbia, SC 29211

January 3, 2012

FILED
NEWBERRY COUNTY
2013 MAR 9 AM 11 01
JACKIE S. BOWERS
CLERK OF COURT

Re: Hobby vs. Hobby 544 Crowder Road (with surrounding 3 acres)

Dear Frank,

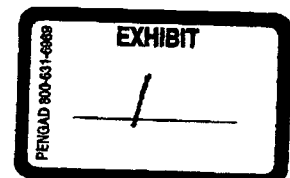
I greatly appreciate the opportunity to make an offer to purchase the property in Kinards, SC, 544 Crowder Road and surrounding acreage. It is my opinion that this property is essential to the value of the overall property holdings that surround it and being extracted from the farm will drastically damage the total value of the property. Therefore I would extend an offer to the trust to purchase Ms. Hobby's interest of 42 ½ % to maintain the most value and marketable position for the overall property.

I am offering to purchase this property for \$138,125.00 as is where is. This is based on the 42 ½ % of the full \$325,000.00 appraisal that was used in the evaluation of material assets at the time of divorce and was agreed on by both parties. No broker discounts, no commissions, no reductions for any reasons.

I am further offering to leave this asset in the Trust to maximize the properties value for any future sale opportunities and receive no distributions until the property is sold and all trust liabilities are satisfied.

According to Ms. Hobby's appraisal it contends the property isn't worth that amount. I, as stated above disagree not only for the overall value of the total farm but feel the size, quality and location of the home keeps it at the former numbers.

As to reimbursements for expenses to Ms. Hobby for taxes, maintenance and repairs, these should be denied. If there is any devaluation or cost to maintain this property it should be borne by Ms. Hobby for failure to comply with the final divorce order to convey this property into the trust. As you know I personally have not asked to date for any reimbursements for funds I have advanced on behalf of trust assets, taxes, maintenance, repairs, mortgage payments, interest or any other cost associated. This will be accounted for when the trust is solvent and has adequate cash flows.



Knowing the Trust is still struggling and has urgent needs for cash flow, I propose this transaction take place as immediate as possible. I can close in a matter of days should you find this proposal acceptable.

I respect your consideration and request to reserve the right to counter offer if any additional offers are presented that exceed this proposal.

Sincerely,
Raymond D. Hobby

June 8, 2005

Mr. Raymond D. Hobby
PO Box 457
Newberry, SC 29108

Re: Release of home held as security

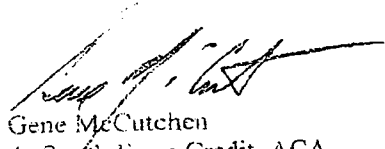
Dear Mr. Hobby,

We have considered your request for a release of the home and 2.75 acres held as security by AgSouth Farm Credit, ACA for outstanding loans. We will release this property, but would not be willing to release further security without some consideration as to replacement collateral and/or a reduction in the overall loan amounts outstanding to AgSouth Farm Credit, ACA. Also a further condition of the release of this property will be to receive a copy of the final divorce decree once completed.

Once you have completed the legal description of the property to be released you may forward this to our Batesburg Office at AgSouth Farm Credit, ACA, PO Box 2607, Batesburg-Leesville, 29070 or physical address of 109 East Church St., Leesville, SC 29070. By this letter they are authorized to execute the release of the home and 2.75 acres with additional improvements.

Please let us know of further service we can be and look forward to working with you in the future.

Sincerely,


Gene McCutchen
AgSouth Farm Credit, ACA

cc: Tom Sawyer, RVP Batesburg Location

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby)
Plaintiff,)

Civil Action No. 2013-CP-36-193

vs.)

CERTIFICATE OF SERVICE

Mary T. Hobby)
Defendant.)

I, Susan J. Mondello, of Johnson & Barnette, LLP, hereby certify that I have served Benjamin C. Bruner, attorney for the defendant, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 8th day of May, 2013.

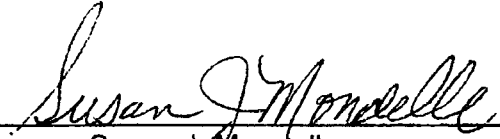
COUNSEL SERVED:

Benjamin C. Bruner
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260-1110

PLEADINGS:

Defendant's Answer

FILED
NEWBERRY COUNTY
2013 MAY 9 AM 11 02
JACKIE S. BOWERS
CLERK OF COURT


Susan J. Mondello

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby)
Plaintiff,)

Civil Action No. 2013-CP-36-193

vs.)

**AMENDED ANSWER, COUNTERCLAIM
AND THIRD PARTY COMPLAINT**

Mary T. Hobby)
Defendant/Third Party
Plaintiff,)

(Jury Trial Demanded)

vs.)

Frances B. Knowlton, Individually)
and as Trustee,)
Third Party Defendant.)

FILED
NEWBERRY COUNTY
2013 JUN 10 AM 11 05
JACKIE S. JOYENS
CLERK OF COURT

The Defendant, subject to the motion to dismiss heretofore made, answers the Complaint herein as follows:

FOR A FIRST DEFENSE

1. That the Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted.
2. That the allegations of paragraph 1 and 2 are admitted.
3. That the allegations of paragraph 3 and 4 are denied.
4. That the allegations of paragraphs 5, 6, 7, 8, 9 and 10 are admitted.
5. That the allegations of paragraphs 11, 12 and 13 are denied.
6. That the allegations of paragraph 14 are admitted and that the Plaintiff's offer dated January 3, 2012, is attached as Exhibit No. 1.
7. That the allegations of paragraphs 15 and 16 are admitted.
8. That the allegations of paragraphs 17, 18, 19, 20, 21, 22, 23 and 24 are

~1~



denied.

9. That the allegations of paragraphs 25 and 26 are admitted.

10. That the allegations of paragraphs 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51 and the remaining allegations of the complaint are denied.

FOR A SECOND DEFENSE

11. That the offer made by the Plaintiff which was accepted included the offer to leave the marital residence in the Trust, which would allow Defendant to live there rent free, and as a result, Defendant is not liable to the Plaintiff for any amount.

FOR A THIRD DEFENSE

12. That the plaintiff failed to leave the marital residence in trust and has unclean hands and is therefore not entitled to any equitable relief.

FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM

13. That a real and substantial case or controversy exists as to the rights and duties of the parties under contract for the sale of the marital residence, including Defendant's right to live in the marital residence rent free, and the Court should declare such rights and duties.

FOR A FIFTH DEFENSE AND BY WAY OF THIRD PARTY COMPLAINT

13. That Frances B. Knowlton, the Third Party Defendant, is the Trustee of the Liquidating Trust which held title to the marital residence.

14. That when the plaintiff offered to purchase the marital residence, he offered to have it in the trust.

15. That upon information and belief, if the marital residence was left titled in the trust, defendant would be entitled to live in it rent free pursuant to the terms of the Trust.

16. That the Third Party Defendant did not retain title of the marital residence but conveyed the property to the plaintiff and breached his fiduciary duty to the Defendant and Third Party Plaintiff.

17. That in addition, the Third Party Defendant sold the property, accepting cash

~2~

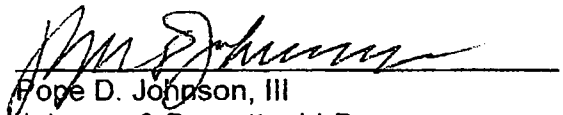
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for the Defendant's interest and allowing the plaintiff to finance his interest, and as a result, the proceeds of the Defendant and Third Party Plaintiff's interest are being used to finance the obligations of the Trust and the plaintiff is not contributing a like amount to finance the obligations of the Trust.

18. That the Third Party Defendant has favored one beneficiary, the plaintiff, over another, the Defendant and Third Party Plaintiff, in selling the marital residence and in failing to determine and protect her right to continue to live in the residence rent free and has breached his fiduciary duty to the Defendant and Third Party Plaintiff, with whom he has a special relationship and has exposed the Defendant and Third Party Plaintiff to the claims by the plaintiff.

19. That if the Defendant owes the Plaintiff any amount, which is denied, the Defendant and Third Party Plaintiff is entitled to equitable indemnification from the Third Party Defendant.

WHEREFORE, having answered, the Defendant demands that this Complaint be dismissed and for a declaratory judgment of the rights and duties of the parties under contract for the sale of the marital residence, including Defendant's right to live in it rent free and if any recovery is made against her by the Plaintiff, a judgment against the Third Party Defendant by way of equitable indemnification, including attorney's fees and for such other and further relief as may be just and proper.


Pope D. Johnson, III
Johnson & Barnette, LLP
P.O. Drawer 11209
Columbia, SC 29211
803-799-9791
803-253-6084 (Fax)
pdjohnson@johnsonbarnette.com
**Attorney for the Defendant and Third
Party Plaintiff**

Columbia, South Carolina
June 7, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby)
Plaintiff,)

Civil Action No. 2013-CP-36-193

vs.)

CERTIFICATE OF SERVICE

Mary T. Hobby)
Defendant.)

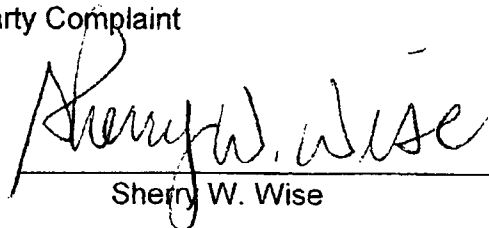
I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Benjamin C. Bruner, attorney for the defendant, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 7th day of June, 2013.

COUNSEL SERVED:

Benjamin C. Bruner
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260-1110

PLEADINGS:

Amended Answer, Counterclaim and Third Party Complaint


Sherry W. Wise

FILED
NEWBERRY COUNTY
2013 JUN 10 AM 11 05
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Raymond D. Hobby,)
Plaintiff,)

C/A No.: 2013-CP-36-0193

v.)

Mary T. Hobby,)
Defendant.)

FIRST AMENDED COMPLAINT
(Non-Jury)

Plaintiff Raymond D. Hobby ("Plaintiff"), complaining of Mary T. Hobby ("Defendant"), hereby amends his complaint in this action, pursuant to Rule 15, SCRCP, to allege as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a citizen of South Carolina and a resident of Newberry County.
2. Defendant is a citizen of South Carolina and a resident of Newberry County.
3. The allegations in this complaint relate to real property commonly described as 544 Crowder Road in Newberry County ("the Property").
4. This Court has jurisdiction over these claims pursuant to Art. V, Sec. 11 of the South Carolina Constitution, S.C. Code § 22-3-10, S.C. Code § 27-33-40, the South Carolina Residential Landlord and Tenant Act, S.C. Code §27-40-10, *et seq.*, and as otherwise provided by law.
5. Venue in this Court is proper pursuant to Chapter 7 of Title 15 of the 1976 South Carolina Code of Laws, as amended.

FACTUAL ALLEGATIONS

6. Defendant and Plaintiff were married on June 24, 1978, and divorced by a Final

Order and Divorce Decree (“Divorce Decree”) filed October 8, 2010 in Docket No. 2005-DR-36-56.

7. The Divorce Decree required the parties to create a liquidating trust and transfer the vast majority of their marital assets into the trust. By the terms of the Divorce Decree, certain provisions were ordered to be included to the trust.

8. In compliance with the Divorce Decree, Plaintiff and Defendant created and signed the Hobby Family Liquidating Trust Agreement (the “Trust”) on December 6, 2010 and December 9, 2010, respectively.

9. One of the assets the Divorce Decree required to be transferred to the Trust is the Property, which was the marital home and included three (3) surrounding acres.

10. At the time of the entry of the Divorce Decree, the Property was titled solely in the Defendant’s name.

11. By the terms of the Trust, the Trustee is granted various powers, including but not limited to the power to “sell or dispose of . . . any property, real or personal, constituting a part of the Trust Estate . . . , for cash or on credit . . . at such times and upon such terms and conditions as it may deem best. . . .”

12. By operation of its own terms, the Trust is a liquidating trust, so that assets and debts owned by it are managed and controlled and disposed of in the manner directed by the Trustee, with distributive benefits flowing to Plaintiff and Defendant in accordance with the terms of the Trust.

13. The Divorce Decree and Trust terms further provide that Defendant had sole and exclusive possession of the Property until it was “sold, or until vacated by her.”

14. Beginning in December 2011, over a year after the entry of the Divorce Decree, Plaintiff and Defendant each made offers to the Trustee to purchase the property.

15. The Trustee intended to sell the Property because the Trust was in need of cash to keep operating.

16. On December 8, 2011, Defendant submitted an offer to the Trustee to purchase the Property for \$225,000, of which \$127,231 would be paid in cash to the Trust. A true and accurate copy of Defendant's offer is attached as **Exhibit A** and incorporated herein.

17. On or about January 3, 2012, the Plaintiff submitted a counteroffer to the Trustee to purchase the Property for \$325,000, \$138,125 of which would be paid in cash to the Trust. A true and accurate copy of the Plaintiff's offer is attached as **Exhibit B**.

18. After giving the Defendant a reasonable time to outbid Plaintiff, the Trustee accepted Plaintiff's offer on or about February 9, 2012.

19. On April 11, 2012, the Defendant transferred the Property into the Trust by general warranty deed, finally complying with the October 2010 Divorce Decree.

20. On April 19, 2012, the Trustee transferred the Property to Plaintiff by quitclaim deed after Plaintiff paid the Trust in accordance with the offer accepted by the Trustee. A true and accurate copy of the quitclaim deed is attached as **Exhibit C** and is incorporated herein by reference.

21. After April 19, 2012, Defendant continued to live on the Property.

22. Since at least April 19, 2012, Defendant has been either a trespasser or a holdover tenant because she has not owned the Property and has continued living there without Plaintiff's permission.

23. Since April 19, 2012, Plaintiff alone has held legal title to the Property.

24. After purchasing the Property, Plaintiff requested that Defendant move out and has taken actions to remove her, but she has refused to vacate the Property.

25. Any agreement allowing the Defendant to live on the Property expired on April 19, 2012, when the Trustee closed the sale to the Plaintiff.

26. Since April 19, 2012, Defendant has wrongfully and unlawfully exercised exclusive possession over Property she does not own, denied Plaintiff any use of Property he purchased and owns, occupied the Property without Plaintiff's consent, and she has failed to pay Plaintiff any compensation for living on the Property.

27. On May 2, 2012, Plaintiff filed a Notice to Quit in the Magistrate's Court for Newberry County, C/A No.: 2012-CV-36-10100450, ("Ejectment Case").

28. On May 14, 2012, Plaintiff served Defendant with the Notice to Quit.

29. On May 15, 2012, Defendant filed suit in the Family Court for Newberry County, C/A No. 2012-CP-36-194, ("Family Court Case") seeking (1) alimony (as permitted by the Divorce Decree), (2) a declaration that the Trustee's Deed to Plaintiff for the Property was void *ab initio*, (3) a determination of whether Plaintiff or Defendant should be allowed to purchase the Property, (4) exclusive possession of the Property until all of the Trust assets are liquidated, (5) an order prohibiting Plaintiff from pursuing eviction proceedings against Plaintiff during the pendency of the case, (6) discovery rights, and (7) attorney's fees and costs.

30. On May 15, 2012, the Family Court issued an Emergency Order prohibiting Plaintiff from pursuing eviction proceedings in the Ejectment Case pending a hearing in the Family Court.

31. On or about May 16, 2012, Defendant filed an Answer in the Ejectment Case. In her Answer, Defendant contested the magistrate's jurisdiction.

32. On November 13, 2012, the Family Court held a hearing in the Family Court Case.

33. On January 7, 2013, the Family Court entered an Order dismissing the Defendant's claims related to the Property in the Family Court Case. A true and accurate copy of the Court's Order is attached hereto as **Exhibit D**.

34. Defendant's subsequent motion to reconsider was also denied, and Plaintiff is informed and believes no appeal has filed or served.

35. After learning the Family Court Case had been dismissed, the Plaintiff contacted the Magistrate's Court to reschedule a hearing in the Ejectment Case.

36. However, the Magistrate declined to reschedule the hearing based on jurisdictional concerns.

37. Defendant filed a financial declaration in the Family Court Case stating her monthly costs for a home similar to the Property are \$1,787. A true and accurate copy of Defendant's financial declaration is attached as **Exhibit E**.

38. Plaintiff is informed and believes the reasonable monthly rental value of the Property is \$1,750. A copy of Plaintiff's Affidavit is attached as Exhibit C to the original verified complaint filed in this action, which is incorporated herein by reference.

39. Plaintiff is therefore entitled to an order directing Defendant to vacate the Property in addition to judgment against her for an ascertainable sum in excess of \$21,000, for double his actual damages, for punitive damages, for other damages as may be discovered and incurred during the course of this action, and for attorney's fees, prejudgment interest and costs.

FOR A FIRST CAUSE OF ACTION

40. Plaintiff repeats and realleges the allegations set forth above as if restated verbatim here to the extent required by, but not inconsistent with, the following allegations.

41. Certain terms in the Trust agreement established a “rental agreement,” as defined by statute, pursuant to which Defendant was entitled to occupy the Property to the exclusion of all others until the Property was “sold, or until vacated by her.”

42. The rental agreement, therefore, expired and terminated when the Trustee sold the Property to Plaintiff, pursuant to the Divorce Decree.

43. Defendant received notice in writing that the Property was sold, but she refused to move out.

44. Upon purchasing the Property, Plaintiff became the “landlord,” as defined by statute, because he owns the Property.

45. Plaintiff and Defendant did not enter into a new rental agreement or any other agreement allowing Defendant to continued living on the Property.

46. Instead, Plaintiff requested in writing that Defendant vacate the Property.

47. However, Defendant has refused to move out and has remained in possession of the Property without Plaintiff’s consent.

48. Defendant’s holdover is not in good faith and constitutes a willful violation of Title 27, Chapter 40 of the South Carolina Code of Laws (Law Co-op 1976, as amended).

49. Accordingly, Plaintiff is entitled to an order directing Defendant to vacate the Property and entering judgment against her for reasonable rent, for the greater of three months periodic rent or double Plaintiff’s damages, for reasonable attorneys fees pursuant to S.C. Code Ann. §§ 27-40-750 and 770, and for prejudgment interest and costs as allowed by law.

FOR SECOND CAUSE OF ACTION

50. Plaintiff repeats and realleges the allegations above as if restated verbatim here to the extent required by, but not inconsistent with, the following.

51. Plaintiff is the sole and exclusive legal owner of the Property.

52. Plaintiff has never given Defendant permission or consent to use or live on the Property after April 19, 2012.

53. Defendant has voluntarily and intentionally invaded the Plaintiff's interest in the exclusive use of his Property, and she continues to do so today.

54. Defendant knew or should have known her use of the Property invaded Plaintiff's right to exclusive use of it.

55. Defendant's trespass is causing Plaintiff permanent and recurring damage by interfering with his right to exclusive possession and enjoyment of his Property.

56. Defendant is a continuous trespasser who should be enjoined to protect the Plaintiff's property rights from hurt or destruction.

57. Furthermore, Plaintiff is informed and believes Defendant has sold, transferred, removed, or has attempted to sell, transfer or remove, personal property that was awarded to him pursuant to the Divorce Decree, to wit: four gun safes and antiques inherited from Plaintiff's grandmother.

58. Plaintiff will suffer irreparable harm without an injunction.

59. Plaintiff is likely to succeed on the merits of his claims in this matter.

60. Plaintiff has no adequate remedy at law.

61. The equities of this matter support an injunction to preserve Plaintiff's property rights and to prevent future harm to Plaintiff.

62. Accordingly, Plaintiff is entitled to an Order directing Defendant to vacate the Property and enjoining her from any continued or future trespass. Plaintiff is further entitled to judgment against the Defendant in excess of \$21,000, punitive damages, other damages as may be incurred and discovered in this action, attorney's fees, and costs as allowed by law.

FOR A THIRD CAUSE OF ACTION

63. Plaintiff repeats and realleges the allegations set forth above as if restated verbatim here to the extent required by, but not inconsistent with, the following allegations.

64. A material term to the Trust, which the parties negotiated and received court approval, was Defendant's promise to move out of the Property when the Trustee sold it.

65. Defendant breached the terms of the Trust by refusing to move out after the Property was sold.

66. As a result, the Plaintiff is entitled to judgment against Defendant for actual damages in excess of \$21,000, incidental and consequential damages, attorney's fees, prejudgment interest and costs as allowed by law.

FOR A FOURTH CAUSE OF ACTION

67. Plaintiff repeats and realleges the allegations set forth above as if restated verbatim here to the extent required by, but not inconsistent with, the following allegations.

68. Defendant unequivocally promised to move out when the Property was sold.

69. Plaintiff reasonably relied on Defendant's promise by agreeing to the terms of the Trust, by performing his obligations under the Trust, and by purchasing the Property.

70. Plaintiff's reliance was expected and foreseeable by the Defendant because she made it so he would agree to allow her to continue living on the Property. Furthermore,

Defendant knew and did foresee that anyone would purchased the Property while she was living on it would rely on her promise to move out when the Property was sold.

71. As a result of his reliance on Defendant's promise to move out, Plaintiff has suffered damages in an amount in excess of \$21,000, prejudgment interest, costs and other damages as may be discovered during the course of this case and as allowed by law.

FOR A FIFTH CAUSE OF ACTION

72. Plaintiff repeats and realleges the allegations set forth above as if restated verbatim here to the extent required by, but not inconsistent with, the following allegations.

73. Defendant has received and retained the benefit of living on Plaintiff's Property since April 19, 2012 without paying any rent or giving any other valuable consideration to Plaintiff.

74. It would be inequitable for Defendant to retain that benefit without paying for it.

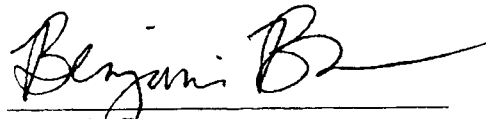
75. The reasonable value Defendant has received and continues to receive is \$1,750 per month, from April 19, 2012.

76. Accordingly, Plaintiff is entitled to judgment against Defendant for an amount in excess of \$21,000, plus prejudgment interest and costs as allowed by law.

WHEREFORE, Plaintiff prays for relief as follows:

- (1) For an Order that the Defendant shall vacate the Property, and if Defendant fails to voluntarily vacate the Sheriff of Newberry County shall to enter the Property and eject the Defendant, using force as may be necessary;
- (2) For judgment against the Defendant for reasonable rent in excess of \$21,000; for the greater of three months periodic rent or double Plaintiff's damages and reasonable attorneys fees, pursuant to S.C. Code Ann. §§ 27-40-750 and 770 and as otherwise allowed by law; for incidental, consequential and punitive damages and other damages as may be discovered during the course of this action; and for prejudgment interest and costs as allowed by law; and

(3) Such other relief as the Court may deem proper.

A handwritten signature in black ink, appearing to read "Benjamin B.", with a horizontal line underneath.

James L. Bruner
Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, S.C. 29260
(803) 252-7693
Attorneys for the Plaintiff

June 12, 2013

Columbia, South Carolina

EXHIBIT A

McDougall & Self, L.L.P.

Attorneys at Law
791 Greenlawn Drive, Suite 4
P. O. Box 90860
Columbia, South Carolina 29290
Telephone: (803) 776-3130 - Telecopier: (803) 776-7748

John O. McDougall*†
Michael W. Self*
Peter G. Currence
Ryan A. McLeod*

Reply to Columbia

December 8, 2011

Alyssa H. Richardson

E-mail: jom@mcdougallandself.com

Sumter Office:
21 East Calhoun Street
P.O. Box 2197
Sumter, South Carolina 29151-2197
Telephone: (803) 778-5062
Telecopier: (803) 778-6908

Website: www.mcdougallandself.com

VIA E-MAIL AND U.S. MAIL

Mr. Francis B. B. Knowlton
Attorney at Law
Nelson, Mullins, Riley & Scarborough, LLP
Post Office Box 11070
Columbia, SC 29211

Re: Hobby vs. Hobby
544 Crowder Road (with surrounding 3 acres)

Dear Frank:

This is to advise and confirm that Mary Hobby would like to purchase the 544 Crowder Road property, with surrounding 3 acres, (her home) from the Liquidating Trust.

I believe that Mary has previously provided you with a complete copy of the Summary Appraisal Report of Hubert M. Bedenbaugh, Jr., provided as of November 23, 2011, which reflects that he appraised this property at \$300,000. Since you have previously been provided with a complete copy of his appraisal, I am attaching only the first three pages of his report with this letter.

I am enclosing a copy of page 4 of 9 of the Marital Assets Addendum dated November 29, 2009, and you will note in Item 9(a)(1) that it confirms that both CPA McKay and CPA Sealey valued this property at that time at \$325,000.

I am enclosing copies of the summary I have received from Mary Hobby regarding the taxes and homeowner's insurance that she has paid on this property, this year, which total \$3,729.19, along with verification of these payments.

Although Mary Hobby believes that the home is worth substantially less than \$300,000, she is willing to base her offer of purchase of this property on that appraised value. For your information, a well needs to be added to the house because the deeded property to Mary does not include an existing well. The cost of digging a new 6" pipe well is approximately \$5,000. The bills Mary previously paid for repairing the existing well amount to \$1,104.21. The power to Mary's property is attached to the red barn behind the house which is not on

†DIPLOMATE, AMERICAN COLLEGE OF FAMILY TRIAL LAWYERS
†FELLOW, INTERNATIONAL ACADEMY OF MATRIMONIAL LAWYERS
*FELLOW, AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

Mr. Francis B. B. Knowlton
December 8, 2011
Page 2

her deeded property. This line needs to be detached and separate meters put in place. The estimated cost will be \$2,000.

As we have determined from the attempted sale of a number of properties since the Liquidating Trust was established, the likelihood that the property could be sold at this time for its appraised value is remote. Therefore, taking into consideration that there will be no cost of sale, that the sale will be immediately consummated, Mary proposes that the \$300,000 value of the property be discounted by 25% or \$75,000 leaving a balance of \$225,000.

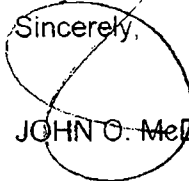
Considering that she is entitled to distributions from the Liquidating Trust in the amount of 42.5% and Ray Hobby is entitled to distributions from the Trust in the amount of 57.5%, if the \$225,000 were in the Liquidating Trust to be distributed at this time, of the \$225,000, \$95,625 would be distributed to Mary Hobby and \$129,375 would be distributed to Ray Hobby. Of the \$3,729.19 which Mary has paid toward taxes and insurance on this property, 57.5% should be attributed to Ray (\$2,144) and 42.5% to Mary (\$1,585), thereby reducing the amount due to Ray to \$127,231.

Based upon the above and the enclosures, Mary is willing to immediately pay into the Trust \$127,231 and consent to these funds being immediately distributed to Ray Hobby for his interest in this property.

The above agreement would not affect the distributions from the Liquidating Trust for legal fees to each of the parties (\$225,000 to Mary T. Hobby and \$200,000 to RDH) as provided in the Liquidating Trust.

After you have had an opportunity to review the above and the attachments, please advise as to whether it is suitable to you as Trustee of the Hobby Family Liquidating Trust and Raymond D. Hobby for Mary T. Hobby to purchase the 544 Crowder Road property as proposed.

With kind regards.

Sincerely,

JOHN O. McDOUGALL

JOM:srb

Enclosures

cc: Mrs. Mary T. Hobby (via e-mail only)

EXHIBIT B

Frank B. Knowlton
Nelson, Mullins, Riley & Scarborough L.L.P.
Post Office Box 11070
Columbia, SC 29211

January 3, 2012

Re: Hobby vs. Hobby 544 Crowder Road (with surrounding 3 acres)

Dear Frank,

I greatly appreciate the opportunity to make an offer to purchase the property in Kinards, SC, 544 Crowder Road and surrounding acreage. It is my opinion that this property is essential to the value of the overall property holdings that surround it and being extracted from the farm will drastically damage the total value of the property. Therefore I would extend an offer to the trust to purchase Ms. Hobby's interest of 42 ½ % to maintain the most value and marketable position for the overall property.

I am offering to purchase this property for \$138,125.00 as is where is. This is based on the 42 ½ % of the full \$325,000.00 appraisal that was used in the evaluation of material assets at the time of divorce and was agreed on by both parties. No broker discounts, no commissions, no reductions for any reasons.

I am further offering to leave this asset in the Trust to maximize the properties value for any future sale opportunities and receive no distributions until the property is sold and all trust liabilities are satisfied.

According to Ms. Hobby's appraisal it contends the property isn't worth that amount. I, as stated above disagree not only for the overall value of the total farm but feel the size, quality and location of the home keeps it at the former numbers.

As to reimbursements for expenses to Ms. Hobby for taxes, maintenance and repairs, these should be denied. If there is any devaluation or cost to maintain this property it should be borne by Ms. Hobby for failure to comply with the final divorce order to convey this property into the trust. As you know I personally have not asked to date for any reimbursements for funds I have advanced on behalf of trust assets, taxes, maintenance, repairs, mortgage payments, interest or any other cost associated. This will be accounted for when the trust is solvent and has adequate cash flows.

Knowing the Trust is still struggling and has urgent needs for cash flow, I propose this transaction take place as immediate as possible. I can close in a matter of days should you find this proposal acceptable.

I respect your consideration and request to reserve the right to counter offer if any additional offers are presented that exceed this proposal.

Sincerely,
Raymond D. Hobby

1022b

NEWBERRY COUNTY	
ASSESSOR	
TAX MAP #	96-12
PART OF MAP #	QUIT-CLAIM DEED
TAX YEAR	2013
<i>Mary C. Ammond</i>	

201200011322
Filed for Record in
NEWBERRY COUNTY, SC
JACKIE S. BOWERS, CLERK OF COURT
04-19-2012 At 11:01 am.
DEED 10.00
STATE 845.00
COUNTY 357.50
Book 1619 Page 118 - 119

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

COPY

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS, an action (Docket No. 2005-DR-36-56) was initiated by Mary T. Hobby in the Newberry County Family Court for the Eighth Judicial Circuit seeking, among other relief, a divorce from Raymond D. Hobby, and in conjunction with such relief, the equitable apportionment of the marital assets;

WHEREAS, in connection with the equitable apportionment of the marital assets, Raymond D. Hobby and Mary T. Hobby, each of whom are citizens and residents of Newberry County, South Carolina, have agreed and are required to transfer various items of real and personal property, as encumbered, to The Hobby Family Liquidating Trust (the "Liquidating Trust") created pursuant to that certain Final Order and Divorce Decree dated October 8, 2010 by the Honorable Joseph W. McGowan, III, Judge of the Newberry County Family Court, Eighth Judicial Circuit (the "Divorce Decree");

WHEREAS, the Property (as defined below) was among the items of real property to be transferred to the Liquidating Trust pursuant to the Divorce Decree;

WHEREAS, the Liquidating Trust desires to convey any interest in the Property which the Liquidating Trust may have or have had to Raymond D. Hobby; and

WHEREAS, the Liquidating Trust has agreed to issue this Quit-Claim Deed in order to convey its interest in the Property, if any, and Raymond D. Hobby has agreed to accept this Quit-Claim Deed.

NOW, THEREFORE, for and in consideration of the foregoing recitals, and also in consideration of the sum of Three Hundred Twenty-Five Thousand and 00/100 Dollars (\$325,000.00), the receipt and sufficiency of such consideration being hereby acknowledged, to the extent the Liquidating Trust is vested or may hereinafter become vested, by virtue of a conveyance from Mary T. Hobby or otherwise, in any interest in the Property, the Liquidating Trust, as Grantor, has remised and forever quit-claimed unto Raymond D. Hobby, as Grantee, and by these presents, Grantor does hereby remise, release and forever quit-claim unto the Grantee, his heirs, successors and assigns, all its right, title and interest in and to the following (the "Property"):

All that certain piece, parcel and lot of land with the improvements thereon, situate, lying and being located on Crowder Road, in the County of Newberry, State of South Carolina, being shown and designated as containing 2.75 acres, more or less, on plat of survey prepared for Raymond D. Hobby, by Adtech Surveying, Inc., PLS 11072, dated May 26, 2005, recorded in Plat Book C122

FILED
NEWBERRY COUNTY
APR 26 PM 10 26
JACKIE S. BOWERS
CLERK OF COURT

EXHIBIT C

at Page 4 in the Office of the Clerk of Court for Newberry County. Said plat is incorporated herein for a more full and complete description as to the metes and bounds of said property.

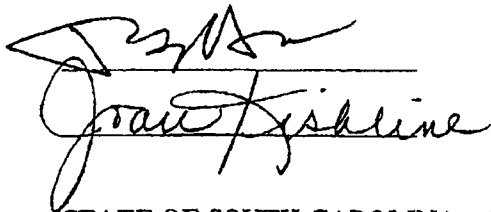
Together with a forty (40') foot right-of-way easement for ingress and egress to said property as shown on said plat.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Grantee, his heirs and assigns, forever so that neither the said Grantor nor its successors or assigns, nor any other person or persons, claiming under it or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

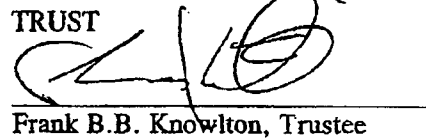
WITNESS THE HAND AND SEAL of the Grantor's duly authorized signatory authority this 19th day of April, 2012.

Signed, sealed and delivered
in the presence of:


Joan A. Kishline

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

THE HOBBY FAMILY LIQUIDATING
TRUST


Frank B.B. Knowlton, Trustee

ACKNOWLEDGMENT

I, Joan A. Kishline, Notary Public for the State aforesaid, do hereby certify that the above-named Frank B.B. Knowlton, as Trustee of The Hobby Family Liquidating Trust, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 19 day of April, 2012.

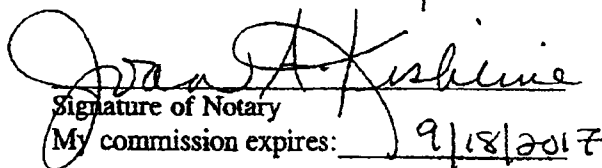

Signature of Notary
My commission expires: 9/18/2017

EXHIBIT D

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Mary T. Hobby,

Plaintiff,

vs.

Raymond D. Hobby,

Defendant.

IN THE FAMILY COURT
EIGHTH JUDICIAL CIRCUIT

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

Docket No.: 2012-DR-36-194

2013 APR 26 AM 10 26

NEWBERRY COUNTY

FILED

Plaintiff's Attorney:
John O. McDougall
Michael B. Brackett

Defendant's Attorney:
Timothy E. Madden
Winston I. Marosek

Guardian Ad Litem:
None

Hearing Date:
November 13, 2012

Judge:
Deborah Neese

Court Reporter:
Angela Berry

2013 JUN -7 P 2 46

NEWBERRY COUNTY

FILED

This Order addresses the Motion to Dismiss filed by Defendant on July 12, 2012, a hearing on which was held before the undersigned on November 13, 2012. Based on the affidavits, arguments presented by counsel at the hearing, and applicable law, this Court makes the following findings of fact and conclusions of law and enters this Order.

Plaintiff and Defendant are citizens and residents of Newberry County, South Carolina and have so resided for more than one year prior to the commencement of this civil action.

Defendant and Plaintiff were married on June 24, 1978, and divorced by a Final Order and Divorce Decree ("Divorce Decree") filed October 8, 2010 in Docket No. 2005-DR-36-56. The Divorce Decree approved the agreement of the parties. The Divorce Decree required the parties to create a liquidating trust and transfer the vast majority of their marital assets into the

trust. By the terms of the Divorce Decree, certain provisions were ordered to be included to the trust. In compliance with the Divorce Decree, Plaintiff and Defendant created and signed the Hobby Family Liquidating Trust Agreement (the "Trust") on December 9, 2010 and December 6, 2010, respectively.

One of the assets which the Divorce Decree required to be transferred to the Trust is the former marital home and three (3) surrounding acres (the "Crowder Road Property"). At the time of the entry of the Divorce Decree, the Crowder Road Property was titled solely in Plaintiff's name. By the terms of the Trust, the Trustee is granted various powers, including but not limited to the power to:

sell or dispose of . . . any property, real or personal, constituting a part of the Trust Estate . . . for cash or on credit . . . at such times and upon such terms and conditions as it may deem best . . . (See Trust, Article IX(a)(vi)).

By operation of its own terms, the Trust is a liquidating trust, so that assets and debts owned by it are managed and controlled and disposed of in the manner directed by the Trustee, with distributive benefits flowing to Plaintiff and Defendant in accordance with the terms of the Trust.

Beginning in December, 2011, over a year after the entry of the Divorce Decree, Plaintiff and Defendant individually negotiated with the Trustee for the purchase of the property after the Trustee gave notice of an intention to sell the Crowder Road Property. Both Plaintiff and Defendant presented offers to purchase the Crowder Road Property from the Trust. On or about February 9, 2012, the Trustee accepted Defendant's offer to purchase the Crowder Road Property from the Trust. On April 11, 2012, Plaintiff transferred the Crowder Road property to the Trust by general warranty deed. On April 19, 2012, the Trustee transferred the Crowder Road property to Defendant by quitclaim deed after Defendant paid the Trust in accordance with the offer accepted by the Trustee.

Plaintiff remained in the possession of the Crowder Road Property, and on May 15, 2012, filed this action seeking (1) alimony (as permitted by the Divorce Decree), (2) a declaration that the Trustee's Deed to Defendant for the Crowder Road Property is void ab initio, (3) a determination of whether Plaintiff or Defendant should be allowed to purchase the Crowder Road Property, (4) exclusive possession of the property until all of the Trust assets are liquidated; (5) an order prohibiting Defendant from pursuing eviction proceedings against Plaintiff during the pendency of the case, (6) discovery rights, and (7) attorney's fees and costs.

With the filing of this action, Plaintiff also filed Motion for Temporary Relief in May 15, 2012 seeking (1) an emergency hearing on Defendant's eviction proceedings against Plaintiff; (2) an emergency order prohibiting Defendant from pursuing eviction proceedings against Plaintiff; (3) temporary alimony; (4) sole and exclusive use of the Crowder Road Property during the pendency of this action; (5) discovery rights, and (6) attorney's fees and costs.

On May 15, 2012, the Family Court issued an Emergency Order prohibiting Defendant from pursuing eviction proceedings against Plaintiff regarding the Crowder Road Property.¹ In the Emergency Order, the Court scheduled an expedited hearing for May 18, 2012. Counsel for the parties agreed to continue the hearing until June 4, 2012, and allowed the provision of the Emergency Order prohibiting Defendant from pursuing eviction proceedings against Plaintiff to remain in effect until the next hearing, without prejudice to either party.²

On July 12, 2012, Defendant filed a Motion to Dismiss in which he requested the Court dismiss Plaintiff's Complaint (as it related to the relief requested concerning the Crowder Road

¹ As of the date of the hearing on November 13, 2012, Plaintiff remained in possession of the Crowder Road Property.

² The hearing was continued a second time to November 13, 2012, in the Consent Order of Continuance dated August 30, 2012.

Property) pursuant to Rules 12(b)(1), (6), and (7) of the South Carolina Rules of Civil Procedure.

In summary, Plaintiff contends the Family Court maintains jurisdiction to hear the issues raised in Plaintiff's Complaint concerning the Crowder Road Property based on the language of the Trust, which states:

The parties to this Agreement hereby acknowledge and agree that the exclusive jurisdiction for matters involving this Trust or any matters related thereto is the Family Court for the Eighth Judicial Circuit Newberry County, South Carolina, and waive any right to object or otherwise take issue with the convenience of such forum.

Plaintiff further argues the "subject matter" before the Court concerning the Crowder Road Property involves the equitable division of an asset and the purpose of the Trust provision cited above is to ensure the fair and equitable liquidation of the assets of the Trust. Plaintiff contends the Trustee is the agent of the Family Court for the purpose of equitable apportionment. Plaintiff relies on Thomas v. McGriff, 368 S.C. 485, 629 S.E.2d 359 (2006), for the proposition of concurrent jurisdiction with the Probate Court. Plaintiff also argues the Court has jurisdiction over the contract (the Trust) between the parties and because the Trust apportions marital property, this Court maintains jurisdiction to hear and determine the issues raised by Plaintiff's Complaint.

In summary, Defendant argues the Family Court lacks subject matter jurisdiction over the subject matter of Plaintiff's Complaint because the subject matter does not fall within S.C. Code § 63-3-530 (jurisdiction of the Family Court) and the Probate Court maintains exclusive jurisdiction over matters related to trusts. Defendant further contends the subject matter of Plaintiff's Complaint is not the equitable division of an asset, but rather the administration of an independent Trust.

The Family Court is a court of limited jurisdiction. It maintains exclusive jurisdiction over those matters specified in S.C. Code § 63-3-530 (1976, as amended). Those matters include, but are not limited to:

1. actions under the provisions of the Uniform Interstate Family Support Act;
2. actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney's fees and costs, if requested by either party in the pleadings;
3. actions for and related to the adoption of children and adults; and
4. actions for termination of parental rights, whether such action is in connection with an action for adoption or apart therefrom.

Pursuant to S.C. Code § 62-1-302 (1976, as amended), the Probate Court maintains exclusive original jurisdiction over all subject matter related to trusts.

The subject matter of Plaintiff's Complaint does not fall within S.C. Code § 63-3-530 (1976, as amended). The subject matter of Plaintiff's Complaint as it relates to the Crowder Road Property concerns an independent trust and transactions occurring after the entry of the Divorce Decree and after the formation of the Trust. Specifically, Plaintiff's Complaint as it relates to the Crowder Road Property concerns the actions of the Trustee of the Trust (whether the Trustee's Deed dated April 19, 2012 is null and void; whether Defendant or Plaintiff should be allowed to purchase the Crowder Road Property from the Trust; whether the property should be held in the Trust; and whether Plaintiff should be entitled to exclusive use of the property). The equitable distribution of the marital property was accomplished in the Divorce Decree. While the vast majority of the marital property was transferred into the Trust, the Trustee's powers and duties do not include the equitable distribution of Trust property. The Trust contains

specific provisions concerning the powers and duties of the Trustee as it relates to the property of the Trust. While the Trust contains language concerning the exclusive jurisdiction of the Family Court for matters involving the Trust or any matters related thereto, individual parties cannot confer subject matter jurisdiction upon this Court. November 4, 2008 Bluffton Town Council Election v. Fulgham, 385 S.C. 632, 637, 686 S.E.2d 683, 686 (2009) ("The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court."); State v. Richburg, 304 S.C. 162, 165, 403 S.E.2d 315, 317 (1991) (. . . "parties cannot, by their actions or agreements, confer subject matter jurisdiction upon the trial court . . .").

Upon careful review, this Court does not have jurisdiction to hear and determine so much of Plaintiff's Complaint as it relates to the relief requested concerning the Crowder Road Property (whether the Trustee's Deed dated April 19, 2012 is null and void; whether Defendant or Plaintiff should be allowed to purchase the Crowder Road Property from the Trust; whether the property should be held in the Trust; and whether Plaintiff should be entitled to exclusive use of the property). While the Divorce Decree required the creation of a trust containing certain terms, and also included language by which the Family Court retained jurisdiction to interpret, enforce, and to the extent necessary, effectuate the terms of the Divorce Decree, the parties themselves settled and created the Trust and signed it more than six weeks after the entry of the Divorce Decree. The language in the Divorce Decree which retained jurisdiction for certain purposes is not sufficiently broad to include a retention of jurisdiction to resolve any dispute arising out of the actions or conduct of the Trustee or the administration of the terms of the Trust. After the entry of the Divorce Decree, no marital property was acquired and the Family Court maintains jurisdiction only over marital property. There is no indication the Trust was ever

reviewed by the Family Court. There is no challenge presented by Plaintiff that the Trust is in fact the product of the Family Court Order or that the Trust contains terms or provisions different from those required by the Divorce Decree.

Actions related to the administration of a Trust are within the exclusive jurisdiction of the Probate Court pursuant to S.C. Code § 62-1-302. As such, the Family Court lacks jurisdiction to hear and decide the issues set forth in Plaintiff's Complaint concerning the Crowder Road property.

NOW, THEREFORE, IT IS ORDERED Plaintiff's Complaint filed May 15, 2012, as it relates to the Crowder Road Property is dismissed.

AND IT IS SO ORDERED.

Deborah Neese
Judge of the Family Court

_____, South Carolina

Dated: _____

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby,)
Plaintiff,)

Civil Action No. 2013-CP-36-193

vs.)

Mary T. Hobby,)
Defendant/Third)
Party Plaintiff,)

vs.)

Frances B. Knowlton, Individually)
and as Trustee,)
Third Party Defendant.)

COPY

ANSWER AND COUNTERCLAIM OF
FRANCES B. KNOWLTON (CORRECTLY
KNOWN AS FRANCIS B. B. KNOWLTON)

FILED
NEWBERRY COUNTY
2013 JUN 28 PM 12 24
JACKIE S. BOYERS
CLERK OF COURT

Third Party Defendant Frances B. Knowlton, Individually and as Trustee (correctly known as Francis B. B. Knowlton) answers the Third Party Complaint as follows:

FOR A FIRST DEFENSE:

1. The Third Party Defendant Francis B. B. Knowlton denies each and every allegation of the Third Party Complaint not hereinafter specifically admitted.
2. That with respect to second paragraph 13 [sic] of the Amended Answer, Counterclaim and Third Party Complaint, Third Party Defendant admits only that he is the Trustee of "The Hobby Family Liquidating Trust" ("the Trust") with all the powers granted to him as set forth in The Hobby Family Liquidating Trust Agreement; and that the former marital residence is an asset of, and part of, the original corpus of the Trust.

3. That with respect to paragraph 14 of the Amended Answer, Counterclaim and Third Party Complaint, Third Party Defendant admits only that among the powers given to him as Trustee by Article IX (a)(xxxii) are the following:

To sell, convey or otherwise deal with or dispose of any and all Trust Assets forming a part of the Liquidating Trust estate, at such time or times and in such manner and upon such terms as, in the absolute and uncontrolled discretion of the Trustee may deem expedient and proper, provided, however, that i) Trustee shall have an obligation to exercise appropriate and reasonable due diligence with respect to the sale of any Trust Asset such that Trustee is reasonably satisfied that any sale has occurred on an arms-length basis and has maximized the value of the Trust Asset being divested, and ii) Trustee may sell any Trust Asset to a Transferor provided the sale and terms of sale are reasonable, fair, and reflect fair market value and any other terms mutually agreeable by the parties.

that on information and belief he denies that Plaintiff offered to leave the former marital residence in The Hobby Family Liquidating Trust as such an offer would be contrary to the intent of the Trust as a liquidating trust; and that he denies the remaining allegations of this paragraph of the Amended Answer, Counterclaim and Third Party Complaint.

4. That with respect to paragraphs 15 and 16 of the Amended Answer, Counterclaim and Third Party Complaint, Third Party Defendant craves reference to Article XII (f) of the Trust which provides in pertinent part that:

MTH [Mary T. Hobby] shall have sole and exclusive, rent-free use of the property known as the marital home of MTH and RDH [Raymond Deneke Hobby] together with the surrounding three (3) acres of land until such property is sold *

* *

that Mary T. Hobby made an offer to purchase the home and property referred to above; that after the offer was made by Mary T. Hobby, Raymond D. Hobby made a higher and better offer to purchase the home and property which was accepted by the trustee; and that Third Party

Defendant denies the remaining allegations of these paragraphs of the Amended Answer, Counterclaim and Third Party Complaint.

5. That with respect to paragraph 17 of the Amended Answer, Counterclaim and Third Party Complaint, the Third Party Defendant craves reference to Article IX (a)(xxxii) of the Trust which gives him as Trustee the power to sell, convey or dispose of any and all Trust Assets forming a part of the Liquidating Trust estate, at such time or times and in such manner and upon such terms as, in his absolute and uncontrolled discretion he may deem expedient and proper; and that he denies the allegations of paragraph 17 of the Amended Answer, Counterclaim and Third Party Complaint.

6. That the Third Party Defendant denies the allegations of paragraphs 18 and 19 of the Amended Answer, Counterclaim and Third Party Complaint.

7. That the Third Party Defendant denies the remaining allegations of the Amended Answer, Counterclaim and Third Party Complaint applicable to him.

FOR A SECOND DEFENSE:

8. That the Third Party Complaint fails to state facts sufficient to constitute a cause of action against the Third Party Defendant in his individual capacity or in his capacity as Trustee of The Hobby Family Liquidating Trust.

FOR A THIRD DEFENSE:

9. That the Third Party Defendant acted in good faith with the care that an ordinarily prudent person in a like position would have exercised under the same or similar circumstances and in a manner that he reasonably believed was in the best interest of the Trust and its beneficiaries, and by reason of which he is not liable for the matters asserted in the Third Party Complaint.

FOR A FOURTH DEFENSE:

10. That the Defendant/Third Party Plaintiff made an individual offer to purchase the former marital home to which a higher offer was made and accepted by the Third Party Defendant as Trustee; that the Defendant/Third Party Plaintiff is not free from fault and does not have clean hands, by reason of which she is not entitled to recover for equitable indemnity.

FOR A FIFTH DEFENSE:

11. That this Third Party Defendant pleads waiver as a defense to the Third Party Complaint.

FOR A SIXTH DEFENSE:

12. That this Third Party Defendant pleads estoppel as a defense to the Third Party Complaint.

FOR A SEVENTH DEFENSE AND BY WAY OF A FIRST
COUNTERCLAIM TO THE THIRD PARTY COMPLAINT:

13. That the Third Party Defendant is informed and believes that the Third Party Plaintiff has filed this Third Party Action and is prosecuting this suit against him individually and as Trustee of The Hobby Family Liquidating Trust for an ulterior purpose of trying to use him to get leverage for Third Party Plaintiff in an attempt to get use of trust assets for her own personal benefit and for other ulterior purposes.

14. That the institution and pursuit of the Third Party Complaint constitutes abuse of process for which Third Party Defendant is entitled to recover such actual damages as he proves at any trial of this action together with punitive damages.

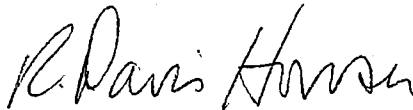
FOR A EIGHTH DEFENSE AND BY WAY OF A SECOND
COUNTERCLAIM TO THE THIRD PARTY COMPLAINT:

15. That there is no legal or factual legal basis to institute and pursue a claim against Third Party Defendant Frances B. Knowlton (correctly known as Francis B. B. Knowlton); that instituting and pursuing a claim against Third Party Defendant in his individual capacity when there is no legal or factual basis to do so constitutes a violation of §15-36-10 of the 1976 South Carolina Code as amended (South Carolina Frivolous Civil Proceedings Sanctions Act) and for which the Third Party Defendant is entitled to recover the costs, expenses and damages provided for by statute.

FOR A NINTH DEFENSE AND BY WAY OF A THIRD
COUNTERCLAIM TO THE THIRD PARTY COMPLAINT:

16. That there is no good ground to support the allegations contained in the Third Party Complaint and the Third Party Defendant demands that the Third Party Complaint be stricken and that appropriate sanctions be placed on the Third Party Plaintiff including an Order pursuant to Rule 11 (a) of the *South Carolina Rules of Civil Procedure* to pay reasonable attorney fees and costs associated with defending this action.

WHEREFORE, having fully answered the Third Party Complaint, Third Party Defendant Frances B. Knowlton, Individually and as Trustee (correctly known as Francis B. B. Knowlton) demands that the same be dismissed; that he have judgment on his Counterclaims; and that he have such other and further relief as may be just and proper, including the cost of this action.



R. Davis Howser
of HOWSER, NEWMAN & BESLEY, LLC
1508 Washington Street Post Office Box 12009
Columbia, South Carolina 29211
(803) 758-6000

Attorneys for Third Party Defendant Frances B. Knowlton,
Individually and as Trustee (correctly known as Francis B.
B. Knowlton)

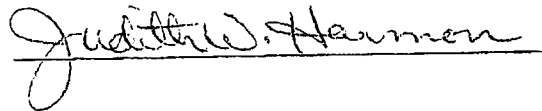
June 26, 2013

CERTIFICATE OF SERVICE

I, the undersigned employee of Howser, Newman & Besley, LLC, attorney for Third Party Defendant Frances B. Knowlton, Individually and as Trustee, hereby certify that I have served copies of his Answer and Counterclaim by depositing same in a United States Postal Service Mail Box directed to counsel listed below, postage prepaid, this 26th day of June, 2013:

Pope D. Johnson, III, Esquire
Johnson & Barnette, LLP
P. O. Drawer 11209
Columbia, South Carolina 29211-1209
ATTORNEY FOR DEFENDANT MARY T. HOBBY

James L. Bruner, Esquire
Benjamin C. Bruner, Esquire
Bruner, Powell, Wall & Mullins, LLC
P. O. Box 61110
Columbia, South Carolina 29260
ATTORNEYS FOR PLAINTIFF RAYMOND D. HOBBY



FILED
NEWBERRY COUNTY
2013 JUN 28 PM 12 24
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby)
Plaintiff,)

Civil Action No. 2013-CP-36-193

vs.)

DEFENDANT AND THIRD PARTY
PLAINTIFF'S REPLY TO COUNTERCLAIM
OF THIRD PARTY DEFENDANT

Mary T. Hobby)
Defendant/Third Party
Plaintiff,)

vs.)

Frances B. Knowlton, Individually)
and as Trustee,)
Third Party Defendant.)

FILED
NEWBERRY COUNTY
2013 JUL 2 PM 12 45
JACKIE S. DOWERS
CLERK OF COURT

The Defendant and Third Party Plaintiff replies to the counterclaims of Third Party Defendant as follows:

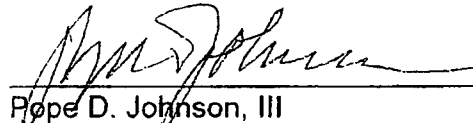
1. That the allegations of the Third Party Complaint are realleged and incorporated herein by reference.

2. That the Defendant and Third Party Plaintiff denies the allegations of paragraphs 13, 14, 15 and 16 and the remaining allegations of the Answer and Counterclaim of the Third Party Defendant.

WHEREFORE, having replied, the Defendant and Third Party Plaintiff prays for the relief sought in the Third Party Complaint and demands that the counterclaims of the Third Party Defendant be denied and for such other and further relief as may be just and proper.

~1~





Pope D. Johnson, III
Johnson & Barnette, LLP
P.O. Drawer 11209
Columbia, SC 29211
803-799-9791
803-253-6084 (Fax)
pdjohnson@johnsonbarnette.com
**Attorney for the Defendant and Third
Party Plaintiff**

Columbia, South Carolina
July 1, 2013

~2~

#2✓

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby)
Plaintiff,)

Civil Action No. 2013-CP-36-193

vs.)

CERTIFICATE OF SERVICE

Mary T. Hobby)
Defendant/Third Party)
Plaintiff,)

vs.)

Frances B. Knowlton, Individually)
and as Trustee,)
Third Party Defendant.)

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Benjamin C. Bruner, attorney for the Plaintiff, and R. Davis Howser, attorney for the Third Party Defendant, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 1st day of July, 2013.

COUNSEL SERVED:

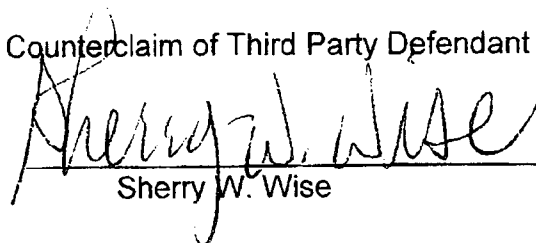
Benjamin C. Bruner
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260-1110

R. Davis Howser, Esquire\
Howser Newman & Besley, LLC
P.O. Box 12009
Columbia, SC 29211

FILED
NEWBERRY COUNTY
JACKIE S. BOWERS
CLERK OF COURT
2013 JUL 2 PM 12 45

PLEADINGS:

Defendant and Third Party Plaintiff's Reply to Counterclaim of Third Party Defendant


Sherry W. Wise

PROBATE COURT

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE)
FOR THE EIGHTH JUDICIAL CIRCUIT

Raymond D. Hobby,)
Plaintiff,)

C/A No.: 2013-6736-00016

v.)

Mary T. Hobby,)
Defendant.)

COMPLAINT
(Non-Jury)

Plaintiff Raymond D. Hobby ("Plaintiff"), complaining of Mary T. Hobby ("Defendant"), hereby amends his complaint in this action, pursuant to Rule 15, SCRCF, to allege as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a citizen of South Carolina and a resident of Newberry County.
2. Defendant is a citizen of South Carolina and a resident of Newberry County.
3. The allegations in this complaint relate to real property commonly described as 544 Crowder Road in Newberry County ("the Property").
4. This Court has jurisdiction over these claims pursuant to Art. V, Sec. 11 of the South Carolina Constitution, S.C. Code § 22-3-10, S.C. Code § 27-33-40, the South Carolina Residential Landlord and Tenant Act, S.C. Code §27-40-10, *et seq.*, and as otherwise provided by law, and pursuant to Title 62 of the S.C. Code of Laws 1976, as amended.
5. Venue in this Court is proper pursuant to Chapter 7 of Title 15 of the 1976 South

Carolina Code of Laws, as amended, and pursuant to Title 62 of the S.C. Code of Laws 1976, as amended.

FACTUAL ALLEGATIONS

6. Defendant and Plaintiff were married on June 24, 1978, and divorced by a Final

Order and Divorce Decree ("Divorce Decree") filed October 8, 2010 in Docket No. 2005-DR-36-56.

7. The Divorce Decree required the parties to create a liquidating trust and transfer the vast majority of their marital assets into the trust. By the terms of the Divorce Decree, certain provisions were ordered to be included to the trust.

8. In compliance with the Divorce Decree, Plaintiff and Defendant created and signed the Hobby Family Liquidating Trust Agreement (the "Trust") on December 6, 2010 and December 9, 2010, respectively.

9. One of the assets the Divorce Decree required to be transferred to the Trust is the Property, which was the marital home and included three (3) surrounding acres.

10. At the time of the entry of the Divorce Decree, the Property was titled solely in the Defendant's name.

11. By the terms of the Trust, the Trustee is granted various powers, including but not limited to the power to "sell or dispose of . . . any property, real or personal. constituting a part of the Trust Estate . . . , for cash or on credit . . . at such times and upon such terms and conditions as it may deem best. . . ."

12. By operation of its own terms, the Trust is a liquidating trust, so that assets and debts owned by it are managed and controlled and disposed of in the manner directed by the Trustee, with distributive benefits flowing to Plaintiff and Defendant in accordance with the terms of the Trust.

13. The Divorce Decree and Trust terms further provide that Defendant had sole and exclusive possession of the Property until it was "sold, or until vacated by her."

14. Beginning in December 2011, over a year after the entry of the Divorce Decree, Plaintiff and Defendant each made offers to the Trustee to purchase the property.

15. The Trustee intended to sell the Property because the Trust was in need of cash to keep operating.

16. On December 8, 2011, Defendant submitted an offer to the Trustee to purchase the Property for \$225,000, of which \$127,231 would be paid in cash to the Trust. A true and accurate copy of Defendant's offer is attached as **Exhibit A** and incorporated herein.

17. On or about January 3, 2012, the Plaintiff submitted a counteroffer to the Trustee to purchase the Property for \$325,000, \$138,125 of which would be paid in cash to the Trust. A true and accurate copy of the Plaintiff's offer is attached as **Exhibit B**.

18. After giving the Defendant a reasonable time to outbid Plaintiff, the Trustee accepted Plaintiff's offer on or about February 9, 2012.

19. On April 11, 2012, the Defendant transferred the Property into the Trust by general warranty deed, finally complying with the October 2010 Divorce Decree.

20. On April 19, 2012, the Trustee transferred the Property to Plaintiff by quitclaim deed after Plaintiff paid the Trust in accordance with the offer accepted by the Trustee. A true and accurate copy of the quitclaim deed is attached as **Exhibit C** and is incorporated herein by reference.

21. After April 19, 2012, Defendant continued to live on the Property.

22. Since at least April 19, 2012, Defendant has been either a trespasser or a holdover tenant because she has not owned the Property and has continued living there without Plaintiff's permission.

23. Since April 19, 2012, Plaintiff alone has held legal title to the Property.

24. After purchasing the Property, Plaintiff requested that Defendant move out and has taken actions to remove her, but she has refused to vacate the Property.

25. Any agreement allowing the Defendant to live on the Property expired on April 19, 2012, when the Trustee closed the sale to the Plaintiff.

26. Since April 19, 2012, Defendant has wrongfully and unlawfully exercised exclusive possession over Property she does not own, denied Plaintiff any use of Property he purchased and owns, occupied the Property without Plaintiff's consent, and she has failed to pay Plaintiff any compensation for living on the Property.

27. On May 2, 2012, Plaintiff filed a Notice to Quit in the Magistrate's Court for Newberry County, C/A No.: 2012-CV-36-10100450, ("Ejectment Case").

28. On May 14, 2012, Plaintiff served Defendant with the Notice to Quit.

29. On May 15, 2012, Defendant filed suit in the Family Court for Newberry County, C/A No. 2012-CP-36-194, ("Family Court Case") seeking (1) alimony (as permitted by the Divorce Decree), (2) a declaration that the Trustee's Deed to Plaintiff for the Property was void *ab initio*, (3) a determination of whether Plaintiff or Defendant should be allowed to purchase the Property, (4) exclusive possession of the Property until all of the Trust assets are liquidated, (5) an order prohibiting Plaintiff from pursuing eviction proceedings against Plaintiff during the pendency of the case, (6) discovery rights, and (7) attorney's fees and costs.

30. On May 15, 2012, the Family Court issued an Emergency Order prohibiting Plaintiff from pursuing eviction proceedings in the Ejectment Case pending a hearing in the Family Court.

31. On or about May 16, 2012, Defendant filed an Answer in the Ejectment Case. In her Answer, Defendant contested the magistrate's jurisdiction.

32. On November 13, 2012, the Family Court held a hearing in the Family Court Case.

33. On January 7, 2013, the Family Court entered an Order dismissing the Defendant's claims related to the Property in the Family Court Case. A true and accurate copy of the Court's Order is attached hereto as **Exhibit D**.

34. Defendant's subsequent motion to reconsider was also denied, and Plaintiff is informed and believes no appeal has filed or served.

35. After learning the Family Court Case had been dismissed, the Plaintiff contacted the Magistrate's Court to reschedule a hearing in the Ejectment Case.

36. However, the Magistrate declined to reschedule the hearing based on jurisdictional concerns.

37. Defendant filed a financial declaration in the Family Court Case stating her monthly costs for a home similar to the Property are \$1,787. A true and accurate copy of Defendant's financial declaration is attached as **Exhibit E**.

38. Plaintiff is informed and believes the reasonable monthly rental value of the Property is \$1,750. A copy of Plaintiff's Affidavit is attached as Exhibit C to the original verified complaint filed in this action, which is incorporated herein by reference.

39. Plaintiff is therefore entitled to an order directing Defendant to vacate the Property in addition to judgment against her for an ascertainable sum in excess of \$21,000, for double his actual damages, for punitive damages, for other damages as may be discovered and incurred during the course of this action, and for attorney's fees, prejudgment interest and costs.

FOR A FIRST CAUSE OF ACTION

40. Plaintiff repeats and realleges the allegations set forth above as if restated verbatim here to the extent required by, but not inconsistent with, the following allegations.

41. Certain terms in the Trust agreement established a "rental agreement," as defined by statute, pursuant to which Defendant was entitled to occupy the Property to the exclusion of all others until the Property was "sold, or until vacated by her."

42. The rental agreement, therefore, expired and terminated when the Trustee sold the Property to Plaintiff, pursuant to the Divorce Decree.

43. Defendant received notice in writing that the Property was sold, but she refused to move out.

44. Upon purchasing the Property, Plaintiff became the "landlord," as defined by statute, because he owns the Property.

45. Plaintiff and Defendant did not enter into a new rental agreement or any other agreement allowing Defendant to continued living on the Property.

46. Instead, Plaintiff requested in writing that Defendant vacate the Property.

47. However, Defendant has refused to move out and has remained in possession of the Property without Plaintiff's consent.

48. Defendant's holdover is not in good faith and constitutes a willful violation of Title 27, Chapter 40 of the South Carolina Code of Laws (Law Co-op 1976, as amended).

49. Accordingly, Plaintiff is entitled to an order directing Defendant to vacate the Property and entering judgment against her for reasonable rent, for the greater of three months periodic rent or double Plaintiff's damages, for reasonable attorneys fees pursuant to S.C. Code Ann. §§ 27-40-750 and 770, and for prejudgment interest and costs as allowed by law.

FOR SECOND CAUSE OF ACTION

50. Plaintiff repeats and realleges the allegations above as if restated verbatim here to the extent required by, but not inconsistent with, the following.

51. Plaintiff is the sole and exclusive legal owner of the Property.

52. Plaintiff has never given Defendant permission or consent to use or live on the Property after April 19, 2012.

53. Defendant has voluntarily and intentionally invaded the Plaintiff's interest in the exclusive use of his Property, and she continues to do so today.

54. Defendant knew or should have known her use of the Property invaded Plaintiff's right to exclusive use of it.

55. Defendant's trespass is causing Plaintiff permanent and recurring damage by interfering with his right to exclusive possession and enjoyment of his Property.

56. Defendant is a continuous trespasser who should be enjoined to protect the Plaintiff's property rights from hurt or destruction.

57. Furthermore, Plaintiff is informed and believes Defendant has sold, transferred, removed, or has attempted to sell, transfer or remove, personal property that was awarded to him pursuant to the Divorce Decree, to wit: four gun safes and antiques inherited from Plaintiff's grandmother.

58. Plaintiff will suffer irreparable harm without an injunction.

59. Plaintiff is likely to succeed on the merits of his claims in this matter.

60. Plaintiff has no adequate remedy at law.

61. The equities of this matter support an injunction to preserve Plaintiff's property rights and to prevent future harm to Plaintiff.

62. Accordingly, Plaintiff is entitled to an Order directing Defendant to vacate the Property and enjoining her from any continued or future trespass. Plaintiff is further entitled to judgment against the Defendant in excess of \$21,000, punitive damages, other damages as may be incurred and discovered in this action, attorney's fees, and costs as allowed by law.

FOR A THIRD CAUSE OF ACTION

63. Plaintiff repeats and realleges the allegations set forth above as if restated verbatim here to the extent required by, but not inconsistent with, the following allegations.

64. A material term to the Trust, which the parties negotiated and received court approval, was Defendant's promise to move out of the Property when the Trustee sold it.

65. Defendant breached the terms of the Trust by refusing to move out after the Property was sold.

66. As a result, the Plaintiff is entitled to judgment against Defendant for actual damages in excess of \$21,000, incidental and consequential damages, attorney's fees, prejudgment interest and costs as allowed by law.

FOR A FOURTH CAUSE OF ACTION

67. Plaintiff repeats and realleges the allegations set forth above as if restated verbatim here to the extent required by, but not inconsistent with, the following allegations.

68. Defendant unequivocally promised to move out when the Property was sold.

69. Plaintiff reasonably relied on Defendant's promise by agreeing to the terms of the Trust, by performing his obligations under the Trust, and by purchasing the Property.

70. Plaintiff's reliance was expected and foreseeable by the Defendant because she made it so he would agree to allow her to continue living on the Property. Furthermore,

Defendant knew and did foresee that anyone would purchased the Property while she was living on it would rely on her promise to move out when the Property was sold.

71. As a result of his reliance on Defendant's promise to move out, Plaintiff has suffered damages in an amount in excess of \$21,000, prejudgment interest, costs and other damages as may be discovered during the course of this case and as allowed by law.

FOR A FIFTH CAUSE OF ACTION

72. Plaintiff repeats and realleges the allegations set forth above as if restated verbatim here to the extent required by, but not inconsistent with, the following allegations.

73. Defendant has received and retained the benefit of living on Plaintiff's Property since April 19, 2012 without paying any rent or giving any other valuable consideration to Plaintiff.

74. It would be inequitable for Defendant to retain that benefit without paying for it.

75. The reasonable value Defendant has received and continues to receive is \$1,750 per month, from April 19, 2012.

76. Accordingly, Plaintiff is entitled to judgment against Defendant for an amount in excess of \$21,000, plus prejudgment interest and costs as allowed by law.

WHEREFORE, Plaintiff prays for relief as follows:

- (1) For an Order that the Defendant shall vacate the Property, and if Defendant fails to voluntarily vacate the Sheriff of Newberry County shall to enter the Property and eject the Defendant, using force as may be necessary;
- (2) For judgment against the Defendant for reasonable rent in excess of \$21,000; for the greater of three months periodic rent or double Plaintiff's damages and reasonable attorneys fees, pursuant to S.C. Code Ann. §§ 27-40-750 and 770 and as otherwise allowed by law; for incidental, consequential and punitive damages and other damages as may be discovered during the course of this action; and for prejudgment interest and costs as allowed by law; and

(3) Such other relief as the Court may deem proper.

Benjamin B

James L. Bruner
Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, S.C. 29260
(803) 252-7693
Attorneys for the Plaintiff

September 4, 2013

Columbia, South Carolina

*Plaintiff hereby moves, pursuant to
S.C. Code Ann §§ 62-1-302 and 62-7-201
for the Probate Court to remove this
matter to the Circuit Court.*

*I so Move: Benjamin B
Benjamin Bruner
Counsel for Plaintiff*

September 4, 2013

EXHIBIT A

McDougall & Self, L.L.P.

Attorneys at Law

791 Greenlawn Drive, Suite 4

P. O. Box 90860

Columbia, South Carolina 29290

Telephone: (803) 776-3130 - Telecopier: (803) 776-7748

John O. McDougall*†

Michael W. Self*

Peter G. Currence

Ryan A. McLeod*

Alyssa H. Richardson

Reply to Columbia

December 8, 2011

E-mail: jom@mcdougallandself.com

Sumter Office:

21 East Calhoun Street

P.O. Box 2197

Sumter, South Carolina 29151-2197

Telephone: (803) 778-5062

Telecopier: (803) 778-6908

Website: www.mcdougallandself.com

VIA E-MAIL AND U.S. MAIL

Mr. Francis B. B. Knowlton

Attorney at Law

Nelson, Mullins, Riley & Scarborough, LLP

Post Office Box 11070

Columbia, SC 29211

Re: Hobby vs. Hobby
544 Crowder Road (with surrounding 3 acres)

Dear Frank:

This is to advise and confirm that Mary Hobby would like to purchase the 544 Crowder Road property, with surrounding 3 acres, (her home) from the Liquidating Trust.

I believe that Mary has previously provided you with a complete copy of the Summary Appraisal Report of Hubert M. Bedenbaugh, Jr., provided as of November 23, 2011, which reflects that he appraised this property at \$300,000. Since you have previously been provided with a complete copy of his appraisal, I am attaching only the first three pages of his report with this letter.

I am enclosing a copy of page 4 of 9 of the Marital Assets Addendum dated November 29, 2009, and you will note in Item 9(a)(1) that it confirms that both CPA McKay and CPA Sealey valued this property at that time at \$325,000.

I am enclosing copies of the summary I have received from Mary Hobby regarding the taxes and homeowner's insurance that she has paid on this property, this year, which total \$3,729.19, along with verification of these payments.

Although Mary Hobby believes that the home is worth substantially less than \$300,000, she is willing to base her offer of purchase of this property on that appraised value. For your information, a well needs to be added to the house because the deeded property to Mary does not include an existing well. The cost of digging a new 6" pipe well is approximately \$5,000. The bills Mary previously paid for repairing the existing well amount to \$1,104.21. The power to Mary's property is attached to the red barn behind the house which is not on

†DIPLOMATE, AMERICAN COLLEGE OF FAMILY TRIAL LAWYERS
*FELLOW, INTERNATIONAL ACADEMY OF MATRIMONIAL LAWYERS
*FELLOW, AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

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JACQUE S. BOZENS
CLERK OF COURT

Mr. Francis B. B. Knowlton
December 8, 2011
Page 2

her deeded property. This line needs to be detached and separate meters put in place. The estimated cost will be \$2,000.

As we have determined from the attempted sale of a number of properties since the Liquidating Trust was established, the likelihood that the property could be sold at this time for its appraised value is remote. Therefore, taking into consideration that there will be no cost of sale, that the sale will be immediately consummated, Mary proposes that the \$300,000 value of the property be discounted by 25% or \$75,000 leaving a balance of \$225,000.

Considering that she is entitled to distributions from the Liquidating Trust in the amount of 42.5% and Ray Hobby is entitled to distributions from the Trust in the amount of 57.5%, if the \$225,000 were in the Liquidating Trust to be distributed at this time, of the \$225,000, \$95,625 would be distributed to Mary Hobby and \$129,375 would be distributed to Ray Hobby. Of the \$3,729.19 which Mary has paid toward taxes and insurance on this property, 57.5% should be attributed to Ray (\$2,144) and 42.5% to Mary (\$1,585), thereby reducing the amount due to Ray to \$127,231.

Based upon the above and the enclosures, Mary is willing to immediately pay into the Trust \$127,231 and consent to these funds being immediately distributed to Ray Hobby for his interest in this property.

The above agreement would not affect the distributions from the Liquidating Trust for legal fees to each of the parties (\$225,000 to Mary T. Hobby and \$200,000 to RDH) as provided in the Liquidating Trust.

After you have had an opportunity to review the above and the attachments, please advise as to whether it is suitable to you as Trustee of the Hobby Family Liquidating Trust and Raymond D. Hobby for Mary T. Hobby to purchase the 544 Crowder Road property as proposed.

With kind regards.

Sincerely,

JOHN C. McDOUGALL

JOM:srb

Enclosures

cc: Mrs. Mary T. Hobby (via e-mail only)

EXHIBIT B

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NEWBERRY COUNTY

2013 JUN 13 PM 12 38

JACKIE S. COWERS
CLERK OF COURT

Frank B. Knowlton
Nelson, Mullins, Riley & Scarborough L.L.P.
Post Office Box 11070
Columbia, SC 29211

January 3, 2012

Re: Hobby vs. Hobby 544 Crowder Road (with surrounding 3 acres)

Dear Frank,

I greatly appreciate the opportunity to make an offer to purchase the property in Kinards, SC, 544 Crowder Road and surrounding acreage. It is my opinion that this property is essential to the value of the overall property holdings that surround it and being extracted from the farm will drastically damage the total value of the property. Therefore I would extend an offer to the trust to purchase Ms. Hobby's interest of 42 ½ % to maintain the most value and marketable position for the overall property.

I am offering to purchase this property for \$138,125.00 as is where is. This is based on the 42 ½ % of the full \$325,000.00 appraisal that was used in the evaluation of material assets at the time of divorce and was agreed on by both parties. No broker discounts, no commissions, no reductions for any reasons.

I am further offering to leave this asset in the Trust to maximize the properties value for any future sale opportunities and receive no distributions until the property is sold and all trust liabilities are satisfied.

According to Ms. Hobby's appraisal it contends the property isn't worth that amount. I, as stated above disagree not only for the overall value of the total farm but feel the size, quality and location of the home keeps it at the former numbers.

As to reimbursements for expenses to Ms. Hobby for taxes, maintenance and repairs, these should be denied. If there is any devaluation or cost to maintain this property it should be borne by Ms. Hobby for failure to comply with the final divorce order to convey this property into the trust. As you know I personally have not asked to date for any reimbursements for funds I have advanced on behalf of trust assets, taxes, maintenance, repairs, mortgage payments, interest or any other cost associated. This will be accounted for when the trust is solvent and has adequate cash flows.

Knowing the Trust is still struggling and has urgent needs for cash flow, I propose this transaction take place as immediate as possible. I can close in a matter of days should you find this proposal acceptable.

I respect your consideration and request to reserve the right to counter offer if any additional offers are presented that exceed this proposal.

Sincerely,
Raymond D. Hobby

1022b

NEWBERRY CO. Y
ASSESSOR

TAX MAP # 96-12

STATE OF SOUTH CAROLINA

PART OF MAP # QUIT-CLAIM DEED

COUNTY OF NEWBERRY

TAX YEAR 2013

Mary C. Ammond

TO ALL WHOM THESE PRESENTS MAY COME:

200911322
Filed for Record in
NEWBERRY COUNTY, SC
JACKIE S. SOWERS, CLERK OF COURT
04-19-2012 At 11:40
DEED
STATE
COUNTY
Book 1612 Page 13

COPY

WHEREAS, an action (Docket No. 2005-DR-36-56) was initiated by Mary T. Hobby in the Newberry County Family Court for the Eighth Judicial Circuit seeking, among other relief, a divorce from Raymond D. Hobby, and in conjunction with such relief, the equitable apportionment of the marital assets;

WHEREAS, in connection with the equitable apportionment of the marital assets, Raymond D. Hobby and Mary T. Hobby, each of whom are citizens and residents of Newberry County, South Carolina, have agreed and are required to transfer various items of real and personal property, as encumbered, to The Hobby Family Liquidating Trust (the "Liquidating Trust") created pursuant to that certain Final Order and Divorce Decree dated October 8, 2010 by the Honorable Joseph W. McGowan, III, Judge of the Newberry County Family Court, Eighth Judicial Circuit (the "Divorce Decree");

WHEREAS, the Property (as defined below) was among the items of real property to be transferred to the Liquidating Trust pursuant to the Divorce Decree;

WHEREAS, the Liquidating Trust desires to convey any interest in the Property which the Liquidating Trust may have or have had to Raymond D. Hobby; and

WHEREAS, the Liquidating Trust has agreed to issue this Quit-Claim Deed in order to convey its interest in the Property, if any, and Raymond D. Hobby has agreed to accept this Quit-Claim Deed.

NOW, THEREFORE, for and in consideration of the foregoing recitals, and also in consideration of the sum of Three Hundred Twenty-Five Thousand and 00/100 Dollars (\$325,000.00), the receipt and sufficiency of such consideration being hereby acknowledged, to the extent the Liquidating Trust is vested or may hereinafter become vested, by virtue of a conveyance from Mary T. Hobby or otherwise, in any interest in the Property, the Liquidating Trust, as Grantor, has remised and forever quit-claimed unto Raymond D. Hobby, as Grantee, and by these presents, Grantor does hereby remise, release and forever quit-claim unto the Grantee, his heirs, successors and assigns, all its right, title and interest in and to the following (the "Property"):

All that certain piece, parcel and lot of land with the improvements thereon, situate, lying and being located on Crowder Road, in the County of Newberry, State of South Carolina, being shown and designated as containing 2.75 acres, more or less, on plat of survey prepared for Raymond D. Hobby, by Adtech Surveying, Inc., PLS 11072, dated May 26, 2005, recorded in Plat Book C122

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C122

EXHIBIT C

at Page 4 in the Office of the Clerk of Court for Newberry County. Said plat is incorporated herein for a more full and complete description as to the metes and bounds of said property.

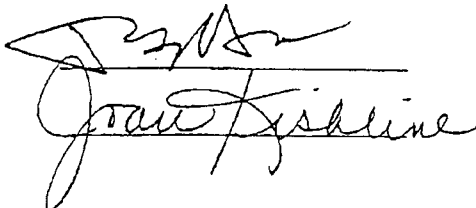
Together with a forty (40') foot right-of-way easement for ingress and egress to said property as shown on said plat.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining.

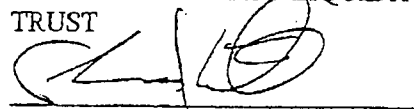
TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Grantee, his heirs and assigns, forever so that neither the said Grantor nor its successors or assigns, nor any other person or persons, claiming under it or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

WITNESS THE HAND AND SEAL of the Grantor's duly authorized signatory authority this 19th day of April, 2012.

Signed, sealed and delivered
in the presence of:


Joan A. Kishline

THE HOBBY FAMILY LIQUIDATING
TRUST


Frank B.B. Knowlton, Trustee

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

ACKNOWLEDGMENT

I, Joan A. Kishline, Notary Public for the State aforesaid, do hereby certify that the above-named Frank B.B. Knowlton, as Trustee of The Hobby Family Liquidating Trust, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 19 day of April, 2012.

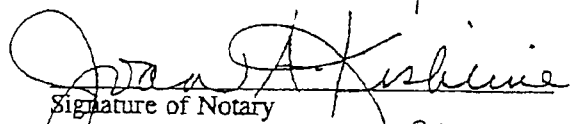

Signature of Notary
My commission expires: 9/18/2017

EXHIBIT D

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

Mary T. Hobby,)

Plaintiff,)

vs.)

Raymond D. Hobby,)

Defendant.)

IN THE FAMILY COURT)

EIGHTH JUDICIAL CIRCUIT)

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

Docket No.: 2012-DR-36-194

Plaintiff's Attorney:

John O. McDougall
Michael B. Brackett

Defendant's Attorney:

Timothy E. Madden
Winston I. Marosek

Guardian Ad Litem:

None

Hearing Date:

November 13, 2012

Judge:

Deborah Neese

Court Reporter:

Angela Berry

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JACQUE S. BOWERS
CLERK OF COURT

This Order addresses the Motion to Dismiss filed by Defendant on July 12, 2012, a hearing on which was held before the undersigned on November 13, 2012. Based on the affidavits, arguments presented by counsel at the hearing, and applicable law, this Court makes the following findings of fact and conclusions of law and enters this Order.

Plaintiff and Defendant are citizens and residents of Newberry County, South Carolina and have so resided for more than one year prior to the commencement of this civil action.

Defendant and Plaintiff were married on June 24, 1978, and divorced by a Final Order and Divorce Decree ("Divorce Decree") filed October 8, 2010 in Docket No. 2005-DR-36-56. The Divorce Decree approved the agreement of the parties. The Divorce Decree required the parties to create a liquidating trust and transfer the vast majority of their marital assets into the

trust. By the terms of the Divorce Decree, certain provisions were ordered to be included to the trust. In compliance with the Divorce Decree, Plaintiff and Defendant created and signed the Hobby Family Liquidating Trust Agreement (the "Trust") on December 9, 2010 and December 6, 2010, respectively.

One of the assets which the Divorce Decree required to be transferred to the Trust is the former marital home and three (3) surrounding acres (the "Crowder Road Property"). At the time of the entry of the Divorce Decree, the Crowder Road Property was titled solely in Plaintiff's name. By the terms of the Trust, the Trustee is granted various powers, including but not limited to the power to:

sell or dispose of . . . any property, real or personal, constituting a part of the Trust Estate . . . for cash or on credit . . . at such times and upon such terms and conditions as it may deem best . . . (See Trust, Article IX(a)(vi)).

By operation of its own terms, the Trust is a liquidating trust, so that assets and debts owned by it are managed and controlled and disposed of in the manner directed by the Trustee, with distributive benefits flowing to Plaintiff and Defendant in accordance with the terms of the Trust.

Beginning in December, 2011, over a year after the entry of the Divorce Decree, Plaintiff and Defendant individually negotiated with the Trustee for the purchase of the property after the Trustee gave notice of an intention to sell the Crowder Road Property. Both Plaintiff and Defendant presented offers to purchase the Crowder Road Property from the Trust. On or about February 9, 2012, the Trustee accepted Defendant's offer to purchase the Crowder Road Property from the Trust. On April 11, 2012, Plaintiff transferred the Crowder Road property to the Trust by general warranty deed. On April 19, 2012, the Trustee transferred the Crowder Road property to Defendant by quitclaim deed after Defendant paid the Trust in accordance with the offer accepted by the Trustee.

Plaintiff remained in the possession of the Crowder Road Property, and on May 15, 2012, filed this action seeking (1) alimony (as permitted by the Divorce Decree), (2) a declaration that the Trustee's Deed to Defendant for the Crowder Road Property is void ab initio, (3) a determination of whether Plaintiff or Defendant should be allowed to purchase the Crowder Road Property, (4) exclusive possession of the property until all of the Trust assets are liquidated; (5) an order prohibiting Defendant from pursuing eviction proceedings against Plaintiff during the pendency of the case, (6) discovery rights, and (7) attorney's fees and costs.

With the filing of this action, Plaintiff also filed Motion for Temporary Relief in May 15, 2012 seeking (1) an emergency hearing on Defendant's eviction proceedings against Plaintiff; (2) an emergency order prohibiting Defendant from pursuing eviction proceedings against Plaintiff; (3) temporary alimony; (4) sole and exclusive use of the Crowder Road Property during the pendency of this action; (5) discovery rights, and (6) attorney's fees and costs.

On May 15, 2012, the Family Court issued an Emergency Order prohibiting Defendant from pursuing eviction proceedings against Plaintiff regarding the Crowder Road Property.¹ In the Emergency Order, the Court scheduled an expedited hearing for May 18, 2012. Counsel for the parties agreed to continue the hearing until June 4, 2012, and allowed the provision of the Emergency Order prohibiting Defendant from pursuing eviction proceedings against Plaintiff to remain in effect until the next hearing, without prejudice to either party.²

On July 12, 2012, Defendant filed a Motion to Dismiss in which he requested the Court dismiss Plaintiff's Complaint (as it related to the relief requested concerning the Crowder Road

¹ As of the date of the hearing on November 13, 2012, Plaintiff remained in possession of the Crowder Road Property.

² The hearing was continued a second time to November 13, 2012, in the Consent Order of Continuance dated August 30, 2012.

Property) pursuant to Rules 12(b)(1), (6), and (7) of the South Carolina Rules of Civil Procedure.

In summary, Plaintiff contends the Family Court maintains jurisdiction to hear the issues raised in Plaintiff's Complaint concerning the Crowder Road Property based on the language of the Trust, which states:

The parties to this Agreement hereby acknowledge and agree that the exclusive jurisdiction for matters involving this Trust or any matters related thereto is the Family Court for the Eighth Judicial Circuit Newberry County, South Carolina, and waive any right to object or otherwise take issue with the convenience of such forum.

Plaintiff further argues the "subject matter" before the Court concerning the Crowder Road Property involves the equitable division of an asset and the purpose of the Trust provision cited above is to ensure the fair and equitable liquidation of the assets of the Trust. Plaintiff contends the Trustee is the agent of the Family Court for the purpose of equitable apportionment. Plaintiff relies on Thomas v. McGriff, 368 S.C. 485, 629 S.E.2d 359 (2006), for the proposition of concurrent jurisdiction with the Probate Court. Plaintiff also argues the Court has jurisdiction over the contract (the Trust) between the parties and because the Trust apportions marital property, this Court maintains jurisdiction to hear and determine the issues raised by Plaintiff's Complaint.

In summary, Defendant argues the Family Court lacks subject matter jurisdiction over the subject matter of Plaintiff's Complaint because the subject matter does not fall within S.C. Code § 63-3-530 (jurisdiction of the Family Court) and the Probate Court maintains exclusive jurisdiction over matters related to trusts. Defendant further contends the subject matter of Plaintiff's Complaint is not the equitable division of an asset, but rather the administration of an independent Trust.

The Family Court is a court of limited jurisdiction. It maintains exclusive jurisdiction over those matters specified in S.C. Code § 63-3-530 (1976, as amended). Those matters include, but are not limited to:

1. actions under the provisions of the Uniform Interstate Family Support Act;
2. actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney's fees and costs, if requested by either party in the pleadings;
3. actions for and related to the adoption of children and adults; and
4. actions for termination of parental rights, whether such action is in connection with an action for adoption or apart therefrom.

Pursuant to S.C. Code § 62-1-302 (1976, as amended), the Probate Court maintains exclusive original jurisdiction over all subject matter related to trusts.

The subject matter of Plaintiff's Complaint does not fall within S.C. Code § 63-3-530 (1976, as amended). The subject matter of Plaintiff's Complaint as it relates to the Crowder Road Property concerns an independent trust and transactions occurring after the entry of the Divorce Decree and after the formation of the Trust. Specifically, Plaintiff's Complaint as it relates to the Crowder Road Property concerns the actions of the Trustee of the Trust (whether the Trustee's Deed dated April 19, 2012 is null and void; whether Defendant or Plaintiff should be allowed to purchase the Crowder Road Property from the Trust; whether the property should be held in the Trust; and whether Plaintiff should be entitled to exclusive use of the property). The equitable distribution of the marital property was accomplished in the Divorce Decree. While the vast majority of the marital property was transferred into the Trust, the Trustee's powers and duties do not include the equitable distribution of Trust property. The Trust contains

specific provisions concerning the powers and duties of the Trustee as it relates to the property of the Trust. While the Trust contains language concerning the exclusive jurisdiction of the Family Court for matters involving the Trust or any matters related thereto, individual parties cannot confer subject matter jurisdiction upon this Court. November 4, 2008 Bluffton Town Council Election v. Fulgham, 385 S.C. 632, 637, 686 S.E.2d 683, 686 (2009) ("The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court."); State v. Richburg, 304 S.C. 162, 165, 403 S.E.2d 315, 317 (1991) ("... parties cannot, by their actions or agreements, confer subject matter jurisdiction upon the trial court ...").

Upon careful review, this Court does not have jurisdiction to hear and determine so much of Plaintiff's Complaint as it relates to the relief requested concerning the Crowder Road Property (whether the Trustee's Deed dated April 19, 2012 is null and void; whether Defendant or Plaintiff should be allowed to purchase the Crowder Road Property from the Trust; whether the property should be held in the Trust; and whether Plaintiff should be entitled to exclusive use of the property). While the Divorce Decree required the creation of a trust containing certain terms, and also included language by which the Family Court retained jurisdiction to interpret, enforce, and to the extent necessary, effectuate the terms of the Divorce Decree, the parties themselves settled and created the Trust and signed it more than six weeks after the entry of the Divorce Decree. The language in the Divorce Decree which retained jurisdiction for certain purposes is not sufficiently broad to include a retention of jurisdiction to resolve any dispute arising out of the actions or conduct of the Trustee or the administration of the terms of the Trust. After the entry of the Divorce Decree, no marital property was acquired and the Family Court maintains jurisdiction only over marital property. There is no indication the Trust was ever

reviewed by the Family Court. There is no challenge presented by Plaintiff that the Trust is in fact the product of the Family Court Order or that the Trust contains terms or provisions different from those required by the Divorce Decree.

Actions related to the administration of a Trust are within the exclusive jurisdiction of the Probate Court pursuant to S.C. Code § 62-1-302. As such, the Family Court lacks jurisdiction to hear and decide the issues set forth in Plaintiff's Complaint concerning the Crowder Road property.

NOW, THEREFORE, IT IS ORDERED Plaintiff's Complaint filed May 15, 2012, as it relates to the Crowder Road Property is dismissed.

AND IT IS SO ORDERED.

Deborah Neese
Judge of the Family Court

_____, South Carolina

Dated: _____

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE PROBATE COURT

2013-GC-36-00016

Raymond D Hobby,

Plaintiff,

v,

Mary T. Hobby,

Defendant.

Acceptance of
Service.

FILED IN PROBATE COURT
SEP 11 2013 4:11 PM
CLERK OF COURT

I, the undersigned counsel for the Defendant, hereby accept service of the Complaint and Summons filed in this case, and I further consent to removal of this case to the Circuit Court.

Pope D. Johnson

Pope D. Johnson, III

Johnson & Barnett, LLP

Attorney for the Defendant.

September 4, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby)
Plaintiff,)

Civil Action No. 2013-CP-36-193

vs.)

**ANSWER TO AMENDED COMPLAINT,
COUNTERCLAIM AND THIRD PARTY
COMPLAINT**

Mary T. Hobby)
Defendant/Third Party
Plaintiff,)

vs.)

Frances B. Knowlton, Individually)
and as Trustee,)
Third Party Defendant.)

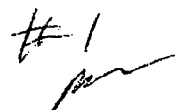
FILED
NEWBERRY COUNTY
2013 SEP 9 PM 1 07
JACQUE S. POWERS
CLERK OF COURT

The Defendant answers the Amended Complaint herein as follows:

FOR A FIRST DEFENSE

1. That the Defendant denies each and every allegation of the Amended Complaint not hereinafter specifically admitted.
2. That the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7 and 8 are admitted.
3. That the allegations of paragraph 9 are denied.
4. That the allegations of paragraph 10 are admitted.
5. That the allegations of paragraphs 11, 12 and 13 are denied.
6. That the allegations of paragraph 14 are admitted and that the Plaintiff's offer dated January 3, 2012, is attached as Exhibit No. 1.
7. That the allegations of paragraphs 15 and 16 are denied.
8. That the allegations of paragraph 17 are admitted.

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9. That the allegations of paragraphs 18, 19 and 20 are denied.

10. That the allegations of paragraph 21 are admitted.

11. That the allegations of paragraphs 22 and 23 are denied.

12. That the allegations of paragraph 24 are admitted.

13. That the allegations of paragraphs 25 and 26 are denied.

14. That the defendant craves reference to the Family Court file and Magistrate Court file in response to paragraphs 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37.

15. That the allegations of paragraphs 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and 76 and the remaining allegations of the Amended Complaint are denied.

FOR A SECOND DEFENSE

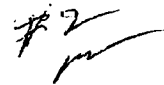
16. That the offer made by the Plaintiff which was accepted by the trust included the offer to leave the marital residence in the Trust, which would allow Defendant to live there rent free had the transaction been handled by a contract of sale with a deed being given only upon payment in full, and as a result, the defendant is not liable to the plaintiff for any amount.

FOR A THIRD DEFENSE

17. That the plaintiff has failed to leave the marital residence in trust in accordance with his offer and has unclean hands and is therefore not entitled to any equitable relief.

FOR A FOURTH DEFENSE

18. That the trustee, after accepting the plaintiff's cash offer and offer to leave the property in trust, gave the plaintiff a quitclaim deed to the property and allowed the plaintiff to finance a substantial portion of the purchase price rather than accept the superior offer of the defendant and the terms of the sale were not reasonable and fair and did not reflect fair market value and the terms of the sale were not mutually agreed upon by the parties and as a result the trustee lacked the authority to sell the property and the quitclaim deed given to the plaintiff is void and a nullity.



**FOR A FIFTH DEFENSE
AND BY WAY OF COUNTERCLAIM**

19. That a real and substantial case or controversy exists as to the rights and duties of the parties regarding the marital residence, including Defendant's right to live in the marital residence rent free, and the Court should declare such rights and duties of the parties regarding the sale of the marital residence.

**FOR A SIXTH DEFENSE
AND BY WAY OF THIRD PARTY COMPLAINT**

20. That Frances B. Knowlton, the Third Party Defendant, is the Trustee of the Liquidating Trust.

21. That when the plaintiff offered to purchase the marital residence, he offered to leave it in the trust and pay the purchase price in cash.

22. That upon information and belief, if the marital residence was left in the trust, defendant would be entitled to continue to live in it rent free pursuant to the terms of the Trust.

23. That the Third Party Defendant did not retain the marital residence in trust but conveyed the property to the plaintiff by a quitclaim deed and breached his fiduciary duty to the Defendant and Third Party Plaintiff.

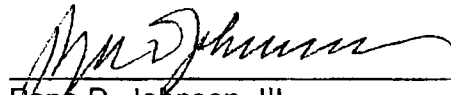
24. That in addition, the Third Party Defendant sold the property, allowing the plaintiff to finance a portion of the purchase price even though the plaintiff had proposed to pay cash.

25. That the Third Party Defendant wrongfully declined to accept the Defendant and Third Party Plaintiff's superior offer.

26. That the Third Party Defendant has favored one beneficiary, the plaintiff, over the Defendant and Third Party Plaintiff, in selling the marital residence and in failing to determine and protect her right to continue to live in the residence rent free and has breached his fiduciary duty to the Defendant and Third Party Plaintiff, with whom he has a special relationship, as set forth above, and has exposed the Defendant and Third Party Plaintiff to the claims by the plaintiff.

27. That if the Defendant owes the Plaintiff any amount, which is denied, the Defendant and Third Party Plaintiff is entitled to indemnification from the Third Party Defendant.

WHEREFORE, having answered, the Defendant demands that this Complaint be dismissed and for a declaratory judgment of the rights and duties of the parties under contract for the sale of the marital residence, including Defendant's right to live in it rent free and if any recovery is made against her by the Plaintiff, a judgment against the Third Party Defendant by way of indemnification, including attorney's fees and for such other and further relief as may be just and proper.



Rope D. Johnson, III
Johnson & Barnette, LLP
P.O. Drawer 11209
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803-799-9791
803-253-6084 (Fax)
pdjohnson@johnsonbarnette.com
**Attorney for the Defendant and Third
Party Plaintiff**

Columbia, South Carolina
September 6, 2013

FILED
NEWBERRY COUNTY
2013 SEP 9 PM 1 07
JACKIE S. BOWERS
CLERK OF COURT

Frank B. Knowlton
Nelson, Mullins, Riley & Scarborough L.L.P.
Post Office Box 11070
Columbia, SC 29211

January 3, 2012

Re: Hobby vs. Hobby 544 Crowder Road (with surrounding 3 acres)

Dear Frank,

I greatly appreciate the opportunity to make an offer to purchase the property in Kinards, SC, 544 Crowder Road and surrounding acreage. It is my opinion that this property is essential to the value of the overall property holdings that surround it and being extracted from the farm will drastically damage the total value of the property. Therefore I would extend an offer to the trust to purchase Ms. Hobby's interest of 42 ½ % to maintain the most value and marketable position for the overall property.

I am offering to purchase this property for \$138,125.00 as is where is. This is based on the 42 ½ % of the full \$325,000.00 appraisal that was used in the evaluation of material assets at the time of divorce and was agreed on by both parties. No broker discounts, no commissions, no reductions for any reasons.

I am further offering to leave this asset in the Trust to maximize the properties value for any future sale opportunities and receive no distributions until the property is sold and all trust liabilities are satisfied.

According to Ms. Hobby's appraisal it contends the property isn't worth that amount. I, as stated above disagree not only for the overall value of the total farm but feel the size, quality and location of the home keeps it at the former numbers.

As to reimbursements for expenses to Ms. Hobby for taxes, maintenance and repairs, these should be denied. If there is any devaluation or cost to maintain this property it should be borne by Ms. Hobby for failure to comply with the final divorce order to convey this property into the trust. As you know I personally have not asked to date for any reimbursements for funds I have advanced on behalf of trust assets, taxes, maintenance, repairs, mortgage payments, interest or any other cost associated. This will be accounted for when the trust is solvent and has adequate cash flows.



Knowing the Trust is still struggling and has urgent needs for cash flow, I propose this transaction take place as immediate as possible. I can close in a matter of days should you find this proposal acceptable.

I respect your consideration and request to reserve the right to counter offer if any additional offers are presented that exceed this proposal.

Sincerely,
Raymond D. Hobby

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby)
Plaintiff,)

Civil Action No. 2013-CP-36-193

vs.)

CERTIFICATE OF SERVICE

Mary T. Hobby)
Defendant/Third Party)
Plaintiff,)

vs.)

Frances B. Knowlton, Individually)
and as Trustee,)
Third Party Defendant.)

FILED
NEWBERRY COUNTY
2013 SEP 9 PM 1 07
JACKIE S. BOWERS
CLERK OF COURT

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Benjamin C. Bruner, attorney for the Plaintiff, and R. Davis Howser, attorney for the Third Party Defendant, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 6th day of September, 2013.

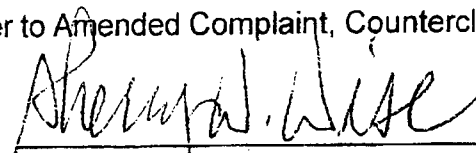
COUNSEL SERVED:

Benjamin C. Bruner
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260-1110

R. Davis Howser, Esquire\
Howser Newman & Besley, LLC
P.O. Box 12009
Columbia, SC 29211

PLEADINGS:

Civil Action Coversheet, Summons and Answer to Amended Complaint, Counterclaim and Third Party Complaint



Sherry W. Wise

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STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby,)
)
Plaintiff,)

Civil Action No. 2013-CP-36-193

COPY

vs.)

Mary T. Hobby,)
)
Defendant/Third)
Party Plaintiff,)

ANSWER AND COUNTERCLAIM OF
FRANCES B. KNOWLTON (CORRECTLY
KNOWN AS FRANCIS B. B. KNOWLTON)
TO THE AMENDED COMPLAINT, COUNTER-
CLAIM AND THIRD PARTY COMPLAINT
DATED SEPTEMBER 6, 2013

vs.)

Frances B. Knowlton, Individually)
and as Trustee,)
)
Third Party Defendant.)

Third Party Defendant Frances B. Knowlton, Individually and as Trustee (correctly known as Francis B. B. Knowlton) answers the Amended Third Party Complaint dated September 6, 2013, and Counterclaims, as follows:

FOR A FIRST DEFENSE:

1. The Third Party Defendant Francis B. B. Knowlton denies each and every allegation of the Amended Third Party Complaint not hereinafter specifically admitted.

2. That with respect to paragraph 20 of the Amended Answer, Counterclaim and Third Party Complaint, Third Party Defendant admits only that he is the Trustee of "The Hobby Family Liquidating Trust" ("the Trust") with all the powers granted to him as set forth in The Hobby Family Liquidating Trust Agreement.

3. That with respect to paragraph 21 of the Amended Answer, Counterclaim and Third Party Complaint, Third Party Defendant admits only that among the powers given to him as Trustee by Article IX (a)(xxxii) are the following:

To sell, convey or otherwise deal with or dispose of any and all Trust Assets forming a part of the Liquidating Trust estate, at such time or times and in such manner and upon such terms as, in the absolute and uncontrolled discretion of the Trustee may deem expedient and proper, provided, however, that i) Trustee shall have an obligation to exercise appropriate and reasonable due diligence with respect to the sale of any Trust Asset such that Trustee is reasonably satisfied that any sale has occurred on an arms-length basis and has maximized the value of the Trust Asset being divested, and ii) Trustee may sell any Trust Asset to a Transferor provided the sale and terms of sale are reasonable, fair, and reflect fair market value and any other terms mutually agreeable by the parties.

that on information and belief he denies that Plaintiff offered to leave the former marital residence in The Hobby Family Liquidating Trust as such an offer would be contrary to the intent of the Trust as a liquidating trust; and that he denies the remaining allegations of this paragraph of the Amended Answer, Counterclaim and Third Party Complaint.

4. That with respect to paragraphs 22 and 23 of the Amended Answer, Counterclaim and Third Party Complaint, Third Party Defendant craves reference to Article XII (f) of the Trust which provides in pertinent part that:

MTH [Mary T. Hobby] shall have sole and exclusive, rent-free use of the property known as the marital home of MTH and RDH [Raymond Deneke Hobby] together with the surrounding three (3) acres of land until such property is sold * * *.

that Mary T. Hobby made an offer to purchase the home and property referred to above; that after the offer was made by Mary T. Hobby, Raymond D. Hobby made a higher and better offer to purchase the home and property which was accepted by the trustee; and that Third Party Defendant denies the remaining allegations of these paragraphs of the Amended Answer, Counterclaim and Third Party Complaint.

5. That with respect to paragraph 24 of the Amended Answer, Counterclaim and Third Party Complaint, the Third Party Defendant craves reference to Article IX (a)(xxxii) of the Trust which gives him as Trustee the power to sell, convey or dispose of any and all Trust Assets forming a part of the Liquidating Trust estate, at such time or times and in such manner and upon such terms as, in his absolute and uncontrolled discretion he may deem expedient and proper; and that he denies the

allegations of paragraph 24 of the Amended Answer, Counterclaim and Third Party Complaint as worded since Raymond D. Hobby made a higher and better offer to purchase the home and property which was accepted by the Third Party Defendant in his capacity as trustee and under the powers granted to him as trustee to which the Third Party Plaintiff agreed.

6. That the Third Party Defendant denies the allegations of paragraphs 25, 26 and 27 of the Amended Third Party Complaint dated September 6, 2013.

7. That the Third Party Defendant denies the remaining allegations of the Amended Answer, Counterclaim and Third Party Complaint dated September 6, 2013, applicable to him.

FOR A SECOND DEFENSE:

8. That the Third Party Complaint fails to state facts sufficient to constitute a cause of action against the Third Party Defendant in his individual capacity or in his capacity as Trustee of The Hobby Family Liquidating Trust.

FOR A THIRD DEFENSE:

9. That the Third Party Defendant acted in good faith with the care that an ordinarily prudent person in a like position would have exercised under the same or similar circumstances and in a manner that he reasonably believed was in the best interest of the Trust and its beneficiaries, and by reason of which he is not liable for the matters asserted in the Third Party Complaint.

FOR A FOURTH DEFENSE:

10. That the Defendant/Third Party Plaintiff made an individual offer to purchase the former marital home to which a higher offer was made and accepted by the Third Party Defendant as Trustee; that the Defendant/Third Party Plaintiff is not free from fault and does not have clean hands, by reason of which she is not entitled to recover for equitable indemnity.

FOR A FIFTH DEFENSE:

11. That this Third Party Defendant pleads waiver as a defense to the Third Party Complaint.

FOR A SIXTH DEFENSE:

12. That this Third Party Defendant pleads estoppel as a defense to the Third Party Complaint.

FOR A SEVENTH DEFENSE AND BY WAY OF A FIRST
COUNTERCLAIM TO THE THIRD PARTY COMPLAINT:

13. That the Third Party Defendant is informed and believes that the Third Party Plaintiff has filed this Third Party Action and is prosecuting this suit against him individually and as Trustee of The Hobby Family Liquidating Trust for an ulterior purpose of trying to use him to get leverage for Third Party Plaintiff in an attempt to get use of trust assets for her own personal benefit and for other ulterior purposes.

14. That the institution and pursuit of the Third Party Complaint constitutes abuse of process for which Third Party Defendant is entitled to recover such actual damages as he proves at any trial of this action together with punitive damages.

FOR A EIGHTH DEFENSE AND BY WAY OF A SECOND
COUNTERCLAIM TO THE THIRD PARTY COMPLAINT:

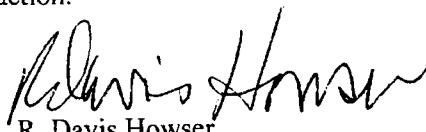
15. That there is no legal or factual legal basis to institute and pursue a claim against Third Party Defendant Frances B. Knowlton (correctly known as Francis B. B. Knowlton); that instituting and pursuing a claim against Third Party Defendant in his individual capacity when there is no legal or factual basis to do so constitutes a violation of §15-36-10 of the 1976 South Carolina Code as amended (South Carolina Frivolous Civil Proceedings Sanctions Act) and for which the Third Party Defendant is entitled to recover the costs, expenses and damages provided for by statute.

FOR A NINTH DEFENSE AND BY WAY OF A THIRD
COUNTERCLAIM TO THE THIRD PARTY COMPLAINT:

16. That there is no good ground to support the allegations contained in the Third Party Complaint and the Third Party Defendant demands that the Third Party Complaint be stricken and that appropriate sanctions be placed on the Third Party Plaintiff including an Order pursuant to Rule

11 (a) of the *South Carolina Rules of Civil Procedure* to pay reasonable attorney fees and costs associated with defending this action.

WHEREFORE, having fully answered the Amended Third Party Complaint, Counterclaim and Third Party dated September 6, 2013, Defendant Frances B. Knowlton, Individually and as Trustee (correctly known as Francis B. B. Knowlton) demands that the same be dismissed; that he have judgment on his Counterclaims; and that he have such other and further relief as may be just and proper, including the cost of this action.



R. Davis Howser
of HOWSER, NEWMAN & BESLEY, LLC
1508 Washington Street Post Office Box 12009
Columbia, South Carolina 29211
(803) 758-6000

Attorneys for Third Party Defendant Frances B. Knowlton,
Individually and as Trustee (correctly known as Francis B.
B. Knowlton)

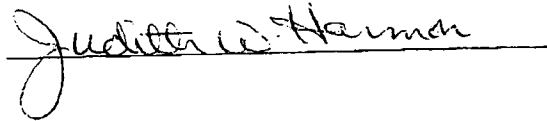
September 10, 2013

CERTIFICATE OF SERVICE

I, the undersigned employee of Howser, Newman & Besley, LLC, attorney for Third Party Defendant Frances B. Knowlton, Individually and as Trustee, hereby certify that I have served copies of his Answer and Counterclaim by depositing same in a United States Postal Service Mail Box directed to counsel listed below, postage prepaid, this 10th day of September 2013:

Pope D. Johnson, III, Esquire
Johnson & Barnette, LLP
P. O. Drawer 11209
Columbia, South Carolina 29211-1209
ATTORNEY FOR DEFENDANT MARY T. HOBBY

James L. Bruner, Esquire
Benjamin C. Bruner, Esquire
Bruner, Powell, Wall & Mullins, LLC
P. O. Box 61110
Columbia, South Carolina 29260
ATTORNEYS FOR PLAINTIFF RAYMOND D. HOBBY

A handwritten signature in cursive script, reading "Judith W. Herman", is written over a horizontal line.

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby)
Plaintiff,)

Civil Action No. 2013-CP-36-193

vs.)

DEFENDANT AND THIRD PARTY
PLAINTIFF'S REPLY TO COUNTERCLAIM
OF THIRD PARTY DEFENDANT

Mary T. Hobby)
Defendant/Third Party
Plaintiff,)

vs.)

Frances B. Knowlton, Individually)
and as Trustee,)
Third Party Defendant.)

FILED
RECEIVED
2013 SEP 18 AM 10 14
JACQUE S. BOYD
CLERK OF COURT

The Defendant and Third Party Plaintiff replies to the counterclaims of Third Party Defendant as follows:

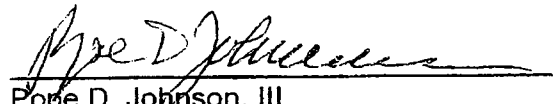
1. That the allegations of the Third Party Complaint are realleged and incorporated herein by reference.

2. That the Defendant and Third Party Plaintiff denies the allegations of paragraphs 13, 14, 15 and 16 and the remaining allegations of the Answer and Counterclaim of the Third Party Defendant.

WHEREFORE, having replied, the Defendant and Third Party Plaintiff prays for the relief sought in the Third Party Complaint and demands that the counterclaims of the Third Party Defendant be denied and for such other and further relief as may be just and proper.

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P2



Pope D. Johnson, III
Johnson & Barnette, LLP
P.O. Drawer 11209
Columbia, SC 29211
803-799-9791
803-253-6084 (Fax)
pdjohnson@johnsonbarnette.com
**Attorney for the Defendant and Third
Party Plaintiff**

Columbia, South Carolina
September 16, 2013

~2~

#2

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby)
Plaintiff,)

Civil Action No. 2013-CP-36-193

vs.)

CERTIFICATE OF SERVICE

Mary T. Hobby)
Defendant/Third Party)
Plaintiff,)

vs.)

Frances B. Knowlton, Individually)
and as Trustee,)
Third Party Defendant.)

FILED
NEWBERRY COUNTY
2013 SEP 18 AM 10 14
JACQUE S. HOWERS
CLERK OF COURT

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Benjamin C. Bruner, attorney for the Plaintiff, and R. Davis Howser, attorney for the Third Party Defendant, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 16th day of September, 2013.

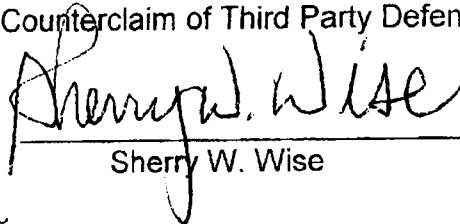
COUNSEL SERVED:

Benjamin C. Bruner
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260-1110

R. Davis Howser, Esquire
Howser Newman & Besley, LLC
P.O. Box 12009
Columbia, SC 29211

PLEADINGS:

Defendant and Third Party Plaintiff's Reply to Counterclaim of Third Party Defendant


Sherry W. Wise

~1~

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Raymond D. Hobby,)
Plaintiff,)

C/A No.: 2013-CP-36-0193

v.)

Mary T. Hobby,)
Defendant/ Third-Party Plaintiff,)

**PLAINTIFF'S REPLY TO
DEFENDANT'S COUNTERCLAIM**

v.)

Francis B. Knowlton, Individually)
and as Trustee,)
Third-Party Defendant.)

Plaintiff Raymond D. Hobby ("Plaintiff"), in reply to the counterclaim asserted by Defendant Mary T. Hobby ("Defendant"), alleges as follows:

1. Any allegation not specifically admitted or qualified is denied.
2. Paragraphs 1 through 18 of the Defendant's Answer are responsive to Plaintiff's pleading and, therefore, require no response. To the extent a response is required, Plaintiff reiterates the allegations in his Amended Complaint and denies any allegation inconsistent therewith.
3. The allegations in Paragraph 19 are denied and Plaintiff alleges any order of the Court would not terminate the uncertainty or controversy giving rise to this proceeding.
4. Paragraphs 20 through 27 are directed toward another party, not the Plaintiff, and therefore require no response. To the extent a response is required, Plaintiff reiterates the allegations in his Amended Complaint and denies any allegation inconsistent therewith.

FOR A SECOND DEFENSE

5. Defendant has no standing on which to base a claim for a declaratory judgment because she was neither a party nor a third-party beneficiary of the contract for sale.

FOR A THIRD DEFENSE

6. Defendant's claim for a declaratory judgment should be dismissed because such a judgment would not terminate the uncertainty or controversy giving rise to this proceeding.

FOR A FOURTH DEFENSE

7. Defendant has failed to state facts sufficient to constitute a cause of action against the Plaintiff.

FOR A FIFTH DEFENSE

8. Defendant's claims are barred by one or more of the doctrines of waiver, estoppel, laches and unclean hands.

WHEREFORE, Plaintiff, having fully responded to the Defendant's Answer to Amended Complaint, Counterclaim and Third-Party Complaint, prays that the Defendant's claims be dismissed with prejudice, that judgment be entered in the Plaintiff's favor, and that costs be awarded to Plaintiff as allowed by law, in addition to the relief sought in Plaintiff's Amended Complaint.



James L. Bruner
Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, S.C. 29260
(803) 252-7693
Attorneys for the Plaintiff

October 7, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Raymond D. Hobby,)
)
Plaintiff,)

C/A No.: 2013-CP-36-0193

v.)

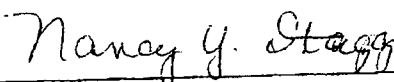
Mary T. Hobby,)
)
Defendant.)

CERTIFICATE OF SERVICE

I, Nancy Y. Stagg, a Legal Assistant with the law firm of Bruner, Powell, Wall and Mullins, LLC, attorneys for Plaintiff, do hereby certify that on this 7th day of October, 2013, I served **Plaintiff's Reply to Defendant's Counterclaim** upon the following parties by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

Pope D. Johnson, III, Esquire
Johnson & Barnette, LLP
P.O. Drawer 11209
Columbia, South Carolina 29211-1209
Attorneys for the Defendant

R. Davis Howser, Esquire
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P.O. Box 12009
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Attorneys for Francis B.B. Knowlton



Nancy Y. Stagg

Columbia, South Carolina

State of South Carolina) In the Court of Common Pleas
County of Newberry) Eighth Judicial Circuit
2013-CP-36-0193
2013-CP-36-0332

Raymond D. Hobby,)
Plaintiff,)
vs.) Transcript of Record
Mary T. Hobby, et al.)
Defendants.)
_____)

September 4, 2013
Newberry, South Carolina

B E F O R E:

The Honorable Frank R. Addy, Jr., Judge

A P P E A R A N C E S:

Benjamin C. Bruner, Esquire
Attorney for Plaintiff Raymond Hobby

Pope D. Johnson, III, Esquire
Attorney for Defendant Mary Hobby

R. Davis Howser, Esquire
Attorney for Defendant Frances B.B. Knowlton

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Page No.</u>

No Exhibits Introduced.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 9:54 a.m.)

THE COURT: All right. We're kind of gathered in two cases. One's a magistrate's appeal. That case, I think, is 13-CP-36-332, *Raymond Hobby v. Mary T. Hobby*. Following that, we have 13-CP-36-193, *Raymond D. Hobby v. Mary T. Hobby and Frances Knowlton*.

I was talking to the attorneys before we went on the record. And there was a difference on opinion on exactly what the best way to proceed is. The docket has the appeal at nine-thirty and the common-pleas case, the -193 case, at ten o'clock. And essentially, this is the -- my understanding of the facts on the magistrate's case is this is one that's bounced around a little bit. And Judge McMahon, I think, ruled that the magistrate had jurisdiction over the ejectment action. The common-pleas case, I believe -- the other case, -193 -- is related in many respects.

I wanted to go ahead and address the issue of the appeal. And hopefully, that'll segue nicely into the next action, if that's acceptable to everybody.

MR. JOHNSON: Sure.

MR. BRUNER: Yes, Your Honor.

THE COURT: All right.

MR. JOHNSON: May it please the Court?

1 jurisdiction within the statute, which is what the statute
2 would require anyway. But if it's the law of the case
3 there, then it must be law of the case, his finding that
4 requires her to remain on the property. I do not see how a
5 magistrate can overrule that.

6 And, Your Honor, we're going to talk about
7 jurisdiction in the civil case. And there is a way to
8 correct all this and get it to go through where we know
9 it's right and we do it once and for all. And I ask the
10 Court to consider the arguments that'll be made on those
11 motions in conjunction with this matter to see if there's
12 some way to get the thing structured where we know we got
13 jurisdiction and there's no -- not going to be a problem
14 about that in the future. And I'll address that with the
15 other motions.

16 THE COURT: All right. Well, that segues nicely into
17 the first argument that you're going to be making about the
18 probate court jurisdiction versus the circuit court
19 jurisdiction.

20 MR. BRUNER: Well, Your Honor, I would -- I would like
21 to point out that the appeal is going to be limited to the
22 record. And we would object to the Court considering
23 matters not -- not related to the magistrate's court case.
24 I just want to put that objection on the record. I -- I
25 don't think it's proper for the Court to consider things

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF NEWBERRY EIGHTH JUDICIAL CIRCUIT

RAYMOND D. HOBBY,
Plaintiff,

C/A Nos.: 2013-CP-36-193

vs 2013-GC-36-00016

MARY T. HOBBY,
Defendant/Third-Party Plaintiff,

vs

FRANCIS B. KNOWLTON, INDIVIDUALLY
AND AS TRUSTEE,

Third-Party Defendant.

DEPOSITION

WITNESS: MARY T. HOBBY

DATE: Wednesday, November 13, 2013

TIME: 10:05 a.m.

LOCATION: Law Offices of
Johnson & Barnette, LLP
1230 Richland Street
Columbia, South Carolina

TAKEN BY: Attorneys for the Plaintiff

REPORTED BY: GINA M. SMITH
Certified Shorthand Reporter
Registered Professional Reporter

Gina M. Smith, CSR, RPR
117 Harmon Creek Court
Lexington, SC 29072
803-359-5705

STIPULATION: It is stipulated by
and among Counsel that this deposition is being
taken in accordance with the South Carolina Rules
of Civil Procedure, and that the deponent waives
the right to read and sign the deposition
transcript.

MARY T. HOBBY, being first duly
sworn, testified as follows:

EXAMINATION

BY MR. BRUNER:

Q. Good morning, Ms. Hobby.

A. Hi.

Q. Have you ever had your deposition taken
before?

A. No.

Q. Okay. I'm required by the rules in South
Carolina to give you some instructions at the
beginning, and those are that if you have any
questions or need clarification about any question
I ask you, then you need to ask me about it. Don't
ask your attorney.

Since the deposition has now begun, if you
have any conversation with your attorney, I'm
allowed to ask you about it with very few

APPEARANCES:

ATTORNEYS FOR PLAINTIFF
RAYMOND D. HOBBY:

BRUNER, POWELL, WALL & MULLINS, LLC
BY: BENJAMIN C. BRUNER, ESQ.
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260-1110

ATTORNEYS FOR DEFENDANT/THIRD-PARTY PLAINTIFF
MARY T. HOBBY:

JOHNSON & BARNETTE, LLP
BY: POPE D. JOHNSON, III, ESQ.
1230 Richland Street
P.O. Drawer 11209
Columbia, SC 29211-1209

ATTORNEYS FOR THIRD-PARTY DEFENDANT
FRANCIS B. KNOWLTON, INDIVIDUALLY AND AS
TRUSTEE:

HOWSER, NEWMAN & BESLEY, L.L.C.
BY: R. DAVIS HOWSER, ESQ.
1508 Washington Street
P.O. Box 12009
Columbia, SC 29211

ALSO PRESENT:

RAYMOND HOBBY

(INDEX AT REAR OF TRANSCRIPT)

exceptions. If -- if you're uncertain about a term
I use or about the way I ask a question, just ask
me for clarification.

Also, if you need a break, and please let
me know, we may be here for a while, so if you need
to take a break and stretch your legs or get some
water, then we can do that. I can see you have
some water in front of you.

A. Yep.

Q. Okay. Ms. Hobby, why do you refuse to
move out of the Crowder Road house?

A. Because -- to explain to you, because I
feel like that the trust documents that I get to
stay in the house until everything in the trust is
sold, but it states that -- let's see -- I'm sorry.
I'm a little nervous.

It states that -- the trust states that I
get to live in the Crowder house until it's sold or
I desert it, and the way things went about with the
sale of the property, I didn't agree with and I
felt was unfair.

Q. Okay. So you think the trust agreement
gives you a right to continue living there?

A. Yes, the trust agreement and Mr. Hobby's
document that I didn't see until much later that he

1 agreed that if he were to purchase it too, that it
2 would be put back in the trust, but the trustee
3 never did that.

4 Q. Okay. So the terms of the trust allow you
5 to continue living there?

6 A. Uh-huh.

7 Q. And you said Mr. Hobby's document. Are
8 you talking about Ray Hobby's offer to purchase the
9 property?

10 A. Yes.

11 Q. That's the January 3rd offer?

12 A. Yes.

13 Q. Okay. And so your testimony today is that
14 you believe that document allows you to continue
15 living there rent free?

16 A. Both documents.

17 Q. Both of them continue -- allow you to
18 continue living there rent free, right?

19 A. Yes.

20 Q. And the third thing I think you said was
21 you thought the sale to Mr. Hobby was unfair?

22 A. Yes.

23 Q. Was that because it wasn't sold for fair
24 market value?

25 A. No. The terms of the agreement with the

1 piece of property out and it will be divided, the
2 money from it that's received will be divided,
3 unless there is debt that's part your debt. In
4 other words, if I had debt on something, then I
5 couldn't do that. You can't have personal debt to
6 be used by trust money.

7 Q. Okay. So the purpose of the trust was to
8 put all the marital assets in there and to sell
9 them, right?

10 A. It was supposed to be -- it was supposed
11 to be for equitable division.

12 Q. Right. And the house --

13 A. For a divorce. It wasn't a normal trust
14 that you would sell off assets.

15 Q. Okay. And the Crowder Road house was part
16 of the trust property that was supposed to be in
17 there, right?

18 A. Yes, to my knowledge, yes.

19 Q. Okay. Well, I'm asking what you believe
20 because you eventually conveyed the house into the
21 trust?

22 A. I was forced to put it in the trust.

23 Q. Okay. Do you believe that the Crowder
24 Road house was part of the trust property and part
25 of the initial property that went into the trust

1 divorce was that it would -- no matter what any
2 property would be sold agreeable to both parties,
3 and I don't know the terminology exactly, but
4 agreeable to both parties and fair and reasonable
5 terms.

6 Q. Okay. So whenever the trustee -- and I
7 may say trustee during this deposition.

8 A. That's okay. I know who you're talking
9 about.

10 Q. I'm talking about Frank Knowlton, right?

11 A. Yes. I know who you're talking about.

12 Q. Okay. And when I say the house or the
13 home, we're talking about the 544 Crowder Road
14 home, right?

15 A. Yes, yes.

16 Q. Okay. So you believe the trust agreement
17 gives you a right to veto or to approve or
18 disapprove of any sale of any real estate the
19 trustee sells?

20 A. No. No, I didn't say that. What I meant
21 was in the divorce agreement, this was all done for
22 equitable division, and the judge said, well,
23 because of the size of the estate and the
24 properties and everything involved, this is a
25 solution is to have a trustee who will sell each

1 when it was created or do you believe that the
2 house was never part of that agreement?

3 A. Well, technically, by the documents, it
4 never showed that the house had ever been owned by
5 me or ever in my name. You know when you have
6 document A, B, and C or exhibit whatever, schedule
7 whatever, it was never listed in there either.

8 Q. Okay. So did --

9 A. But as far as I do -- I do believe that it
10 was supposed to have been put in the trust.

11 Q. Okay. You believe the divorce decree
12 required you to transfer that property into the
13 trust, right?

14 A. Yes.

15 Q. Okay. And you mentioned the trust terms.
16 Did you agree to the trust terms, the -- which were
17 part of the settlement in the divorce action, did
18 you agree to that settlement under duress?

19 A. Yes, I was.

20 Q. Okay. So it's your position that that
21 agreement is unenforceable because you were under
22 duress. Is that what you're saying?

23 A. Well, to me to force someone in order to
24 get divorced to give up their home -- I was told to
25 give up my home, I would not -- I would not be a

1 divorce.

2 Q. Okay. All right. So that's --

3 A. But it does say -- that's the divorce.
4 That isn't -- which the divorce papers were -- the
5 trust was formed as a, I guess you'd call it,
6 device for the -- the trust was formed as a device
7 for the divorce.

8 Q. Okay. I think you testified --

9 A. Equitable division. I mean, that's all I
10 mean.

11 Q. And the terms of the trust laid out how
12 the equitable division was to be accomplished,
13 correct? They laid out percentages for you and
14 Mr. Hobby, correct?

15 A. Oh, yes.

16 Q. Okay. And those percentages were to be
17 paid out as the trustee saw fit within his powers,
18 correct?

19 A. No, I don't remember that it delegated the
20 trustee as doing that part.

21 Q. No, the trustee wasn't supposed to --
22 wasn't supposed to make the payments out from the
23 proceeds of the sales?

24 A. Yes, he was supposed to pay the bills, if
25 that's -- but the accounting firm was supposed to

1 A. No.

2 Q. You weren't happy from the beginning?

3 A. Uh-uh.

4 Q. That's your testimony today?

5 A. I mean, I really didn't have an
6 alternative person that they let me talk to or
7 interview, so --

8 Q. Okay. So you asked your attorney for
9 alternatives. Is that what you're telling me?

10 A. No, no, it was kind of like he was a
11 trustee and he would do a good job as an
12 attorney -- I mean as a trustee. So, I mean, I
13 only met him one time.

14 Q. Do you mean you only met him one time
15 before you agreed for him to serve as trustee?

16 A. I think it was before. I'm pretty sure it
17 was before.

18 Q. Okay. So you really didn't feel like --

19 A. I really didn't know him.

20 Q. You're telling me you didn't feel like you
21 had any say in the matter?

22 A. Not really.

23 Q. Even though you had an attorney at the
24 time who was advising you, right?

25 A. Uh-huh.

1 be overseeing that part too.

2 Q. Okay. Do you know whether they did that?

3 A. No, I never got a document from the
4 accounting firm.

5 Q. Do you believe you were supposed to get a
6 document from the accounting firm?

7 A. Yes.

8 Q. Okay. Who selected the trustee?

9 A. I think the Court did.

10 Q. Okay. Okay. Ms. Hobby, I'm going to ask
11 you some questions about once the trust --
12 Ms. Hobby, I can see you're talking to your
13 attorney.

14 A. I just --

15 Q. What are you talking to your attorney
16 about?

17 A. I asked him if y'all were supposed to be
18 able to talk. That's all.

19 Q. Would it surprise you to learn that your
20 attorney selected the trustee for the trust?

21 A. No. I don't know whether he selected it.
22 I think he suggested. I think both attorneys
23 suggested trustees.

24 Q. Okay. Were you happy about your selection
25 of trustee?

1 Q. Okay. And even though your attorney
2 recommended Mr. Knowlton and said he would do a
3 good job, right?

4 A. Yeah, he recommended him, and I didn't
5 know him, so I really didn't have any background in
6 trustees.

7 Q. All right. So the trust was created,
8 right?

9 A. Yes.

10 Q. And you signed off on the trust agreement,
11 right?

12 A. Yes.

13 Q. Which you now say is under -- was under
14 duress, right?

15 A. Oh, it was huge duress, but I signed it
16 because I did not want to be a part of a 5 million
17 dollar debt. And I wanted -- I didn't know any
18 solution to the equitable division.

19 Q. Okay. And you were represented by an
20 attorney at the time, right?

21 A. Yeah.

22 Q. Okay. And as part of the trust agreement,
23 you were supposed to transfer the Crowder Road
24 house to the trustee, correct?

25 A. Yes, we've been over that, yes.

1 separated, and they're very organized. Accountants
2 don't do things like the spreadsheets I got.

3 Q. Okay. So when you did get the
4 spreadsheets, you had an attorney at the time,
5 right?

6 A. Yeah.

7 Q. And you talked to him about the
8 spreadsheets?

9 A. Yes.

10 Q. Okay. And you told him you thought they
11 were fraudulent?

12 A. Yes.

13 Q. Okay. And nothing happened, did it?

14 A. No, but I'm not an attorney.

15 MR. JOHNSON: Ben, you know we've moved --
16 we filed an action to remove the trustee. When you
17 say nothing happened --

18 THE WITNESS: Oh, yeah, that did.

19 MR. JOHNSON: -- you're talking about at
20 the time or you're talking about ultimately?

21 BY MR. BRUNER:

22 Q. Nothing happened until your recent
23 Richland County Probate Court action against the
24 trustee, correct?

25 A. Yes, sir.

1 Q. Okay.

2 MR. JOHNSON: Thank you.

3 MR. BRUNER: I have to say Richland County
4 and Probate Court given the different courts this
5 thing's bounced around to.

6 MR. JOHNSON: True.

7 MR. BRUNER: Off the record real quick.

8 (Off-the-record discussion.)

9 BY MR. BRUNER:

10 Q. Okay, Ms. Hobby.

11 A. Yes.

12 Q. What letters and e-mails do you have from
13 the trustee forcing you or threatening you to
14 sell -- to transfer the house into the trust?

15 A. I've already given those to Pope.

16 Q. Okay. So we can do this during a break --

17 A. To my knowledge, most of them -- there was
18 like a portion of them for about a year, I would
19 say, that -- and I asked him -- I asked him in one
20 e-mail to clarify that for me because I didn't
21 understand.

22 Q. Oh, and he did --

23 A. Why he was forcing me when it didn't have
24 a date in the trust anywhere that I had to do it.

25 Q. So when do you think you were supposed to

1 do it if there wasn't a date?

2 A. When most of the assets were sold and I --
3 and the house was repaired and I knew I had an
4 enough money to pay for it.

5 Q. So your plan was to not transfer the house
6 into the --

7 A. I didn't have a plan.

8 Q. Well, you certainly had an intent at the
9 time, right?

10 A. No. There was no intent. I don't
11 understand what you're asking me.

12 Q. Well, you didn't transfer the house into
13 the trust because you didn't want to, correct?

14 A. What do you mean, I personally didn't want
15 to? I don't understand what you're asking me.

16 Q. You didn't -- you didn't transfer --

17 A. I've already --

18 Q. You didn't transfer the house into the
19 trust when you were Court ordered to do, correct?

20 A. That's not the way it reads -- that's not
21 the way it reads.

22 Q. Well, the divorce decree was October of
23 2010, right?

24 A. Yes.

25 Q. And you didn't transfer it until --

1 transfer the property into the trust until April of
2 2012, right?

3 A. Yes.

4 Q. Okay. And you didn't do that because --

5 A. I explained to you why already.

6 Q. You were waiting until the trustee gave
7 you money for you to buy the house?

8 A. You're being redundant. No, I've already
9 told you that the reason I didn't transfer it was
10 the trustee never had the money to either pay me my
11 Court-ordered money. He didn't have that for six
12 months. Actually, I didn't get any money from him
13 until more than a year after the trust was formed.
14 And he didn't pay the taxes or insurance on the
15 house, and there was no money to do upkeep and
16 repair it.

17 Q. Okay. And you mentioned some repairs.
18 Who -- you owned that house from 2005 to when you
19 conveyed it into the trust, right?

20 A. Yes, I did.

21 Q. All right. And I think you've represented
22 in some of the other proceedings we've had that the
23 house is falling into disrepair?

24 A. Yes.

25 Q. Okay. So your testimony is those -- the

1 that you got in the Magistrate's Court that we've
2 been talking about for a few minutes now that
3 directed you to move out of the house because
4 Mr. Hobby owned it. Do you remember that piece of
5 paper?

6 A. Not specifically, no.

7 Q. You filed an answer, didn't you?

8 A. I know I appealed it.

9 Q. Okay. Okay. And after -- so after that
10 case was started, you didn't move out of the
11 Crowder Road house?

12 A. No.

13 Q. And then after you lost in Magistrate's
14 Court, you didn't move out of the Crowder Road
15 house, did you?

16 A. No.

17 Q. And then after you lost your appeal, you
18 still didn't move out of the Crowder Road house,
19 did you?

20 A. No.

21 Q. Okay. And you're still living there
22 today?

23 A. Yes.

24 Q. Okay. And that's because you believe the
25 trust agreement gives you a right to stay there

1 until all the assets in the trust are sold. Is
2 that right?

3 A. No, I believe the trust agreement says
4 there was no date that I specifically had to
5 transfer it to the trust or that I had to move out
6 of it. The trust agreement says that I can stay
7 there until I desert the property.

8 Q. Isn't it true, ma'am, that the trust
9 agreement says that you had sole and exclusive
10 possession of the house until it was sold or until
11 vacated by you?

12 A. Yes, but it wasn't -- it wasn't legally
13 sold. Let me put it that way.

14 Q. Okay. And that's because you believe the
15 trustee didn't have the authority to sell it. Is
16 that right?

17 A. I believe the trustee -- I believe the
18 trustee didn't have the right to force me to bid on
19 the house much less put it in the trust because
20 there's no date in the trust that said I have to do
21 it by a certain time. Dates aren't specified in
22 there on that just like dates aren't specified in
23 the trust on any of the other property by a certain
24 date.

25 Q. But you did bid on the house, right?

1 A. Yeah, because he told me I had to.

2 Q. Okay. Did you offer what you believed to
3 be a fair price for the house?

4 A. Yes.

5 Q. Do you believe that the cost for you to
6 have a house similar to this is roughly \$1,787 per
7 month?

8 A. No. That was kind of like to pick a house
9 that was close in value, and that's an approximate
10 amount that I used that I got from -- I'm trying to
11 think what you call it. Where you can do the
12 percentage of what your -- what your monthly
13 payments would be if you bought a brand-new house
14 that was similar to that.

15 Q. Well, that's the number you put on your
16 financial declaration to the Family Court, right?

17 A. No, that was just a -- they told me to do
18 a comparison if I had to go buy a new house of
19 about the same size.

20 Q. And that's what you did, right?

21 A. Yeah. I mean, I just tried to get
22 something -- I took the original amount, not the --
23 not the amount that it's really valued at now or
24 that it was valued at then, but just the original
25 approximate house and what your payments would have

1 to be a month if I had to go out and buy a new
2 house.

3 Q. Brand-new house?

4 A. Yeah.

5 Q. Okay. So --

6 A. I mean, that was like a comparison -- to
7 my knowledge, that's what it was done for.

8 Q. So in fact --

9 A. In other words, it was done similarly for
10 like alimony, if you had to -- say if you had to go
11 somewhere and buy a new house.

12 Q. Okay. And I just want to make sure the
13 record's clear. We're talking about the number
14 that you put on your financial declaration for the
15 Family Court as part of your alimony request,
16 right?

17 A. Yes.

18 Q. Okay. So, in fact, if you were to go buy
19 a house similar to the one on Crowder Road, it
20 would cost you less than 1787 per month. Is that
21 what you're saying?

22 A. I don't understand because that house
23 isn't right now worth that. That was over a year
24 or more ago too.

25 Q. Okay. When you signed that financial

1 value of the house is not the same now.

2 Q. So --

3 A. Because of the market. I mean, a \$300,000
4 house now, a lot of people's mortgage is where --
5 it's mortgaged for more than its worth. I don't
6 know any other way to explain it.

7 Q. They're upside down on it?

8 A. Uh-huh.

9 Q. They're underwater. But that wasn't the
10 case with the Crowder Road house, was it? There
11 was no impending foreclosure on the Crowder Road
12 house, was there?

13 A. No, there was just huge debt from the
14 trustee.

15 Q. So you -- but you believe the trustee
16 should have --

17 A. Well, let me put it this way. None of
18 that debt that's in there is mine. I didn't sign
19 any of those mortgages, didn't know about them,
20 wasn't aware of any liens on anything.

21 I did extensive and spent a lot of money
22 doing appraisals and discovery to find out myself
23 besides ordering it if there was, and then I get to
24 court and after this is over, there's mortgages and
25 liens on top of liens and collateralizing liens

1 that, I mean, I had no idea what the real value of
2 the trust was after everything would be said and
3 done, the liabilities, and that's pretty scary.

4 Q. So what it boiled down to is there was --
5 you expected there to be a lot more value in the
6 trust than there actually was in reality?

7 A. Oh, most definitely. Not just the value,
8 but I didn't know about mortgages that were there.
9 Those weren't revealed to me nor did Knowlton
10 reveal any of them to me.

11 And that's what bothered me the most is I
12 think all of that should have been -- anything
13 financial should have been honest with me. I mean,
14 this is my life, you know?

15 Q. Well, but by the time Mr. Knowlton got
16 involved, the divorce decree had already been
17 issued, right?

18 A. A few months before, yeah.

19 Q. Okay.

20 A. But he was involved in it then.

21 Q. You're saying --

22 A. And I didn't know about it.

23 Q. You're saying you didn't know Mr. Knowlton
24 was involved?

25 A. Not until later.

1 Q. In what?

2 A. I didn't know he was involved and knew
3 totally about the trust. I knew when we went to
4 court he was appointed, but I didn't know -- for
5 instance, I didn't know that Judge McGowan should
6 have never done our divorce because I didn't know
7 his stepdaughter was dating one of the men that cut
8 the timber on the property and was going to marry
9 her. That's a conflict of interest. He should
10 have never gotten involved in the divorce or he
11 should have given it to another judge. So I was --

12 Q. I want to make sure I understand you.
13 You're saying Mr. -- you're saying Judge McGowan
14 should have recused himself?

15 A. Yes.

16 Q. Because his stepdaughter was dating the --

17 A. His stepdaughter married --

18 Q. Married somebody who was going to cut the
19 timber?

20 A. Who cut the timber on our marital property
21 before we were divorced. That's why I went to
22 court before we were ever divorced about the timber
23 on the property, and he knew that we weren't
24 divorced yet.

25 Q. The guy who cut the timber or Judge

1 McGowan?

2 A. Oh, yes, uh-huh.

3 Q. Okay. I want to get back to --

4 A. Okay.

5 Q. -- this part of the divorce decree. It
6 said, provided the sale and terms are reasonable,
7 fair, and reflect fair market value. If I
8 understand your testimony correctly, the trustee --
9 you're saying the trustee shouldn't have sold the
10 Crowder Road home in 2011 or 2012 at all and should
11 have held it in the trust to wait for the real
12 estate market to rebound. Is that what you're
13 saying?

14 A. No.

15 Q. Because you mentioned something earlier
16 about depressed market prices and the real estate
17 market was low and homes --

18 A. Well, I was basing that on what I bid.

19 Q. Didn't you base your bid on the low
20 appraisal that Hugh Bedenbaugh gave you?

21 A. Yeah, I based it on that because that was
22 the market value then. That's what I was -- you
23 know, the appraisal the guy gave me. I mean, I
24 didn't personally know him.

25 Q. Okay. Is it fair to say that 300,000 --

1 that you believe \$300,000 was the fair market value
2 of the house in December 2011?

3 A. No. I think that's what he bid it as, but
4 he didn't go in the house or he didn't realize
5 too -- and I told him that he needed to see the
6 repairs in the house, and he said all he needed was
7 a visual of the outside of the house, so he
8 wouldn't come in.

9 And the well is not actually on the piece
10 of property, so therefore, in order for you to get
11 a loan or anything, there has to be a well on the
12 property, which there is a second well, but it's
13 not operable. To my knowledge, it doesn't work.

14 I tried to have it repaired so I'd have
15 backup water, but I couldn't get it fixed for it to
16 work, so I don't know what's wrong with it, but the
17 well that actually goes to the house is not on any
18 acreage, and I paid to have it repaired. I paid
19 like close to a thousand to have a whole new pump
20 and everything put in.

21 Q. Okay. So you think Mr. Bedenbaugh's
22 appraisal was high and it would have been lower --

23 A. I think it was high, yeah, I do because of
24 the extensive repairs that need to be done.

25 Q. And you mentioned that the house -- you

1 didn't think the house was livable because the
2 bathrooms needed to be gutted and the kitchen
3 needed to be gutted?

4 A. Oh, one bathroom, seriously the -- and I
5 had all of the -- I had a plumber come out, Lide
6 Plumbing, and shut off all the valves to the
7 bathrooms. You know, you pull the -- anyway, to
8 the tubs and all that because the floor was
9 beginning to lean and I was afraid there was a leak
10 under the house.

11 And I knew, well, there's no sense
12 spending money having all this done if it's got to
13 be gutted and a new bathroom put in, so I just got
14 him to cut off all the valves and see if there was
15 any major leaks, and I paid him to do that, but --

16 Q. Ms. Hobby, my question is if the house
17 isn't livable, why do you continue to live there?

18 A. Because I'm only making -- I only get a
19 thousand dollars alimony, and I don't clear enough
20 substitute teaching to move somewhere else.

21 Q. Okay. It's just because you can't afford
22 to move somewhere else?

23 A. I cannot afford it. Also the trustee
24 won't let me use the creek house, so I can't go
25 there either.

1 Q. I'm sorry, you said the trustee won't let
2 you use the creek house?

3 A. Uh-uh. I haven't been back there.

4 Q. What do you mean he won't -- did he change
5 the locks?

6 A. He sent me an e-mail -- I don't know. He
7 sent me an e-mail that I couldn't go down and use
8 it anymore, that it was being repaired.

9 Q. When did he send that to you?

10 A. I guess it's been at least a year maybe.
11 I don't know exactly.

12 Q. And what --

13 A. I mean, I get hundreds of e-mails.

14 Q. From the trustee?

15 A. I get a lot of e-mails now. Usually every
16 Friday, but not always. I haven't --

17 Q. Ms. Hobby, at the -- during the divorce
18 proceedings --

19 A. Yes.

20 Q. -- was it ever revealed to you that
21 Mr. Hobby might be filing bankruptcy or might be
22 forced to file bankruptcy?

23 A. No.

24 Q. Okay. If you can flip to page 11 of the
25 divorce decree for me. Paragraph M says, the

1 assets to be transferred into the trust shall
2 consist of those detailed on the schedule attached
3 as schedule A as such assets exist as of the date
4 of transfer regardless of the manner in which a
5 party or the parties currently hold title
6 ownership.

7 Isn't the 544 Crowder Road house included
8 in schedule A?

9 A. Yes, it is.

10 Q. Okay. And those same terms that we've
11 just discussed in the divorce decree are included
12 in the trust agreement, correct?

13 A. I think so.

14 Q. Okay. I'd like you to look at the trust
15 agreement, and, for example, we can look at
16 schedule A to the trust agreement and see if that
17 includes the same description as the schedule A to
18 the divorce decree.

19 A. I'm pretty sure they're the same. Yes,
20 it's the same.

21 Q. Okay. So isn't it fair to say that the
22 trust agreement required you to transfer the house
23 into the trust as well?

24 A. Yes, it just didn't give a specific date
25 that I had to do it.

1 for the -- for the bid or whatever you call it, the
2 offer.

3 Q. Oh, for the offer you made to buy the
4 house?

5 A. Uh-huh. I just wanted his opinion that I
6 had done it -- hadn't left anything out that was
7 important because that's what he does for a living.

8 Q. Okay. You were asking for his advice on
9 how to craft your offer to buy the house, right?

10 A. Yes.

11 Q. Okay. All right. I'm going to hand you
12 what's been marked as Exhibit 18.

13 A. Okay.

14 Q. And this is -- this is the appraisal from
15 Mr. Bedenbaugh, right?

16 A. Yes.

17 Q. In November of 2011 that you based your
18 offer to buy the house on, correct?

19 A. Yes.

20 Q. All right. This is the one that you said
21 was high, right?

22 A. No. Burke's was higher, but then it was
23 done in 2007, so of course it would be different.

24 Q. I thought you testified earlier that you
25 thought --

1 Q. And page 2 --

2 A. Okay.

3 Q. -- the third full paragraph after you've
4 calculated in amounts you believe you were owed for
5 reimbursement and what your percentage was in the
6 purchase price?

7 A. Yes, Mr. McDougall did that.

8 Q. Fair enough. He says that you were
9 willing to pay \$127,231 for the house, right?

10 A. Uh-huh, at that time, yes.

11 Q. At that time, okay. And that's true, that
12 was your offer, right?

13 A. Yes, that was my offer excluding the -- if
14 he would have added on the bills that -- the taxes
15 and insurance and everything. This was with those
16 not in it. In other words, the trustee had told me
17 he would -- he was supposed to reimburse me by the
18 document.

19 Q. Well, ma'am, isn't it true that this takes
20 into account those taxes and insurance and --

21 A. That's what I'm saying, it does -- I mean,
22 that's why I did that offer. That's with it
23 subtracted from the --

24 Q. Okay.

25 A. The 42 1/2 percent offer.

1 A. Well, I did say it was high -- to me it
2 was high.

3 Q. Okay.

4 A. Now that we're -- well, you know what I
5 said. That's fine.

6 (DEPO. EXH. 19, 12/8/11 Letter, was marked
7 for identification.)

8 BY MR. BRUNER:

9 Q. All right. Ms. Hobby, I've handed you
10 what's been marked as Exhibit 19. This is your
11 offer to buy the Crowder Road house, right?

12 A. Uh-huh.

13 Q. That Mr. McDougall made on your behalf?

14 A. Yes, because I told him I didn't know how
15 to do it.

16 Q. Okay. If you go to page -- go to page 2,
17 please.

18 A. Okay.

19 Q. Well, I'm sorry. If you go back to
20 page 1, the last paragraph on page 1, although Mary
21 Hobby believes that the home is worth substantially
22 less than \$300,000 -- that's true, isn't it, that
23 you believed at that time the home was worth
24 substantially less than \$300,000?

25 A. Yeah, I did.

1 Q. Okay. I understand.

2 A. All right.

3 Q. Do you know whether this offer would have
4 triggered a distribution from the trust?

5 A. Yeah, because it -- I get -- I don't know.
6 I don't know because I didn't know he had emptied
7 out the trust.

8 (DEPO. EXH. 20, 1/3/12 Letter, was marked
9 for identification.)

10 BY MR. BRUNER:

11 Q. Okay. Ms. Hobby, I've handed you
12 Exhibit 20. You've seen this document before,
13 haven't you?

14 A. Yes.

15 Q. And this is Mr. Hobby's counteroffer,
16 right?

17 A. Yes.

18 Q. To buy the house based on a value of
19 \$325,000, right?

20 A. Yes.

21 Q. Okay. And this is -- this is the document
22 you say that contains a term where Mr. Hobby agreed
23 to let you continue living in the house rent free?

24 A. I didn't say that. I said what it says
25 is -- yes, because what it says is that he'll put

1 A. It would have been on my record and I
2 wouldn't be able to work.
3 Q. And Mr. Hobby filed that petition?
4 A. Yes, but the trustee testified against me
5 too.
6 MR. JOHNSON: Let him ask the question.
7 THE WITNESS: Okay. Sorry.
8 MR. JOHNSON: Ben, has this got something
9 do with the case?
10 MR. BRUNER: I think it does, Pope. I
11 believe it does.
12 THE WITNESS: I think it's stretched,
13 but --
14 BY MR. BRUNER:
15 Q. So you'll agree with me --
16 MR. HOWSER: You don't think this has
17 anything to do with mine?
18 MR. JOHNSON: I don't think what happened
19 in the Family Court has got a thing to do with it.
20 MR. BRUNER: The testimony she's given
21 certainly has to go straight to her credibility.
22 BY MR. BRUNER:
23 Q. So you'll agree with me, Ms. Hobby, that
24 there's nothing -- there's no language in
25 Exhibit 20 that says Mr. Hobby is offering to allow

1 you to continue living on the property rent free,
2 right?
3 MR. JOHNSON: Ben, we'll stipulate it's
4 not in there.
5 THE WITNESS: There was nothing in here
6 that says anything rent free.
7 MR. JOHNSON: I mean, those words do not
8 appear.
9 (DEPO. EXH. 21, E-Mail Chain, was marked
10 for identification.)
11 (DEPO. EXH. 22, E-Mail Chain, was marked
12 for identification.)
13 (DEPO. EXH. 23, E-Mail Chain, was marked
14 for identification.)
15 (DEPO. EXH. 24, 1/23/12 E-Mail, was marked
16 for identification.)
17 (DEPO. EXH. 25, E-Mail Chain, was marked
18 for identification.)
19 (DEPO. EXH. 26, E-Mail Chain, was marked
20 for identification.)
21 (DEPO. EXH. 27, E-Mail Chain, was marked
22 for identification.)
23 (DEPO. EXH. 28, 1/30/12 E-Mail Chain, was
24 marked for identification.)
25 (DEPO. EXH. 29, 1/31/12 E-Mail Chain, was

1 marked for identification.)
2 (DEPO. EXH. 30, E-Mail Chain, was marked
3 for identification.)
4 (DEPO. EXH. 31, 2/3/12 E-Mail, was marked
5 for identification.)
6 (DEPO. EXH. 32, 2/6/12 E-Mail, was marked
7 for identification.)
8 (DEPO. EXH. 33, 2/7/12 E-Mail, was marked
9 for identification.)
10 (DEPO. EXH. 34, E-Mail Chain, was marked
11 for identification.)
12 (DEPO. EXH. 35, E-Mail Chain, was marked
13 for identification.)
14 (DEPO. EXH. 36, E-Mail Chain, was marked
15 for identification.)
16 BY MR. BRUNER:
17 Q. I'm going to hand you what's been marked
18 as Exhibit 21.
19 A. Okay.
20 Q. This is an e-mail from your attorney to
21 you dated January 23, 2012, correct?
22 A. Yep, looks like it.
23 Q. And the substance of it looks like it's
24 been crossed out, but below it we see that
25 Mr. McDougall is forwarding you an e-mail from the

1 trustee that says, John, Ray has provided a
2 counteroffer for the 544 Crowder Road house. I'm
3 sorry, it says, 544 Crowder house. Please review
4 and let's discuss. Do you see that?
5 A. Uh-huh.
6 Q. And you received this e-mail, right?
7 A. Yeah, looks like I did.
8 Q. And the reason I ask is you testified
9 earlier that you didn't receive Mr. Hobby's offer
10 until months later?
11 A. I didn't receive that letter. It was the
12 offer, and I was in a lot of pain and under pain
13 medication when I got this e-mail too, so I
14 couldn't tell you what it said.
15 Q. Well, you see there's an attachment on
16 Exhibit 21. You see at the top where under subject
17 it says, attachments: Image001.gif; offer to
18 purchase 544.doc. Wouldn't you agree that looks
19 like a document --
20 A. But I was -- I was taking hydrocodeine
21 then. I don't remember even offer -- opening up
22 any documents.
23 Q. Okay. So you may have received it, but
24 you didn't know what it meant?
25 A. No, I probably didn't. I know I didn't

1 open up anything that had that letter. I never saw
2 that letter then.

3 Q. All right. I'm going to hand you what's
4 been marked as Exhibit 22.

5 A. Okay.

6 Q. And this is another e-mail from you to
7 Mr. Watson and Mr. McDougall. It looks like it's
8 got a whole slew of attachments including the offer
9 to purchase 544.doc attachment that we just talked
10 about on Exhibit 21. Do you see that?

11 A. Yeah, I just don't remember it.

12 Q. And this is an e-mail that you sent on
13 January 23, 2012, right?

14 A. Yes, but I was -- I was under medication
15 then, so I couldn't tell you what I did back then.

16 Q. Okay. Well, you said it's been three
17 months since I made the offer on my house, 127?

18 A. Yeah, which is totally out of order. It
19 hadn't been any three months.

20 Q. Right. But you weren't -- you knew
21 enough --

22 A. I was taking three different painkillers,
23 and I was also taking prednisone and I was having
24 shots in my neck. I mean, I don't remember half of
25 what I did then.

1 Q. Okay. Are you --

2 A. I love to do attachments, by the way.

3 Q. Are you --

4 A. So I put a lot on there.

5 Q. Are you still taking medications today?

6 A. For what? For my neck or what?

7 Q. Are you taking any medications that impair
8 your ability to testify truthfully here today?

9 A. No, uh-uh.

10 Q. Okay. And you say in your e-mail that you
11 had made an offer of \$127,000 on your house. You
12 were right about that, right?

13 A. Uh-huh.

14 Q. And you say that you never got a response
15 back from the trustee on the proposal. That was
16 correct, wasn't it?

17 A. Yes, I didn't ever get one.

18 Q. And you say that it seems so urgent that
19 you had it reappraised at 300,000, and as we sit
20 here today, you still believe that's the case,
21 right?

22 A. Yes.

23 Q. And you say you don't know what's up, but
24 it seems that you had been -- that you've been
25 abused repeatedly?

1 A. Yes.

2 Q. And you still believe that today, right?

3 A. Yes.

4 Q. Okay. So -- and at the very bottom, you
5 say, if the trust has no money and Ray Hobby is
6 broke, where's the money going to come from? Isn't
7 that the overriding issue here? Isn't the big
8 problem that the trust was broke?

9 A. That's not what I meant. I was being --
10 when I made that statement, it's like being
11 facetious, but it's -- I mean, the trustee was
12 telling me that the trust was broke, but I didn't
13 know he had gotten a lot of money in and I didn't
14 know he'd made disbursements to himself either.
15 This is very redundant some of this. You've
16 already asked me this before.

17 Q. Okay. I'm going hand you what's been
18 marked as Exhibit 23.

19 A. Okay.

20 Q. And this, again, is an e-mail from
21 Mr. McDougall to you on January 23rd. It's later
22 in the day than his earlier e-mail, again,
23 communicating with you about the offer to purchase,
24 right?

25 A. Yes, and I told you once again that I was

1 heavily medicated then. I mean, I was trying to do
2 my part.

3 Q. Okay. Exhibit 24 is later in the day,
4 more communications from your attorney about the
5 offer -- Ray's counteroffer to purchase the house,
6 right?

7 MR. JOHNSON: My 24 is an e-mail from her
8 to him.

9 MR. BRUNER: I'm sorry, you're right.
10 Your right.

11 BY MR. BRUNER:

12 Q. Exhibit 24 is an e-mail from you to
13 Mr. McDougall dated January 23rd and sent
14 approximately 4:34 p.m. about Ray's counteroffer to
15 purchase the house, right?

16 A. No. I told him about the taxes. I don't
17 understand.

18 Q. Okay. So you're communicating with your
19 attorney about the taxes paid on the Crowder Road
20 house?

21 A. Yeah. I guess he had called me and asked
22 me if I paid taxes, if I had paid the taxes. I
23 don't know. I don't remember way back then.

24 Q. All right. Exhibit 25. The follow day,
25 this is an e-mail from you to Mr. Watson and to

1 Tori Stewart on January 24, 2012, asking for
2 Mr. Watson's help in connection with Ray's
3 counteroffer, correct?

4 A. No, it's with an offer on the house.

5 Q. And you see the attachment is offer to
6 purchase 544.doc, right?

7 A. Yeah.

8 Q. And that's the same attachment that was in
9 Ray's counteroffer, right?

10 A. Okay. I'm going to tell you one more
11 time. I'm being very nice about this. I was
12 taking a lot of medication. I was trying to read
13 e-mails and respond the best I could. I couldn't
14 tell you right now when I did this and what I said.

15 Q. Isn't it true, though, that you had the --
16 you had the sense of mind to contact --

17 A. Well, my mind wasn't gone. I just
18 wouldn't remember. It affects your short-term
19 memory when you take painkillers and you don't
20 remember.

21 Q. Isn't it true that you had the presence of
22 mind on January 24, 2012, to contact Mr. Watson and
23 seek his counsel about the offer?

24 A. Have you ever had a pinched nerve?

25 MR. JOHNSON: Mary, let him finish. Let's

1 sent to the trustee and to you on January 23, 2012,
2 that says, Frank, I have forwarded this e-mail to
3 Mary for her response. As soon as I hear from her,
4 I will advise, JOM. Do you see that?

5 A. Yeah. Yes, sir.

6 Q. Why didn't you respond when Mr. McDougall
7 asked you for -- asked you to?

8 A. I don't know. I was under medication. I
9 just -- I honestly don't know.

10 Q. Okay. And up top is an e-mail from the
11 trustee to Mr. McDougall and to you dated Friday,
12 January 27th where he says -- where the trustee
13 says that the trust does not have sufficient funds
14 to pay the expenses of the trust in February and
15 beyond. Unless a better offer is received, I have
16 no other choice than to accept this offer to
17 purchase 544 Crowder Road.

18 Did you receive this e-mail from the
19 trustee on January 27th?

20 A. I don't remember.

21 Q. Okay. And he says, due to the timing of
22 the obligations to pay the mortgage payments in
23 February, I intend to close on this offer by
24 January 31, 2012, right?

25 A. That's what it says.

1 take a break.

2 (A recess transpired.)

3 BY MR. BRUNER:

4 Q. We were on --

5 MR. JOHNSON: 25.

6 MR. BRUNER: I was getting ready to go to
7 26.

8 BY MR. BRUNER:

9 Q. Ms. Hobby, I'm handing you what's been
10 marked as Exhibit 26. Did you receive this e-mail?

11 A. I don't remember.

12 Q. This was January 27, 2012?

13 A. I really don't remember.

14 Q. And Ms. Barkley says, please respond to
15 John's recommendation below as soon as practical so
16 this issue can be resolved. This needs to be
17 addressed ASAP. Isn't that what it says?

18 A. It looks like what it says to me.

19 Q. And under the attachments up top, it says
20 one of -- the attachment is offer to purchase
21 544.doc, correct?

22 A. Yes.

23 Q. Okay. I'm going to hand you what's been
24 marked as Exhibit 27. In the middle of Exhibit 27,
25 it appears there was an e-mail from Mr. McDougall

1 Q. Okay. I'm going to hand you what's been
2 marked as Exhibit 28. Exhibit 28 is an e-mail from
3 Mr. McDougall to the trustee and to you dated
4 January 30th, correct?

5 A. Yes.

6 Q. And it's listed as high importance, right?

7 A. Yes, I flag every legal e-mail as high
8 importance.

9 Q. Did you receive this e-mail on
10 January 30th?

11 A. I don't remember it.

12 Q. And your attorney says, I will try to get
13 Mary to -- I will try to get Ms. Hobby to respond
14 ASAP, right?

15 A. Yes, that's what it says.

16 Q. Did you respond ASAP?

17 A. I don't know.

18 Q. I'm going to hand you what's been marked
19 as Exhibit 29.

20 A. Okay.

21 Q. This is an e-mail from the trustee to you
22 and your attorney, correct?

23 A. No, it's from Frank Knowlton.

24 Q. From the trustee?

25 A. Oh, yes.

1 Q. To you and your attorney, correct?

2 A. Oh, yes.

3 Q. And it's dated January 31st, right?

4 A. Yes.

5 Q. And it's Mr. -- Mr. Knowlton's reply after
6 you have told him earlier that day that you were
7 sitting in extreme pain from a pinched nerve in
8 your right arm?

9 A. They thought it was in my arm, but it was
10 in my neck after they did the MRIs and the other
11 x-rays.

12 Q. Okay.

13 A. Because I had broken my shoulder cuff in
14 2006.

15 Q. Okay. And this is January 31st, the date
16 that the trustee had given for the closing or the
17 deadline for you to respond with a counteroffer,
18 correct?

19 A. I guess.

20 Q. Well, didn't we just see an e-mail where
21 he said I would have to accept --

22 A. Yes.

23 Q. I intend to close on January 31st?

24 A. Yes.

25 Q. Okay.

1 and he had told me he talked to him on the phone, I
2 guess, but I sent him this e-mail. I was in a lot
3 of pain. I was just trying to do the best I could.

4 But I've got the dates and everything
5 specifically from -- there's a PDF file that I sent
6 later that had the first time I went to emergency
7 care which was January 3rd when I went to the --
8 before I ended up with Dr. Clavet, there was a
9 series of different doctors I went to, and they
10 thought it was in my arm.

11 They thought it was caused from my arm
12 because it was my arm and hand that were going numb
13 and I couldn't feel my last three fingers, so I
14 thought it had to do with injuring my arm.

15 Q. Okay. But in Exhibit 29 --

16 A. But it was my neck.

17 Q. -- in the trustee's response to you, he
18 says that he has to -- he has to move on this -- or
19 he needs --

20 A. Well, sure.

21 Q. -- he needs a response from you in a day
22 or two?

23 A. Well, I know he did because he had emptied
24 the trust out in December. He took out 500,000
25 total. He took out 350,000 he gave to Ray, and he

1 A. I think he did.

2 Q. I believe that's Exhibit 27. He says, I
3 intend to close on this offer by January 31st,
4 right?

5 A. Yeah.

6 Q. And so in Exhibit 29, we see an e-mail
7 from you on January 31st asking him -- the last
8 sentence of your e-mail says, please bear with me
9 until I can get some help with my pain, right?

10 A. Yes.

11 Q. And then he responds, and in his e-mail,
12 he says, on the 544 Crowder Road issue, I'm okay
13 waiting a day or two, but the trust's mortgage
14 payments are becoming due as of tomorrow, and if I
15 don't get cash in very soon, we will default on the
16 mortgages. Did you receive that e-mail from him?

17 A. I don't -- I mean, this has been a long
18 time ago. I don't know if I did or not.

19 Q. Okay. But you didn't bring your --

20 A. I mean, I must have.

21 Q. You didn't bring your pinched nerve issue
22 to the trustee's attention until January 31st,
23 right?

24 A. No, he knew about it because I called my
25 lawyer when I was in pain at the first of January,

1 took out more than 200,000 for himself, and I
2 didn't know about it. So of course the trust was
3 empty.

4 Q. I'm going to hand you what's been marked
5 as Exhibit 30.

6 A. Okay. I'm sorry, don't take this
7 personally.

8 Q. I don't take it personally.

9 A. Okay.

10 Q. Exhibit 30 is an e-mail from Mr. McDougall
11 to you on February 3rd, correct?

12 A. Yes.

13 Q. And the substance of that e-mail has been
14 blacked out, but we see below it that he is
15 forwarding to you an e-mail from February 2nd that
16 Mr. McDougall received from the trustee, right?

17 A. Yes.

18 Q. So in this e-mail of February 3rd, it --

19 I'm sorry, in the February 2nd e-mail from the
20 trustee, the trustee tells Mr. McDougall that the
21 trust is going to be short by \$56,000 this
22 month, right?

23 A. That's what he says, yes.

24 Q. Okay. And this would be -- this would be
25 a day or two after his January 31st e-mail to you

1 that says he needs an answer from you in a day or
2 two, right?

3 A. I guess.

4 Q. And he has the breakdown below that. The
5 trustee gives you the breakdown over on page 1 and
6 following over to page 2 of this exhibit showing
7 the balance in the trust account and what
8 obligations it needs to pay, right?

9 A. Yes. I want you to notice on page 2 it
10 says 3711 Village Court and it says Maggie Valley,
11 and it's in Edisto. I mean, a lot of the stuff was
12 just never correct.

13 Q. Okay. Do you dispute that the dollar
14 amounts in the far right-hand column were paying
15 trust obligations?

16 A. Yes.

17 Q. You do?

18 A. Yeah, because a lot of times he paid -- he
19 paid AgSouth double amounts sometimes.

20 Q. Was that a trust obligation?

21 A. Not to do it double in one month, no.

22 Q. Edisto Pipe Dreams, those were trust
23 obligations, right?

24 A. I mean, you'd have to go through the
25 financials, but I went through them with a

1 fine-toothed comb.

2 Q. Do you -- do you know whether any of
3 the -- do you know whether at the time AgSouth was
4 paid two months worth of payments, do you know
5 whether that was because those payments were a
6 month behind?

7 A. No, they weren't a month behind because
8 when I did get them, I went back and looked. In
9 other words, sometimes he would give them -- he
10 would send them to me way -- months later, but I
11 went back to look to see what was done.

12 Q. Okay.

13 A. And that's the one thing that caught my
14 eye is that he had paid double, but I didn't know
15 why.

16 Q. So instead of paying double that month, he
17 should have sent some money to you. Is that what
18 you're saying?

19 A. No, that's not what I said. That was his
20 way to drain the trust.

21 Q. Did you ever ask the trustee why he was
22 paying double some months?

23 A. I asked my lawyer to respond to him about
24 that. I asked my lawyer because I didn't know
25 whether there was another reason behind it.

1 Q. Okay.

2 A. I mean, I'm not an accountant, so --

3 Q. But you received this Exhibit 30, this
4 February 3rd e-mail from your attorney. You
5 received it, right?

6 A. I guess I did.

7 Q. Why didn't you reply to it?

8 A. Because I was under a lot of pain and
9 medication. If you've ever had a pinched nerve,
10 you hurt all the time. Even when you're taking
11 pain stuff, it's like -- it's kind of like a
12 constant throb. I don't know how to describe it.
13 Nerve pain is the worst.

14 Q. Okay. I'm going to hand you what's been
15 marked as Exhibit 31.

16 A. Okay.

17 Q. This is a February 3rd e-mail from your
18 attorney to you about 544 Crowder, right?

19 MR. JOHNSON: What day?

20 MR. BRUNER: February 3rd.

21 MR. JOHNSON: Was the early one
22 February 6?

23 MR. HOBBY: There's another one that had
24 February 6 I think.

25 MR. JOHNSON: This is 31 and 32.

1 MR. BRUNER: February 3rd e-mail is 31.
2 BY MR. BRUNER:

3 Q. And, ma'am, did you receive this e-mail
4 from your attorney?

5 A. I don't know.

6 Q. But you'll agree with me that he did send
7 this to you?

8 A. I don't know. I can't even see what the
9 e-mail says. Its blacked out.

10 Q. The substance of the e-mail has been
11 blacked out.

12 A. So I don't know.

13 Q. But that is your e-mail address in the to
14 line, correct?

15 A. Yes.

16 Q. Okay. I'm going to hand you what's been
17 marked as Exhibit 32. This is a similar e-mail
18 sent three days later on February 6th from your
19 attorney to you, right?

20 A. Yes.

21 Q. And the substance has been blacked out,
22 but we can see based on the subject line that this
23 is an e-mail that pertains to the purchase of 544
24 Crowder, right?

25 A. Yes.

1 Q. And you received this e-mail, didn't you?
2 A. I don't know. I mean, it seems harassing
3 to me that every other day they send me an e-mail.

4 Q. Well, ma'am, this is from your attorney,
5 right?

6 A. I know. I'm well aware of that.

7 Q. So you're saying your attorney was
8 harassing you by sending you these e-mails?

9 A. I think they both were.

10 Q. Okay.

11 MR. HOWSER: Excuse me, they being who?

12 THE WITNESS: Mr. Knowlton and
13 Mr. McDougall were both continually sending me
14 e-mails knowing I was in a lot of pain.

15 BY MR. BRUNER:

16 Q. Okay. Exhibit 33, this is a February 7th
17 e-mail from the trustee to Mr. McDougall with a
18 copy to you, correct?

19 A. Yeah, this was the next day.

20 Q. And this is about a week after the
21 January 31st deadline, correct?

22 A. I don't know.

23 Q. Well, would you agree with me that
24 February 7th is about a week after January 31st?

25 A. Yeah, I agree with that.

1 A. I don't remember seeing this e-mail
2 either.

3 Q. Did you ever make a materially better
4 offer?

5 A. I don't -- tell you the truth, I'm not
6 sure what happened after that. I think I sent an
7 e-mail of 5,000 more than what I had -- or 3,000
8 more than what I'd originally sent.

9 Q. Okay.

10 A. And I don't know whether that got to
11 Mr. Knowlton or not, but I don't remember a lot of
12 this because what I was taking.

13 Q. But the trustee did end up accepting
14 Mr. Hobby's offer, right?

15 A. I don't know. I never got documentation
16 that he had done anything. And he never called me,
17 never sent me hard copy of anything.

18 Q. He never told you he'd accepted
19 Mr. Hobby's offer?

20 A. No. He never picked up the phone and
21 called me. He never verbally -- I mean, this is a
22 house I was living in. He never verbally told me
23 anything.

24 Q. Okay. I'm going to hand you what's been
25 marked as Exhibit 34. This is two days later, an

1 Q. Okay.

2 A. But --

3 Q. So this e-mail to -- Mr. Knowlton sent
4 this e-mail to your attorney and to you about a
5 week after the January 31st deadline he gave,
6 right?

7 A. What are you trying to point out?

8 MR. JOHNSON: Mary, answer -- just answer
9 the question.

10 THE WITNESS: Yes.

11 BY MR. BRUNER:

12 Q. And he says that he has in hand a check
13 from Mr. Hobby in the amount of \$56,000 as an
14 advance on his purchase of the house, right?

15 A. Yes.

16 Q. And he again stresses that unless he
17 receives a materially better offer by the close of
18 business that day, he will accept Mr. Hobby's
19 proposal and the advance, right?

20 A. Yes.

21 Q. Did you make a materially better offer by
22 the close of business that day?

23 A. I don't remember. I really do not.

24 Q. You don't remember whether you made a
25 better offer by the close of business that day?

1 e-mail from the trustee to Mr. McDougall, his
2 assistant and to you, right?

3 A. Yes.

4 Q. And he says -- the trustee says in the
5 second sentence, unfortunately time is not on our
6 side and in my opinion Mary has had plenty of time
7 to come up with a counteroffer. She has apparently
8 had Ray's counteroffer since January 23rd, 18 days.
9 The trust is now past due in most or all of the
10 loan payments which it is required to service.
11 Therefore, I have no choice but to accept what is
12 clearly the superior offer and use the cash advance
13 to service the loans for February. Isn't that what
14 this e-mail says?

15 A. It does.

16 Q. And you received this on February 9th,
17 didn't you?

18 A. I really don't remember this.

19 Q. Do you deny that the trustee sent this
20 e-mail to you and to your attorney?

21 A. I don't deny anything. I just don't
22 remember it.

23 Q. I'm going to show you --

24 A. The trustee was well aware that I was
25 under medication and so was Mr. McDougall.

1 MR. HOWSER: But how can she accuse my
2 client and not us fully explore as to who forced
3 it, Pope?

4 MR. JOHNSON: Just like any confidential
5 communication.

6 MR. HOWSER: No, she can't have it both
7 ways, Pope.

8 MR. JOHNSON: What do you mean?

9 MR. HOWSER: She can't say they forced me
10 and not disclose who "they" is.

11 MR. JOHNSON: Well, we'll have to get a
12 judge to tell --

13 THE WITNESS: I'll just say I was forced.

14 BY MR. BRUNER:

15 Q. Did Mr. Hobby force you to do it?

16 A. I haven't spoken with Mr. Hobby.

17 Q. Did Mr. Hobby's attorney force you to do
18 it, any of his attorneys force you to do it?

19 A. I don't recall.

20 Q. Did Mr. Knowlton force you to do it?

21 A. I don't remember what happened then. Not
22 totally. I just remember I was forced to do it.

23 Q. Okay.

24 A. And I didn't want to.

25 Q. And isn't that because the hearing for the

1 Q. And on page 4, the middle of paragraph 3,
2 you see the sentence that says the order did
3 require plaintiff to transfer this property into
4 the trust, right?

5 A. Yes.

6 Q. Okay.

7 MR. JOHNSON: Can we in the -- under the
8 rule of completeness ask you to read the balance of
9 the paragraph?

10 MR. BRUNER: No, sir. The whole exhibit's
11 in.

12 MR. JOHNSON: Well, if you're going to --

13 MR. BRUNER: We're not talking about
14 admissibility.

15 MR. JOHNSON: -- publish her testimony at
16 some point, I want this read at the same time.

17 MR. BRUNER: When I publish her testimony,
18 Mr. Johnson, then we -- you can assert the rule of
19 completeness to get the whole paragraph read in at
20 that time, but I think at this time it's a little
21 premature, respectfully.

22 BY MR. BRUNER:

23 Q. Okay. And you didn't appeal -- you didn't
24 appeal anything in this order, did you?

25 A. Appeal?

1 contempt proceedings was coming up? Wasn't this
2 deed executed right before y'all had the hearing on
3 the contempt proceedings?

4 A. Yeah, but they still did the hearing and
5 wasted all that time and money, and I was in a lot
6 of pain then.

7 Q. Was it your belief that if you signed this
8 deed you wouldn't have to go forward with that
9 contempt hearing?

10 A. No.

11 Q. All right. I'm going to hand you what's
12 been marked as Exhibit 43. This is an order from
13 the Family Court, correct?

14 A. Yes, sir.

15 Q. And the hearing -- you can see on page 1
16 that it says the hearing was April 16th, right?

17 A. Yes, sir.

18 Q. And this was the hearing based on the
19 petition and the rule to show cause for you to
20 transfer the property in the trust, right?

21 A. Yes.

22 Q. Because --

23 A. I think so.

24 Q. All right.

25 A. Yeah, it says the contempt.

1 Q. You didn't file an appeal of that order,
2 did you?

3 A. I don't remember.

4 Q. You don't remember?

5 A. No. I was taking at that time two and --
6 I read out my medications to the judge.

7 Q. Okay. I'm going hand you Exhibit 44.

8 And, ma'am, this is an e-mail from the trustee to
9 your attorney and to Mr. Hobby's attorney, correct?

10 A. Yes.

11 Q. And it's dated May 11, 2012. Isn't that
12 right?

13 A. Yes.

14 Q. And this e-mail was in the documents that
15 your attorney produced to me, and I present it to
16 you only because you tell me that you never
17 received closing documents until the middle of this
18 year?

19 A. I did not.

20 Q. But wouldn't you agree that this e-mail
21 appears to transmit the closing documents for the
22 544 Crowder Road house on May 11th to your
23 attorney?

24 A. I don't know whether it went to him or
25 not.

Page 1	Page 3
STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS COUNTY OF NEWBERRY) C/A # 2013-CP-36-193 Raymond D. Hobby.) Plaintiff.) v.) Mary T. Hobby.) Defendant/Third-Party Plaintiff.) v.) Frances B. Knowlton, Individually and) as Trustee.) Third-Party Defendant.) DEPOSITION OF JULIAN W. WALKER, JR. ***** Thursday, February 27, 2014 10:12 a.m. - 1:40 p.m. The deposition of Julian W. Walker, Jr., was taken on behalf of the Defendant/Third-Party Plaintiff at the law offices of Pope D. Johnson, III, Esquire, 1230 Richland Street, Columbia, South Carolina, on the 27th day of February, 2014 before Cassandra E. Vance, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.	1 STIPULATIONS 2 3 It is stipulated and agreed that this 4 deposition is being taken pursuant to the South 5 Carolina Rules of Civil Procedure. 6 7 It is stipulated by and between counsel and the 8 witness that the reading and signing of the following 9 deposition be, and the same are, hereby not waived. 10 Signature sheet is attached at page 145.
Page 2	Page 4
1 APPEARANCES 2 Benjamin C. Bruner, Esquire Bruner, Powell, Wall & Mullins, LLC 1735 St. Julian Place, Suite 200 Columbia, South Carolina 29260 Attorney for the Plaintiff 3 Pope D. Johnson III, Esquire Pope D. Johnson, III, Attorney at Law 1230 Richland Street Columbia, South Carolina 29201 Attorney for Defendant Mary Hobby 4 R. Davis Howser, Esquire Howser, Newman & Besley, LLC 1508 Washington Street Columbia, South Carolina 29201 Attorney for Third-Party Defendant Frances Knowlton 5 Also Present: Frances Knowlton 6 INDEX 7 MR. WALKER. PAGE 8 MR. JOHNSON. EXAMINATION. 4 9 Signature. 145 10 Certificate. 146 11 EXHIBITS 12 Defendant's Exhibit Number One. 5 (Affidavit of Mr. Walker) 13 Defendant's Exhibit Number Two. 65 (Exhibit A, ltr dtd 12/8/11 frm Mr. McDougall) 14 Defendant's Exhibit Number Three. 65 (Exhibit B, ltr dtd 1/3/12 frm Mr. Hobby) 15 Defendant's Exhibit Number Four. 77 (Purchase agreement dtd 4/19/12)	1 JULIAN W. WALKER, JR., having been duly sworn, 2 deposes and testifies as follows: 3 MR. WALKER - EXAMINATION BY MR. JOHNSON: 4 Q: Would you state your name for the record? 5 A: Julian W. Walker, Jr. 6 Q: Mr. Walker, did you bring your entire file in 7 this matter with you to the deposition today? 8 A: I did. I have it right here. 9 Q: Okay. Anytime you need to look at something in 10 there or refer to it, feel free to do so. 11 A: Okay. 12 Q: Are you able to hear me? 13 A: I can hear you just fine. 14 Q: Good. Good. You've been deposed before? 15 A: Yes. 16 Q: How many times? 17 A: I can't -- 18 Q: Roughly. 19 A: I can't give you an accurate count. It's been 20 over a period of almost 20 years. I would say, 21 just roughly -- your question was whether I'd 22 been deposed. 23 Q: Yes. 24 A: I would say probably -- let's just say 15 25 times, 15 to 20.

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1 pay Mary for her interest in the trust. 2 A: Well, you know, I don't have the answers to 3 exactly where this would flow, okay? 4 Q: Let me ask you -- 5 A: I don't know that. And I'm not saying 6 that -- I just -- I just am satisfied -- it's 7 strictly my opinion that Mr. Knowlton explored 8 all of this and he made a decision, which I'm 9 satisfied was a reasonable -- a reasonable 10 decision. 11 Q: Let me ask this, Mr. Walker. Have you analyzed 12 the offers that were made and what was accepted 13 to determine whether he reached the right 14 conclusion in taking Ray's offer or not? 15 A: I have -- I have -- I have familiarized myself 16 with the process that Mr. Knowlton went 17 through. And Mr. Knowlton, as a trustee, has 18 a duty to pursue a prudent process. If there 19 is prudence, it must be in the process. And I 20 am satisfied that he acted prudently in the -- 21 in what he did to arrive at his decision. 22 I did not go in there and conduct an 23 independent examination of all that happened to 24 come up with my own opinion as to what that 25 decision should have been.	1 Q: Is this it? 2 A: Yeah. 3 Q: I think it's Exhibit Four. 4 A: All right. You want to -- let's just go to 5 page -- this is, of course, Defendant's Exhibit 6 Four, purchase agreement, April the 19th, 2012. 7 The second item is purchase price. 8 Q: Yes, sir. 9 A: And that appears on the middle of page one. 10 "Amount and Payment of Purchase Price: Subject 11 to adjustment and credits as otherwise 12 specified" -- in a further section -- "purchase 13 price to be paid by purchaser to seller shall 14 be \$325,000. The purchase price shall be paid 15 by purchaser to seller at the time when the 16 purchase and sale are consummated by cashier's 17 check or by wire transfer of immediately 18 available federal funds, less the amount of 19 earnest money, and the note as defined below, 20 and subject to prorations, adjustments and 21 credits as otherwise specified in this 22 agreement." 23 Q: And what was the earnest money? 24 A: \$56,000. 25 Q: And what other -- and then the promissory note
Page 86	Page 88
1 Q: So you're not in a position to give an opinion 2 to a reasonable degree of certainty as to 3 whether Ray's offer was better -- in fact 4 better than Mary's offer. 5 A: That's not what my -- that's not my role. So 6 the answer is "no" -- 7 Q: Okay. 8 A: -- because I didn't undertake to even try to do 9 that. And all -- but I am completely satisfied 10 that what I did learn about the process that 11 Mr. Knowlton went through, including his 12 seeking the accountant's opinion, was a prudent 13 process and that's what he's required to do. 14 Q: When did he seek the opinion of a CPA? 15 A: I don't have a date on that, but I would say 16 that -- for the record, that that's certainly 17 something that ought to be pursued. 18 Q: And -- 19 A: I mean, I assume that she could certainly 20 testify herself as to exactly what went on. 21 Q: What did -- under the contract to sale, what 22 was the -- how was -- what were the terms of 23 purchase? What was paid for the property under 24 the contract to sell? 25 A: Well, we'll have to go back into it, okay.	1 was how much? 2 A: The promissory note is 186,875. 3 Q: And so how much additional money did the buyer 4 have to come up with? 5 A: Well, you can -- I mean, once -- let's just do 6 the arithmetic there. 7 Q: So it would be 325 less 56,000 less 186,000 -- 8 A: Yeah. 9 Q: -- 875? 10 A: Now, I -- my understanding of this is that, 11 essentially -- you know, just in reflecting 12 back on it, I -- and it may well be covered 13 somewhere in here, but I think that just as in 14 the case of Mary, both of these parties are 15 factoring in their percent -- their percent of 16 the -- you know, of the properties. And so I 17 wouldn't be a bit surprised if the total you 18 get when you do that subtraction, whatever that 19 figure is, might constitute 57.5 percent. 20 I'm not sure, but I'm just sitting here 21 thinking. But, again, you know, I just am 22 satisfied from what I've looked at, my 23 conversations with Mr. Knowlton, and, again, 24 the information he shared with me about going 25 to the accountant and getting the accountant to

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1 agreeable," and one beneficiary says, "I think
2 it means this and you can't sell to the other
3 one," the other beneficiary says, "No, I think
4 the language gives the trustee the authority,"
5 and you put in there that the trust is
6 different than the divorce decree and has
7 different language and it's interpreted by
8 different people different ways, how does the
9 trustee protect himself from liability in
10 making a determination as to how to go forward?
11 A: The trustee ends up making the best -- the most
12 reasonable, prudent judgment it can and acts
13 upon that judgment. And you have an action
14 like this that comes forward and a court will
15 ultimately decide this point that you and I are
16 talking about.
17 If you're -- the trustee does not -- a prudent
18 trustee does not have to take this issue into
19 court to determine what this thing means;
20 doesn't have to.
21 Now, if he did decide to do it and the court
22 did entertain the petition, and the court ruled
23 a certain way, and it ruled whatever -- the way
24 it ruled, then obviously that would be a
25 protection of one type or another.

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1 But the point is, it is not required. A
2 trustee does not have to do that in order to be
3 prudent. And you keep talking about what would
4 be a protection for the trustee. And I'm tell
5 you the trustee didn't need any such protection
6 in this case. The trustee made its decision
7 and I'm telling you over and over that there
8 was no mutual agreement by the parties on other
9 terms and, therefore, this clause would (sic)
10 never triggered.
11 Q: Mr. Walker, submitting it to the court would
12 actually protect the trustee and it would be
13 for the benefit of the beneficiaries, wouldn't
14 it? It would protect them to ensure that the
15 right decision was made about what to do.
16 MR. HOWSER: Object; asked and answered five times.
17 A: How many times do I have to say that the court
18 probably would not entertain a petition?
19 Q: Well, you don't have to say it anymore because
20 I've heard that one over and over again. But
21 I would like an answer to my question and the
22 question is --
23 MR. HOWSER: He's answered the question five times,
24 Pope --
25 MR. JOHNSON: He hasn't answered it.

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1 MR. HOWSER: -- and you don't like his answer, so
2 you're trying to beat him into giving you
3 another answer.
4 MR. JOHNSON: I'm trying to get -- I'm trying to --
5 okay. I'm trying to --
6 THE WITNESS: Mr. Johnson, you're not going to beat
7 me down. You got my answer and that's what
8 you're going to get, okay?
9 (Off the Record)
10 Q: Mr. Walker, submitting it to the court benefits
11 the -- prior to acting benefits the
12 beneficiaries, as well as the trustee, doesn't
13 it?
14 A: I would not answer that question "yes" because
15 I don't think that the trustee -- in my
16 opinion, a prudent trustee would not under
17 these circumstances do that. And it would be
18 an -- it would be an unnecessary step for the
19 trustee to take.
20 It would really basically be an effort by the
21 trustee to -- to defer something -- a decision
22 to a court to make and the court for the -- I
23 know you don't want to hear it, but my problem
24 with all of this is, that the reason a prudent
25 trustee, in my opinion, would not do it is that

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1 the prudent trustee knows that that's a
2 decision that the trustee has the power to make
3 and the trustee has the duty to make and the
4 trustee will have to live with that decision;
5 that's the point. The trustee will have to
6 live with it.
7 Q: Mr. Walker, had the trustee in this case acted
8 prudently and submitted the question to the
9 court for guidance on which offer was better
10 and the court had answered the question, would
11 that -- we wouldn't be sitting here, would we?
12 MR. HOWSER: Object to the form of the question,
13 because it presupposes that the trustee didn't
14 act prudently.
15 MR. BRUNER: I also object to the form.
16 MR. JOHNSON: Okay.
17 MR. HOWSER: And form, yeah.
18 Q: Here's the question. I'll take out "prudent."
19 The trustee -- had the trustee simply submitted
20 this to the court to say which offer is better,
21 we wouldn't be here today, would we?
22 MR. HOWSER: We'd be here on some other issue.
23 Q: We wouldn't be here on this issue as to whether
24 the price was --
25 A: I don't agree with you, Mr. Johnson, because,

35 (Pages 137 to 140)

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

EIGHTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

RAYMOND D. HOBBY,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 MARY T. HOBBY,)
)
 DEFENDANT.)
 _____)

TRANSCRIPT OF RECORD

MARCH 12, 2014
NEWBERRY, SOUTH CAROLINA
OCTOBER 17, 2014
GREENWOOD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR.

A P P E A R A N C E S:

ATTORNEY FOR PLAINTIFF:

BENJAMIN BRUNER, ESQUIRE

ATTORNEY FOR DEFENDANT:

POPE D. JOHNSON, ESQUIRE

ATTORNEY FOR THE TRUSTEE:

R. DAVIS HOWSER, ESQUIRE

TARA T. SCOTT, CVR
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>

(NO EXHIBITS WERE ENTERED INTO EVIDENCE)

1 MARCH 7, 2014

2 THE COURT: We're back on the record in case 13-CP-36-
3 1193, Raymond Hobby vs. Mary T. Hobby and Frances Knowlton.
4 It is my understanding I think we have various cross-motions
5 for summary judgement to address today. Is that correct,
6 gentlemen? I can't remember the last time I touched this
7 trial, but I am familiar with the general facts. It
8 involves a house, a divorce, and the ensuing fun that
9 happens. So, let's go ahead and go at it. Who wants to go
10 first?

11 MR. BRUNER: May it please the court. I believe my
12 Motion for Summary Judgement was filed first. I will take
13 the honors. As a procedural matter, I believe there were
14 five motions listed on the roster. The Defendant's motion
15 to dismiss, I believe, is moot. That was based on subject
16 matter jurisdiction issue that we resolved when we took a
17 recess on September 4th and I filed an identical complaint
18 in the Probate Court for Newberry County, and this court
19 then consolidated. After that case was removed, this court
20 consolidated the two under the caption that we're here
21 before you today. The motion to amend was filed last. I
22 believe that's going to be moot if the court finds that
23 summary judgement is proper - or partial summary judgement
24 is proper for the Plaintiff and the Trustee's claim. As a
25 factual background, I'd like to give Your Honor just a brief

1 overview of the facts. You are correct. This does involve
2 the former marital home. We appeared in the Probate Court in
3 early January because I wanted a hearing on my motion to
4 dismiss in that case, because I argued that she was
5 collaterally estopped from raising these issues again. They
6 were already decided by the Magistrate's Court and affirmed
7 by Your Honor.

8 The morning of that hearing -- what we've experienced
9 since September of last year is simply delays. We've had
10 six months to conduct discovery. I've received no discovery
11 requests from the Defendant. The Trustee -- the Trustee's
12 attorney and I have sent our discovery request. We've
13 gotten responses, but I've received no discovery requests.
14 We've taken two depositions. I deposed the Defendant, and
15 the Defendant's attorney deposed an expert identified by the
16 Trustee. Those are the only two depositions.

17 We showed up in the Probate Court for a hearing in the
18 morning of the motion's hearing --

19 MR. JOHNSON: Your Honor, may I be heard?

20 THE COURT: Sure.

21 MR. JOHNSON: This has got nothing to do with the
22 motion before you. I've been sitting here listening to
23 counsel give you his background, much that is not before you
24 in admissible form. I would ask that we get to the motion.

25 THE COURT: All right. We'll let's do this. You said

1 that there are basically two issues involved in the case;
2 the authority of the Trustee to sell and the propriety of
3 your client's purchase. Is that in a nutshell?

4 MR. BRUNER: Those are the counter arguments, Your
5 Honor.

6 THE COURT: Sure.

7 MR. BRUNER: I mean, my issues are simple and I raise
8 them in my motion. There's no issue of genuine fact that --
9 there's no genuine issue of fact that my client owns the
10 property. That was decided. She had an opportunity to
11 litigate that issue in the Magistrate's Court. She did.
12 She lost. Necessarily, under the statute, the magistrate
13 found that Ray Hobby owns the property and that she is there
14 unlawfully. And Your Honor's order affirming that says that
15 exactly. She's now appealed that, but a pending appeal
16 doesn't -- doesn't take away the collateral effect. The
17 effect of that finality of Your Honor's order. So she's
18 already litigated the issues that are essential for me to
19 approve four of the claims that are in the amended
20 complaint. For trespass I've got to prove that I'm the
21 legal owner of the property. That's been decided. I've
22 also got to prove that she is on the property voluntarily
23 and without my client's permission or consent. That's
24 already been proven. We know she's living there, and she
25 knows that she doesn't have consent. For me to -- for me to

1 prevail on my holdover tenancy claim I have to prove that
2 there was a rental agreement, that I'm the landlord under
3 the statute, that her right to live there is terminated.
4 The rental agreement in this case is the trust agreement,
5 because under the statute, if you look at the way -- at the
6 way a rental agreement is defined under the statute, it is
7 an agreement that pertains to the use of a residence. This
8 trust agreement gave her a right to live in the house on
9 Crowder Road rent free until it was sold or until she
10 vacated it. One of those conditions occurred. It was sold.
11 Therefore, her right to live there terminated.

12 The Trustee was originally the landlord under that
13 agreement because he was the legal owner. When Mr. Hobby
14 purchased the property he became the legal owner.
15 Therefore, there's no disputed issue that he's entitled to
16 recover under that -- under that act. The Residential
17 Landlord Tenant Act.

18 Now, what damages are going to be decided by a jury
19 later, because whether she held over in good faith or in
20 willful violation of the act I think are issues for the
21 jury. We're just talking about liability here. The breach
22 of contract is clear also. The trust agreement was a
23 contract. She promised to move out when the house was sold.
24 She did not. Mr. Hobby has incurred damages and continues
25 to incur damages because she is using the house to his

1 exclusion. He can't move in there, he can't rent it out,
2 and he can't use it as long as she keeps living there.

3 And finally I've got quantum meruit, Your Honor. And
4 she's obviously received a benefit from Mr. Hobby because
5 he's the legal owner of the property, and there are no
6 circumstances in this case that the Defendant has raised to
7 show that she has -- that she should be able to receive rent
8 for two years. Especially a gift of no rent for two years
9 without having to compensate the Plaintiff.

10 I will point out that these crucial facts are admitted
11 in this case. And if Your Honor would refer behind Tab 2, I
12 attached to my motion for summary judgement -- for partial
13 summary judgement, which was filed July 9th of last year,
14 the Defendant's responses to my request to admit. I asked
15 him to admit the authenticity of roughly 20 documents, A
16 through Q. They admitted -- she admitted the authenticity
17 of all of them. Admit the terms of the trust to allow the
18 Defendants to live on the property until it was sold or
19 until she moved out. Admitted. Admit the Defendant offered
20 to purchase the property in 2011. Admitted. Number 6,
21 admit the Trustee sold the property. Admitted. Number 7,
22 admit the Trustee sold the property on or before April 20th,
23 2012. Admitted.

24 What they have raised in defense of these arguments is
25 not whether the Trustee had the authority, but in truth

1 whether he should have conveyed the property. He had the
2 authority clearly under the trust agreement to do what he
3 did and bind the trust and to give Mr. Hobby good title to
4 the property. Her arguments all relate to whether he should
5 have. Whether that breached a duty owed to her. Her
6 recovery is against the Trustee. It's not against Mr.
7 Hobby, and it's not a defense to any of my claims.

8 THE COURT: Let me ask you. As far as what you're
9 requesting, you're asking for partial summary judgement on
10 the question of liability. Presumably Ms. Hobby is still in
11 possession of the house. I'm assuming you're also
12 requesting that the court find that she has to vacate at
13 this point?

14 MR. BRUNER: Your Honor, we've severed the case. And
15 in possession claim -- I can only pursue one claim for
16 possession. And the possession claim is the Magistrate's
17 Court case that's currently on appeal before the Court of
18 Appeals.

19 THE COURT: Okay. But is that -- I affirmed that back
20 in September --

21 MR. BRUNER: Yes, Your Honor.

22 THE COURT: -- and then it got kicked up to the Court
23 of Appeals, right?

24 MR. BRUNER: And then she appealed it, yes.

25 THE COURT: Right. Right. Okay.

1 MR. BRUNER: And we're briefing that now. The
2 transcript just came back. That's the possession claim. I
3 don't think I can --

4 THE COURT: I glanced at my order from September. I
5 didn't have a chance to read it and --

6 MR. BRUNER: I think that order was entered only in the
7 Magistrate's Court appeal. I don't know that there's a
8 written order consolidating the cases. That order says
9 that, but there's no --

10 THE COURT: I understand.

11 MR. BRUNER: -- there's no clear ruling to that effect.
12 But that's the way we proceeded as if the cases were
13 consolidated and my motion was held in abeyance.

14 But in this case, all we're asking for is liability so
15 that we can have a damages hearing. If she's still there --
16 if she's still there when the damages hearing occurs, the
17 only thing I know to do to address future damages is either
18 ask the court to apply a daily rate or sue her again later,
19 and I'd rather not do the latter.

20 THE COURT: All right. Let me hear the Trustee's
21 motion, and then I'm going to turn it to you. Go ahead.

22 MR. HOWSER: Your Honor, I would only take issue with
23 one thing that Mr. Bruner has said. And for the record, I'm
24 Dave Howser representing the Trustee. And it is not a
25 material issue of fact.

1 With regard to the offer which Ms. Hobby submitted to
2 the Trustee, that was -- our position is that was an
3 unsolicited offer which she gave instead of conveying the
4 property to the trust as required by an order of the court.
5 Mr. Bruner has done an excellent job of reciting the facts.
6 I will not, in the interest of judicial economy, go into any
7 more specific facts, but I may, as I touch on certain
8 points, amplify a couple of things.

9 I would point out that as Mr. Bruner has said in his
10 memorandum and very able arguments to this court, the
11 parties have had a long history litigating this matter. The
12 original divorce action was filed in 2005. They have been
13 litigating -- Ms. Hobby has been litigating in some form or
14 fashion for eight plus years.

15 MR. JOHNSON: Your Honor, I must object to Mr. Howser
16 now. It doesn't matter whether they've been litigating a
17 hundred years. We're here on a motion.

18 THE COURT: Fair enough. Let me hear from you.

19 MR. HOWSER: We are asking the court --

20 THE COURT: It's obviously been going on for a while,
21 so...

22 MR. HOWSER: It's been going on for a while, Your
23 Honor. And we have moved for summary judgement on a number
24 of grounds. But -- and rather than recite all of those
25 grounds, unless the court would want me to, I think we can

1 narrow it down to several issues. Did Mr. Knowlton, as
2 Trustee, have the authority to sell the property at 544
3 Crowder Road under the provisions of the liquidating trust
4 to Ray Hobby or Mary Hobby. Two, did Mr. Knowlton as
5 Trustee breach his fiduciary duty with resulting damage in
6 selling this property to Ray Hobby under all of the
7 attendant circumstances. And third, has Mr. Knowlton
8 favored one beneficiary over another, particularly where one
9 beneficiary is going to be disappointed with whatever
10 decision he makes.

11 So let me now turn to the issue of whether or not Mr.
12 Knowlton, as Trustee, had the authority to sell this
13 property to Mr. Hobby or to Ms. Hobby under the
14 circumstances that exist here. The answer to that question,
15 Your Honor, I submit is clearly yes, and here's why. There
16 are a number of provisions of the trust giving the Trustee
17 power of sale. That, of course, is not surprising since
18 this was a liquidating trust. Examples of the power of the
19 trustee to sell are found in Article 9 of the trust and in
20 subsections such as Roman numeral 6, Roman numeral 30, roman
21 numeral 32. Specifically, Roman numeral 32 provides in
22 pertinent part that -- gives the Trustee the power to sell,
23 convey, or otherwise deal with or dispose of any and all
24 trust assets forming a part of the liquidating trust.

25 And then I will skip down to subsection ii. "Trustee

1 may sell any trust asset to a transferor," that is Mr. Hobby
2 or Ms. Hobby, "provided the sale and terms of sale are
3 reasonable, fair, and reflect fair market value and other
4 terms mutually agreeable by the parties." What the
5 Defendant, Mary Hobby, is apparently focusing in on is the
6 language in any -- of "any other terms mutually agreeable to
7 the parties."

8 Your Honor, we submit that that is not applicable in
9 this case to preclude the sale of this property for several
10 reasons. First of all, that language differs from the
11 language of the order of the Family Court, because the
12 Family Court says that the Trustee has the power to sell to
13 a transferor, provided the sale and terms of sale are
14 reasonable, fair and reflect the fair market value, or any
15 other terms mutually agreeable to the parties.

16 In our memorandum we have cited a number of cases that
17 discuss the difference in how the court can interpret "and"
18 versus "or", and the court has the power to find that "and"
19 means "or". But as our expert has opined in the affidavit,
20 and further amplified in his deposition -- and we're not
21 presenting his deposition because it just came back and he
22 reserved the right to read and sign. But basically he's
23 saying that the "and other terms mutually agreeable by the
24 parties" doesn't come into play because the parties didn't
25 ever -

1 THE COURT: Agree.

2 MR. HOWSER: -- agree. So that he had the power of
3 sale, we submit, Your Honor, under the terms and provisions
4 of the trust.

5 And I would point out that the affidavit we have
6 submitted to the court in support of our motion comes from
7 Julian Walker. And I think, if the court would permit me,
8 I'd like to tell you what his affidavit and Curriculum Vitae
9 attached to that affidavit establishes about Mr. Walker's
10 background.

11 In March 1971 Mr. Walker became the executive officer
12 of the Trust Department of First National Bank of South
13 Carolina, and he had authority statewide for the Trust
14 Department. And incidentally worked for Mr. Bruner's
15 grandfather who was president of the bank. Later, as Your
16 Honor is probably familiar with, First National Bank merged
17 with South Carolina National Bank. Mr. Walker then became
18 executive officer, head of the entire trust operations for
19 South Carolina National Bank. Later South Carolina National
20 Bank merged with Wachovia, or was acquired by Wachovia. Mr.
21 Walker then became executive officer for South Carolina
22 Trust Operations for Wachovia. And he has opined that Mr.
23 Knowlton, as a prudent trustee, exercising the required
24 reasonable care, skill, and caution, acted appropriately and
25 acted as any other prudent trustee would have acted under

1 the same or similar circumstances.

2 And what Mr. Walker says is, Your Honor, you have to
3 focus on the process. Not the results of the process. That
4 is the process that the Trustee went through. Now, what is
5 that process in this case? First, Mr. Knowlton tried and
6 tried to get Mary Hobby to abide by the terms of the order
7 of the Family Court and convey the property at 544 Crowder
8 Road to the trust. He tried from sometime after the date of
9 that -- the creation of the trust in December 2010 until
10 March or April 2012 when she finally conveyed the property
11 to the trust. And it's our position, as I pointed out, in
12 December 2011 Mr. Knowlton received an unsolicited offer
13 from Mary Hobby to purchase the Crowder Road property rather
14 than conveying the property to the trust. As Mr. Bruner has
15 so ably pointed out, acting as a prudent Trustee, he
16 conveyed that offer to Ray Hobby. Ray Hobby gave a counter
17 proposal. That counter proposal was for \$100,000 more than
18 Mary Hobby offered. And it contained the provisions which
19 Mr. Bruner has so ably described as to how he was willing
20 for that property to go with the residual tract of land if
21 it made that residual tract of land more appealing to a
22 prospective buyer. He didn't stop there. Mr. Knowlton went
23 to the Trustee -- I mean, went to the accountant for the
24 trust. That trustee was selected by the parties about the
25 time that he was selected as Trustee. But he went to the

1 Trustee and put the two offers before the Trustee -- before
2 the accountant. I'm sorry. And we've submitted an
3 affidavit from the accountant, Terry Williams, who says that
4 obviously the offer of Mr. Hobby was superior. And Mr.
5 Hobby since making that offer has advanced two payments of
6 \$56,000 each to keep this trust solvent. Because one of the
7 reasons Mr. Knowlton was selected as Trustee was because of
8 his experience in negotiating workouts and in his experience
9 in bankruptcy matters. So he was interested in keeping that
10 trust afloat.

11 He even went further than that, as Mr. Bruner has
12 pointed out. Kept asking Ms. Hobby, through her attorney,
13 you know, do you want to submit an additional counter offer
14 to the offer made by Mr. Hobby. That offer never came. And
15 if Your Honor will permit me I can submit to you the case of
16 *Wheeler vs. Greene* found at 381 S.C. 548, 674 SE2d, a Court
17 of Appeals decision from 2009. And this involved a personal
18 representative, and we've discussed this in our memorandum.
19 And the personal representative had interest in some
20 property over which that personal representative had the
21 authority to sell, but did not have a firm offer. Later a
22 firm offer from another party came in. The Trustee accepted
23 that offer. And in the process of deciding whether to
24 accept that offer, the original offer, perspective
25 purchaser, came in with a higher offer. It was too late.

1 And the court held that the PR acted appropriately in
2 accepting that earlier offer.

3 May I hand this to the court?

4 THE COURT: Sure, please.

5 MR. HOWSER: Now, one of the arguments that -- and I
6 can supply you with a copy later. I don't --

7 MR. JOHNSON: All right. I'll take it later.

8 MR. HOWSER: One of the arguments being advanced is
9 that one beneficiary is being favored over another.
10 Obviously if you've got a piece of property and you've got
11 two beneficiaries, both who have an interest in the
12 property, and the Trustee makes a decision, somebody, Your
13 Honor, I submit to you is going to be disappointed. But
14 does that mean that the Trustee has breached his fiduciary
15 obligations to the disappointed party? I would say
16 certainly not.

17 One of the other contentions that the -- that Ms. Hobby
18 is making is that the Trustee should have sought court
19 approval of a sale to Mr. Hobby. I have a couple of points
20 to make on that.

21 First, Section 62-7-201 of the 1976 South Carolina
22 Code.

23 THE COURT: Uniform Trust Code.

24 MR. HOWSER: Correct.

25 THE COURT: Right.

1 MR. HOWSER: Deals with the role of the court in
2 administration of trust. And if you look at the comments to
3 that section it says that where the Trustee has a lot of
4 discretion in administration of a trust, the court is not
5 going to provide guidance to that Trustee in the exercise of
6 his discretion.

7 The last paragraph of the reporter's comments in
8 dealing with subsection -- I think it's D. It says, "The
9 court will not ordinarily instruct Trustees on how to
10 exercise discretion." While not exactly in point, but at
11 least some indication of this, is found also in 62-7-904(e).
12 And I think that's subsection D of the trust code. And
13 under subsection D it really deals with distribution of
14 principal and interest and this sort of thing. The comment
15 does say, "However, to have the court --" that is, that
16 section is not designed to allow a trustee to run to the
17 court for instruction on how he as a fiduciary ought to
18 exercise his discretion.

19 THE COURT: And the general rule for that is because
20 the Trustee is always answerable in damages should he breach
21 his fiduciary duty, right?

22 MR. HOWSER: And also, Your Honor, in connection with
23 that I would like to point out, as Your Honor probably is
24 well aware much more than me, that there are two leading
25 authorities of -- in the country on trust. One is *Scott on*

1 *Trust*, the other is *Bogert on Trust*, and the other document
2 is the *Restatement of the Law of Trust*.

3 And if I could hand, Your Honor, these. I've given --

4 THE COURT: Sure.

5 MR. HOWSER: -- copies of these to Mr. Johnson earlier.
6 But they also support the position, for example, that -- and
7 if I can quote from *Bogert*. If we look at, for example,
8 Page 175. If Your Honor would permit me to quote. It says,
9 "The court will not advise the Trustee as to his powers
10 where they are clearly fixed by the trust instrument or by
11 common or statute law, but only in cases of real difficulty
12 where there is honest doubt after a careful reading of the
13 instrument and procurement of legal advice from counsel.
14 The courts do not hold themselves out to act as lawyers for
15 timid Trustees who seek court protection for every move they
16 make or who wish to save the trust the expense of procuring
17 the assistance of a lawyer. The powers of the court do not
18 extend to advising the trustee how to exercise a discretion
19 which a trust -- which a settlor as vested in him, nor does
20 it include deciding business questions such as what
21 investments to make or whether to sell or retain trust
22 realty. There must be a legal problem arising from
23 uncertainty of the settlor's intent or from applicable law."
24 And both *Scott* and *Restatement* amplify, we submit to Your
25 Honor, that position.

1 Now, the second point I want to make on that is this.
2 As Mr. Bruner has made clear, as the court has made clear,
3 we have been dealing with lengthy proceedings. There was a
4 need for infusion of capital. If the Trustee had gone to
5 the court seeking advice, be it an advisory opinion or what,
6 can you imagine where we would be if the court ruled against
7 Mary Hobby? We'd be right up the chain of an appeal where
8 the Trustee would not have had the infusion of capital that
9 was so needed to keep this trust afloat.

10 We submit to Your Honor, under the undisputed facts of
11 this case and the applicable law, Mr. Knowlton as Trustee
12 acted with the required duties of a trustee, a careful
13 prudent trustee, and did not breach any fiduciary duty owed
14 to Mary Hobby in this case.

15 Thank you, Your Honor, very much.

16 THE COURT: All right.

17 MR. JOHNSON: My turn?

18 THE COURT: Yes, sir.

19 MR. JOHNSON: Your Honor, I handed up a memo I'd like
20 to be made a part of the record.

21 THE COURT: Certainly.

22 MR. JOHNSON: And I have an additional affidavit which
23 I've sent them on John McDougall.

24 THE COURT: Thanks.

25 MR. JOHNSON: And I have what I believe is an original

1 deposition of Mr. Howser's expert. I'd like it to be made a
2 part of the record.

3 THE COURT: All right.

4 MR. HOWSER: Your Honor, he reserved the right to read
5 and sign.

6 THE COURT: That's fine, assuming that there are no
7 changes to it.

8 MR. JOHNSON: Yeah, that's fine.

9 MR. HOWSER: In other words, I just got it yesterday --

10 THE COURT: Sure.

11 MR. HOWSER: -- the day before, and he came by my
12 office last night to pick it up to take it home to read and
13 sign.

14 THE COURT: Subject to that reservation, if there are
15 any changes, or if he has issue with what's in the
16 deposition, just let us know and we'll address that if that
17 issue should arise.

18 MR. JOHNSON: Your Honor, and I would also like to
19 submit into the record after the hearing the deposition
20 transcript of Mary Hobby. I emailed Mr. Bruner about that,
21 but I didn't give him sufficient time to get it and bring it
22 with him.

23 THE COURT: You all don't think that's a problem?

24 MR. BRUNER: Your Honor, it's a 300 page deposition.
25 If Mr. Johnson wants to take the excerpts that he finds

1 relevant and admissible, that's okay. But to -- the last 20
2 pages, I believe, is Mr. Johnson telling the witness what
3 numbers to punch into a calculator and then asking her what
4 the calculator reads. You know, there's a tremendous amount
5 of testimony in that 300 page transcript that's inadmissible
6 for one or more reasons. I would ask that Mr. Johnson take
7 the excerpts that he finds relevant and admissible and
8 submit those instead of the whole 300 page transcript.

9 THE COURT: Why don't we do it this way, just for
10 purposes of -- it may be easier simply to submit -- assuming
11 that they're giving you an electronic copy, submitting an
12 electronic copy on CD ROM and then just point out to the
13 court the pertinent parts that you feel are -- are --

14 MR. JOHNSON: That will be fine, Your Honor.

15 THE COURT: -- most important to your argument. That
16 way the entire transcript is available if I need to refer,
17 if my clerk needs to refer, if somebody else needs to refer
18 to other sections in order to give context to the parts that
19 he points out.

20 MR. HOWSER: Your Honor --

21 MR. JOHNSON: Your Honor --

22 MR. HOWSER: -- not to interrupt --

23 THE COURT: Sure.

24 MR. HOWSER: -- at a breaking point. I didn't address
25 the indemnity issue, and may I come back and just touch very

1 briefly on it --

2 THE COURT: That's fine.

3 MR. HOWSER: -- when Mr. Johnson gets through.

4 MR. JOHNSON: Your Honor, the file should contain two
5 affidavits from John McDougall, one affidavit from Artie
6 White, both of whom are lawyers, and an affidavit from me.

7 And, Your Honor, let me begin by saying what I said
8 earlier. I objection to the attack on Mary Hobby. I object
9 to matters outside the record being argued as for some basis
10 for this motion to be -- these motions to be addressed.
11 We're here on summary judgement. The question is, is there
12 a scintilla of evidence that would just put in dispute
13 anything the other side said. And actually, the court
14 doesn't even have to have a scintilla of evidence. The
15 court ruling on a summary judgement motion can rule on it if
16 the court views that a further inquiry under the facts where
17 necessary.

18 So I'll talk about Mr. Bruner's motion first and then
19 turn to Mr. Howser's. Mr. Bruner has brought an action
20 against Mary Hobby which he's alleged four causes of action.
21 He has alleged that a cause of action under the 27-4757-70,
22 a breach of a rental agreement. He's made a claim in
23 trespass. He's made a claim that she breached a promise to
24 move out of the house. And he's -- his client's entitled to
25 damages for reliance upon her promise to move out of the

1 house when it was sold. I'm not sure what cause of action
2 that could be.

3 You asked him what he was asking you to do on his
4 motion hearing today. It's worthwhile to look at his
5 motion, Your Honor, because it says that -- these things.
6 "This is a dispute over the use of real property located in
7 Newberry County." There's no genuine issue of fact that the
8 property was sold. There's no genuine issue of fact that
9 Plaintiff has been the owner since April 19th, 2012.
10 There's no genuine issue of fact that the Defendant has
11 continued living on the property after it was sold without
12 permission without making payments -- any payments to the
13 Plaintiff. And it would be my position that the only real
14 relief he can be granted is what he asked for in his motion.

15 His motion was made without the filing of any
16 affidavits to support his motion. His motion states that
17 it's based on the record in this case, the Defendant's
18 admissions and the request to admit, and may be further
19 supported by memorandum, affidavit, or such other cases as
20 may be made and provided. If he was going to support his
21 motion with an affidavit the Rules of Civil Procedure that
22 apply to all of us would require him to attach those
23 affidavits to his motion. I got this morning when I walked
24 in an affidavit of Ray Hobby. First time I've seen that.
25 Haven't even had time to read that. But it was not -- no

1 affidavits were attached to support his motion.

2 Our position is his motion should be denied for these
3 reasons. Number one, discovery is not complete. No ruling
4 should be made until discovery is completed. In support of
5 that I submit the affidavits of Mr. White, Mr. McDougall and
6 myself. Rule 56(f) obligates a party that if he cannot
7 submit affidavits to contest a motion, the party is supposed
8 to submit his own affidavit, tell the court what discovery
9 is needed, and the court then has -- can grant the
10 discovery, put off a ruling on the motion, or whatever. We
11 would ask that the court postpone a ruling on the matter to
12 allow us to take the deposition of Ray Hobby, Frank Knowlton
13 and Terry Williams, who is an expert Mr. Howser has. The
14 first time I was aware he was going to be a witness in the
15 case was yesterday when I got his affidavit. No opportunity
16 to contest or challenge them on what -- what they have said
17 by way of an affidavit.

18 So our first position is it's premature to rule when
19 the case is only six months old and we ought to have time to
20 complete discovery.

21 Second basis for our position is that the motion was
22 not accompanied by the affidavits that have been submitted
23 that supported -- they've attached, I believe,
24 unauthenticated emails, and we would say that since they
25 didn't provide the factual basis at the time they made the

1 motion, the court should deny the motion.

2 Third ground, Your Honor, is that we would say the
3 court shouldn't rule on summary judgement until the court
4 rules on our motion to amend our answer and assert a claim
5 for constructive trust. We -- the rules provide that the
6 right to amend should be freely given, constructive trust
7 results when the circumstances under which the property was
8 acquired making it inequitable, that it be retained by one
9 holding the legal title which circumstances include fraud,
10 bad faith, abuse of confidence, violation of fiduciary duty
11 which gives rise to an obligation in equity to make
12 restitution. So we would urge that before you rule on his
13 motion you allow us to amend our complaint.

14 THE COURT: Just one -- one point on that. On the
15 Trustee's motion for summary judgement though, if the court
16 were to conclude that the expressed trust granted the
17 Trustee the authority, then obviously there is no basis for
18 a constructive trust, correct? Because a constructive trust
19 would only arise, as you point out, through fraud. It
20 usually arises in a situation where the cases that deal with
21 constructive trust would usually -- they usually come about
22 when somebody used a straw man. You give money to somebody
23 to purchase property and that person titles it in their name
24 but there's evidence to indicate that the true owner is
25 supposed to be someone else. The person who, for example,

1 provided the cash to pay the price for the property. That's
2 where you would have a constructive trust arise. And if the
3 court were to conclude that the Trustee is -- or that the
4 trust -- I don't know that the validity of the trust is
5 contested. It sounds more of a breach of fiduciary duty.
6 And if the court were, like I said, to conclude that summary
7 judgement is appropriate on behalf of the Trustee, that he
8 acted within the scope of his authority under the trust, I
9 understand your position that you haven't deposed these
10 folks, et cetera, but if the court were to conclude that
11 that's the case, there would be no need for a constructive
12 trust, or there would be no basis to allege constructive
13 trust in an amended complaint or amended answer.

14 MR. JOHNSON: Well, it would seem to me we would be
15 entitled to have the pleading amended initially and present
16 evidence in support of the pleading before the court rules
17 on whether it's proper or improper, or whether there's a
18 determination whether it's proper or improper. So I would
19 ask that before the court rule on Mr. Howser's motion and
20 Mr. Bruner, the pleading -- that you allow us to amend our
21 pleading to assert a claim.

22 MR. HOWSER: Your Honor, may I respond? Although he's
23 addressed --

24 THE COURT: In a minute. I'm going to let him finish
25 and then I'll --

1 MR. HOWSER: I just wanted to respond to that one
2 point.

3 THE COURT: Yeah, but let me -- he's on a roll, so
4 we're going to let him finish.

5 MR. HOWSER: Sure. I apologize.

6 THE COURT: That's all right.

7 MR. JOHNSON: Your Honor, to the extent Mr. Bruner is
8 moving for summary judgement on his claim pursuant to
9 Section 27-47-50 and 7-70, which are landlord/tenant
10 statutes and rights claim tenancy, there's been no evidence
11 that there was a lease ever entered into by Mary Hobby in
12 favor of Ray Hobby. And to trigger of those statutes you'd
13 have to have a lease.

14 There's a genuine issue of material fact relating to
15 the cause of action for trespass. He has to prove that he's
16 the legal owner, and whether he was the lawful owner and in
17 legal possession is disputed. The dispute and the facts
18 show up in the affidavit of Mr. White and Mr. McDougall.
19 And I won't belabor that, but they say in their opinion Mr.
20 Hobby did not acquire title to the property for the reason
21 that Mr. Knowlton was acting outside of his authority to
22 convey it and that he had no authority to convey it and,
23 therefore, the deed would be a annulled. And so, we say
24 that it's a classic dispute. They have an affidavit from
25 their expert and affidavits from witnesses saying he had

1 authority. He did the right thing. His heart was in the
2 right place. And we have counter-affidavits that somebody's
3 going -- a finder of facts is going to have to look at and
4 view.

5 The third cause of action is a cause of action for
6 breach of contract. Fourth cause is reliance on promises to
7 move out. There was never any agreement. Counsel doesn't
8 even address there had been an agreement where Mary Hobby
9 ever agreed with Ray Hobby that she would move out at any
10 particular time. And in the absence of such a contract
11 there would be no basis for the granting of summary
12 judgement.

13 Now, Your Honor, here's what our affidavits basically
14 say. The transaction, what was leading up to the sale.
15 Mary Hobby makes an offer. Ray Hobby comes back on January
16 the 3rd and makes a counter-offer. What he says in the
17 counter-offer is that, "I would extend an offer to the trust
18 to purchase Mary Hobby's interest of 42 percent to maintain
19 the most value and marketable position of the overall
20 property." So he wasn't offering \$56,000 in cash to be
21 applied to debt or support the service of debt, he was
22 offering to buy her share out of the trust. He would get
23 his share and she would get the cash for her share. He
24 offered to leave it in -- the asset in trust. Not to take
25 it out but to leave it in trust. When Mary was -- when the

1 Trustee sent his offer to Mary Hobby, the evidence is
2 supported by the affidavits and by the doctor's statement,
3 she was incapacitated. He takes \$56,000. There was no
4 Trustee. There was no signing contract. But after that he
5 continues to go back and forth with Mr. McDougall, as shown
6 by the emails that were presented trying to find out what
7 Mary's further offer would be. Mary Hobby makes an offer on
8 -- in March. Now, what was saying that we've already --
9 already have a contract. Don't bother to submit an offer.
10 She makes an offer that, according to Mr. McDougall's second
11 affidavit where he analyzes and compares the two offers,
12 superior to the offer Ray had made in terms of the cash that
13 would go to the trust. And he expresses the opinion that
14 her -- her offer was superior. Mr. Howser's new expert says
15 her offer was not superior. That's a classic disputed issue
16 that has to be resolved by the fact finding. But --

17 THE COURT: Let me -- forgive me for interrupting, but
18 let me just jump in there real quick. If the Trustee is
19 correct that the trust grants the Trustee discretion in
20 deciding which offer to take, and there's a rational basis
21 for the Trustee to do what he did, and in this case what I'm
22 hearing is there's no dispute that she missed the deadline
23 to submit an offer.

24 MR. JOHNSON: That is disputed, Your Honor.

25 THE COURT: So she did make an offer before the

1 deadline?

2 MR. JOHNSON: She made an offer -- well, I don't know
3 what the deadline was to make an offer, because he kept
4 going back and forth over offers and whether she was going
5 to submit an offer and what was happening. So --

6 THE COURT: Right. But I'm looking at the email of
7 February the 9th, "John, thanks for your letter yesterday.
8 Unfortunately time is not on our side. Again, in my
9 opinion, Mary has plenty of time to come up with a counter-
10 offer. She's had the -- she's had Ray's offer since January
11 23rd, 18 days. The trust is now past due. I have no choice
12 but to accept what is clearly the superior offer and use the
13 cash advance to service the loans for February."

14 MR. JOHNSON: But, Your Honor, there's no evidence that
15 he accepted the offer.

16 THE COURT: He deeded it to --

17 MR. JOHNSON: No, Your Honor. He didn't -- he didn't
18 accept the offer Ray Hobby made in January. He didn't come
19 close to accepting that offer.

20 MR. BRUNER: That's not true, Your Honor.

21 THE COURT: How does -- what did he not accept?

22 MR. JOHNSON: He did not accept the offer that Ray
23 Hobby made. The deal was structured -- the contract that is
24 -- let me see if I can point you to it. The contract that
25 he entered into is totally different than the offer Ray

1 Hobby made. The April 19th, 2012 exhibit I believe to the
2 second affidavit sets out what -- the contract, the purchase
3 agreement, was not made until April 19, 2012. Sells the
4 property. The purchaser's paid \$325,000, the purchase
5 price. And then it goes on to say, "Prior to entering into
6 the purchase agreement, the purchaser --" so before they had
7 an agreement the purchaser delivered a non-refundable
8 payment of \$56,000. Hobby is obligated to -- upon delivery
9 of the deed to provide a promissory note, demand note, for
10 \$186,875. If you look back at what Ray Hobby offered to
11 begin with it didn't have anything to do with taking the
12 note from him. It didn't have anything to do with \$56,000
13 as a non-refundable earnest money payment. What he proposed
14 to do originally was buy Mary Hobby's interest and leave the
15 property in trust, not take it out of trust, and there's
16 nothing in the agreement that they made that said it would
17 be left in trust. That it wasn't left in trust. So he
18 didn't -- he didn't accept the contract -- or didn't close
19 pursuant to the contract he made with Ray Hobby. At some
20 point unbeknown to us, because we haven't deposed him, we
21 haven't deposed Hobby, the deal changed with Mr. Hobby. And
22 Mr. McDougall has outlined why Mary's offer that she made in
23 March was superior to the deal the Trustee took in April.

24 Your Honor, aside from those issues of disputed facts,
25 you need to know that there's a question of the Trustee's

1 authority to settle. The Trustee is given broad discretion
2 to settle assets, et cetera, et cetera. But if you look
3 under Article 12(a) -- I'll just refer to Mr. McDougall's
4 affidavit on the first page. When it is a sale to a
5 transferor that is a beneficiary of the trust, the trust
6 agreement requires that the sale be reasonable, fair with a
7 fair market value, and any other terms mutually agreeable by
8 the parties. Now, our position, and the position of Mr.
9 McDougall in his affidavit is, is that the reason that
10 language is there is to provide protection to the
11 beneficiaries from the Trustee making a sweetheart deal with
12 one beneficiary or the other. And with that language "any
13 other terms mutual agreeable by the parties" means that if
14 the Trustee is going to sell to a transferor beneficiary
15 he's got to get an agreement and the deal has got to be fair
16 and reasonable and reflect fair market value. The word
17 "and" is used. You need to also know that that language in
18 the divorce decree is different. The word in place of "and"
19 is "or". That you've to have it fair and reasonable or
20 you've got to get it mutually agreed by the parties. So the
21 Trustee when he was doing -- making this deal, we say
22 sweetheart deal with Mr. Hobby, these -- these issues that
23 relate to his authority to sell wasn't resolved. Is he
24 bound by the decree?

25 THE COURT: Right.

1 MR. JOHNSON: Does his authority come from the decree
2 or does it come from the trust?

3 THE COURT: Let me stop you just there for a second,
4 because what is being represented to me -- we can't -- the
5 reason that the Uniform Trust Code grants the level of
6 discretion to the Trustee that it does -- and for the what
7 it's worth category, I was one of the people who worked on
8 the revised Uniform Trust Code when it passed years ago. If
9 you Monday morning quarterback the Trustee in situations
10 like it appears the Defendant is trying to do, it doesn't
11 take into account the very real urgency of making a
12 decision. Sometimes a decision has to be made. And maybe
13 it's not a perfect decision, but it's a decision that
14 circumstances are compelling a Trustee to make. To accept
15 your argument would render practically every trust
16 unworkable, especially under these facts, because what's
17 being represented is that the Trustee needed cash. There
18 were obligations to service. If the Trustee -- their point
19 is well taken. That if the Trustee had petitioned the court
20 to get approval of this, be it the Probate Court or the
21 Circuit Court because of the amount in controversy, or maybe
22 based upon Ms. Hobby's actions in the past, the Family
23 Court, or some other court, the trust becomes -- the trust
24 goes into default on various obligations and the Trustee is
25 left with even a greater bird's nest to untangle than he had

1 initially. You may have an argument. But it's clear that
2 she had time to consider an offer. I'm sorry she had a
3 pinched nerve. But, I mean, I've had a pinched nerve
4 before. It doesn't keep the brain from working, and she
5 could have made an offer.

6 MR. JOHNSON: But Judge --

7 THE COURT: And she didn't.

8 MR. JOHNSON: -- she made an offer before they had a
9 written contract. Before they had an agreement taking his
10 language -- say they didn't have an agreement in place.

11 THE COURT: Understood. But they needed the cash and
12 the cash is what was immediately provided in order to
13 service the debts, and --

14 MR. JOHNSON: They got the cash as a non-refundable
15 payment of cash and it is not pursuant to any kind of
16 contract and is not referred to. It was taken before it was
17 -- before they had a contract.

18 THE COURT: And that's not unusual in these situations.
19 You need the infusion of cash. You need it now. You reach
20 an agreement in principal in you reduce it to writing later
21 on. Similar to an arbitration award. Very often you come
22 up with -- you strike the deal while everybody is sitting
23 there, you maybe jot some notes down, but the actual
24 paperwork isn't executed until much later on.

25 I mean, back to the point though. Back to the point at

1 hand. If the Trustee had done what you are suggesting that
2 the Trustee do, if he had decided to go back on the previous
3 offer that Mr. Hobby made, then the Trustee is liable to Mr.
4 Hobby because Mr. Hobby has put forward 50 plus thousand
5 dollars as a non-refundable deposit on the deal. Ms. Hobby
6 -- I mean, Ms. Hobby just didn't respond in time. And, you
7 know, this happens in real estate. You don't -- you know,
8 make a decision or get off the pot is kind of what the
9 requirement is for her.

10 MR. JOHNSON: Well, Your Honor, when she made a
11 proposal, and it was made, it was for more money, more cash
12 into the estate -- into the trust than Mr. Hobby's original
13 offer or his -- the agreement he made. And --

14 THE COURT: I understand. Sure.

15 MR. JOHNSON: The question is perhaps when does a
16 Trustee have a responsibility to go to the court for
17 guidance. And he was urged to seek a court order and get
18 some third party to rule on what the disposition was. And
19 here are the issues, Your Honor. The issues were Mr. Hobby
20 made an offer originally. There's no record of it being
21 accepted. No record whatsoever. \$56,000 comes in. She
22 makes a far superior offer to what Mr. Hobby has done before
23 any contract is -- has been signed. In addition to that,
24 Your Honor, you've got the difference between the court --
25 the divorce decree and the language in the trust. So -- and

1 then there's a question to what the language means in the
2 trust, because their expert said it means one thing. Our
3 expert said it means something totally different.

4 THE COURT: So your client -- if the Trustee had done
5 as you're suggesting and sought court approval and the
6 obligations go into foreclosure and a deficiency judgement
7 is demanded against the trust and subsequently obtained and
8 the only other property out there is this home, the
9 deficiency judgement, they then seek to foreclose that on
10 the property, your client is okay with all that?

11 I mean, here's the problem. *Wheeler* is directly on
12 point. You look at the holding in *Wheeler*. And my clerk
13 just handed this back to me. But final paragraph, "At the
14 time -- at the time *Wheeler* petitioned the Probate Court for
15 approval she knew of Power's interest but had only received
16 an offer from the Corbets that was for more than the
17 appraisal and contained no unreasonable contingencies.
18 Given the circumstances, *Wheeler* would have most likely
19 breached her fiduciary duties had she not accepted the
20 Corbet's offer."

21 MR. JOHNSON: Now, was that decided on a motion for
22 summary judgement or was that decided on the basis of a
23 trial?

24 THE COURT: That's a good question. Let me look.

25 MR. HOWSER: It was an appeal from the Probate Court, I

1 believe, Your Honor. To the Circuit Court and then to the -
2 -

3 THE COURT: While I'm checking that, the action that's
4 filed in Richland, what are you all seeking to do in
5 Richland?

6 MR. JOHNSON: Remove the Trustee, Your Honor, for
7 damages.

8 THE COURT: Why isn't that being brought here? Because
9 the -- this action was initially instituted first. I created
10 a Probate File in Newberry, and under the probate code where
11 two actions can be maintained in more than one jurisdiction
12 the court that has first jurisdiction retains it until such
13 time as they find it is proper to move it.

14 MR. JOHNSON: Well, Mr. Knowlton lives in Columbia and
15 that's where the trust is administered and that's we've
16 chosen to bring it there.

17 THE COURT: Okay. What's this --

18 MR. JOHNSON: Nobody has moved to dismiss it or move it
19 to Newberry.

20 THE COURT: Have there been any hearings on that?

21 MR. JOHNSON: There was no hearing, because we went to
22 have a hearing on Mr. Bruner's motion to dismiss and Judge
23 McCulloch disqualified herself.

24 MR. BRUNER: That's right. We -- I filed a motion to
25 dismiss that action and asked --

1 THE COURT: Just because similar actions --

2 MR. BRUNER: There was a notice of dismissal --

3 THE COURT: -- similar actions pending between the same
4 parties?

5 MR. BRUNER: Collateral estoppel, similar actions. It
6 was a -- I believe that was a compulsory counterclaim that
7 was not raised in this action when he had time to do it,
8 various other grounds. We showed up in morning of the
9 hearing and I was handed a filed copy of a notice of
10 dismissal that I didn't consent to. The judge then recused
11 herself. We just got a new judge in that case, Your Honor.

12 THE COURT: Any idea when it's going to be heard?

13 MR. BRUNER: I have no idea, Your Honor. I'm just
14 happy to have today's hearing so we might have some progress
15 in this dispute.

16 MR. JOHNSON: Your Honor.

17 THE COURT: Yes, sir.

18 MR. JOHNSON: I guess I would ask you to consider the
19 fact that the history of what was going on and the dispute
20 over what was going on gives rise to a genuine issue of
21 material fact. Our affidavits are in direct contradiction
22 to their affidavits. And what this case needs is a trial on
23 the merits so that it is done one time and one time alone.
24 And if we try it, maybe that it turns out we lose it. But
25 we've got -- we've got a Trustee who had not signed the

1 contract at the time our offer was received who had a
2 fiduciary duty to -- since it was a sale to a transferor to
3 get to a reasonable fair -- fair and reflect fair market
4 value, and there was a question -- or arguably a question as
5 to what the language in the trust means or doesn't mean, and
6 there's a question of what -- and whether the trust is
7 controlled by the divorce decree or the terms of the trust.
8 And the Trustee nevertheless, after offering in January to
9 pay cash of \$138,000, ends up paying only cash of \$56,000
10 and then a promissory note at a time when Ms. Hobby's offer
11 would have put into the trust \$186,875. And that's all, I
12 would say, undisputed. Those things were there. The
13 Trustee has taken \$56,000 in cash and continues to maintain
14 a demand promissory note.

15 The fact that the Trustee did it in the face of an
16 offer from Ms. Hobby to put substantially more cash into the
17 trust raises a question of whether he got a fair, reasonably
18 fair market value deal or whether he took less than. And to
19 me it is a classic case of if the Trustee came to me and
20 said what should I do in this setting. We've got this
21 screwy set of facts. We've got the difference in Mr.
22 Hobby's offer. We've got her offer which is better. What
23 should I do. I don't know whether the trust language means
24 one thing or the divorce decree means another. What does a
25 Trustee do in that setting. What should he do to satisfy

1 his fiduciary duty is submit it to the court. And had he
2 done it we wouldn't be standing here today.

3 THE COURT: We wouldn't be standing here on this issue,
4 but I think we'd be in a far worse place because all the
5 assets would be in foreclosure.

6 MR. JOHNSON: Well, we don't -- we don't really know
7 that, Your Honor. We don't know what the pressing cash
8 needs are. All we have is a bold statement saying that
9 there were these cash needs. We do know that he'd have
10 gotten \$186,000 if he dealt with us, and he took 56. So
11 surely some further inquiry into the facts were warranted in
12 this case given this pattern and this history. I mean --

13 THE COURT: What is your solution? What would Ms.
14 Hobby's solution to the current dispute entail? She lives
15 in the house indefinitely and it stays in trust in
16 perpetuity, correct?

17 MR. JOHNSON: No, sir.

18 THE COURT: All right. What would you suggest to
19 resolve this so that the two of them can part ways?

20 MR. JOHNSON: You mean what could have been done or
21 what --

22 THE COURT: No today. Because we still have a trust.
23 I'm assuming we still have a Trustee that is trying to
24 maintain property that remains in the trust. Going forward
25 -- and I would hope that at some point Ms. Hobby appreciates

1 that litigation has to end. I think that everybody here
2 hopefully has that appreciation. What fixes this problem,
3 according to Ms. Hobby? What does she want?

4 MR. JOHNSON: She wants a trial on the merits.

5 THE COURT: No, no, no. I'm not talking about --

6 MR. JOHNSON: Oh, what does she -- what does she want?

7 THE COURT: I'm not talking about this case. What does
8 she want? What does she --

9 MR. JOHNSON: Your Honor, we --

10 THE COURT: What does she -- not a trial on the merits.
11 I'm not talking about legalese. What makes her a happy
12 camper?

13 MR. JOHNSON: Well, Your Honor, what she wants is she
14 wants to purchase the house, and she wants Mr. Knowlton to
15 resign and another Trustee be appointed because she thinks
16 Mr. Knowlton has acted impartially to her and wants someone
17 else to do it.

18 THE COURT: What's the problem with her offering to Mr.
19 Hobby to buy the house for more than he paid for it?

20 MR. JOHNSON: Well, I guess it's a matter of how much
21 more. But she's willing to --

22 THE COURT: I mean, she missed out. She -- a day late.
23 Maybe her dollars were better, so she wasn't a dollar short,
24 but she was a day late in making the offer.

25 MR. JOHNSON: Your Honor, we've offered to buy the

1 house for what Mr. Hobby has in it and I don't -- you know,
2 he's been adamant he's not going to sell it to her. We've
3 offered, as part and parcel to that, that Mr. Howser -- Mr.
4 Knowlton resigns. I have the feeling Mr. Knowlton -

5 THE COURT: Well, if we can get the house thing
6 resolved then I imagine that the trust -- it's a liquidating
7 trust. That's going to take care of itself.

8 MR. BRUNER: That's -- well, we hope so, Your Honor.
9 And I take issue with -- I take issue with the way Mr.
10 Johnson just phrased his point to the court. He said that
11 his client offered to buy the house for what Mr. Hobby has
12 in it. We have a fundamental disagreement about how much
13 money Mr. Hobby has in it. He had -- he would have the
14 court believe the only cash that has been paid is \$56,000,
15 and that simply is not true. Mr. Hobby's affidavit -- after
16 I got John McDougall's affidavit on Monday I talked to my
17 client, and Mr. Hobby has given an affidavit that I handed
18 to the court in reply, pursuant to the rules, before the
19 hearing that says -- and we've got bank statements showing
20 that he paid \$56,000 on February 2nd and the Trustee held
21 the check to give Mary Hobby more time to respond and she
22 didn't. He deposited the check on February 13th. On March
23 14th Mr. Hobby wired another \$56,000 to keep the trust in
24 operation through March. At the closing on April 19th Mr.
25 Hobby presented a certified check for the balance of Ms.

1 Hobby's 47 -- 42 and a half percent of the equitable
2 distribution. So, and John McDougall, in the affidavit he
3 gave on Monday, says -- says, "Thus, Mr. Hobby paid
4 \$138,125." That's in the last paragraph of his affidavit.
5 So -- and that is -- that was the structure of the deal
6 because that's the way the Defendant's offer was first
7 structured. I will buy out his interest. Mr. Hobby said I
8 will buy out his -- her interest. The essential terms of
9 that agreement were put in place and were enforceable when
10 the Trustee deposited the check and signed the back of it.
11 All this states clear, *Cash vs. Maddox* is a 1975 case that
12 you can prove an enforceable contract to sell property by
13 separate writings. So -- and I guarantee you that if the
14 Trustee had tried to back out, if he tried to back out and
15 accept her offer for the same amount of money, the Trustee
16 would have been faced with a dispute against Mr. Hobby for
17 specific performance. I may have become involved earlier.

18 MR. JOHNSON: Well, we don't know that. I haven't
19 deposed Mr. Hobby or Frank Knowlton. I don't know what
20 signed deal they made or if they made a signed deal, or made
21 a deal that he gets his 56 back and takes her contract or
22 what. But --

23 MR. BRUNER: Getting to the court's point, Your Honor,
24 we've tried to work this out. We've been trying to work it
25 out for -- since I've been on this case. I think it's going

1 to take -- I think it's going to take one party buying the
2 other party out of the trust, period. I think as long as
3 they are both co-beneficiaries under this trust and they
4 have a relationship, be it only in that nature, I think
5 there is going to be opportunity for the court to be
6 burdened with this dispute moving forward. We've talked
7 about trying to settle the trust alone. We've talked about
8 trying to integrate some ramification of the trust terms and
9 minimize the opportunity for dispute going forward. That
10 has -- that's gone nowhere. We're still here.

11 THE COURT: Well, I'm -- it's probably naive for the
12 court to believe that it could be settled and I don't think
13 that it would be settled, or it's possible that this could
14 ever be settled without court intervention. In all candor,
15 there's a reason that the trust was created in the first
16 place, and that's probably because the Family Court just
17 threw up its arms and said I can't take this anymore, so
18 we'll let the Trustee try and do this. I think this dispute
19 probably has more to do with who doesn't want somebody else
20 to have the house, and I think that's probably both sides.

21 MR. BRUNER: I want to ask Your Honor for an
22 opportunity to respond to Mr. Johnson's arguments. I don't
23 want to beat a dead horse.

24 THE COURT: Sure.

25 MR. JOHNSON: Your Honor --

1 THE COURT: He's raised some issues. The question is
2 at this point summary judgement, whether it's appropriate.

3 MR. BRUNER: That's right. If I may respond to those
4 points. If you have specific concerns, Your Honor, I'll be
5 glad to address those directly rather than go through my
6 notes.

7 THE COURT: No.

8 MR. JOHNSON: I didn't mention Mr. Howser's position,
9 but same argument.

10 THE COURT: Sure.

11 MR. JOHNSON: If you look at our affidavits and their
12 affidavits. I mean, I won't burden you with them.

13 MR. HOWSER: Your Honor, may I respond to what you
14 addressed about resolution of the matter?

15 THE COURT: Sure. Well, go ahead. I don't think it's
16 going to happen, so...

17 MR. HOWSER: Well, Mr. Knowlton has said I'll be glad
18 to resign. The problem is -- you know, he just -- then he's
19 just wide open to Ms. Hobby for a suit. And I think, quite
20 candidly, it would be to the detriment of the trust if he
21 did. For example, just last week, or maybe it was this
22 week, I got in a copy of an offer for a contract on the sale
23 of an asset of the trust in Maggie Valley. So he continues
24 to work to liquidate the trust. And it is my understanding
25 that Mr. Hobby doesn't want him to resign because he's been

1 dealing with all of these business assets trying to wrap
2 things up.

3 THE COURT: I understand. And then there's the
4 question of what fool would be stupid enough to take it.

5 MR. HOWSER: Exactly.

6 THE COURT: Go ahead.

7 MR. BRUNER: Your Honor, Mr. Johnson has told you that
8 the Defendant wants a trial on the merits and she's already
9 gotten that trial. She had -- she got her trial in
10 Magistrate's Court when she argued that the quick claim deed
11 Mr. Hobby received was not valid. The magistrate found
12 otherwise. I'll back up for a minute, Your Honor. I want
13 to flesh that out a little bit, but I want -- I'll back up
14 and address first his argument that summary judgement is
15 premature.

16 In order -- in order for a party who's opposing summary
17 judgement to prove it's premature they have to show that
18 there's a likelihood that further discovery would uncover
19 additional irrelevant evidence and that they have not -- or
20 that they have been diligently pursuing discovery. The
21 court -- I've got two cases, Your Honor, and I can give you
22 the cites. *Dawkins vs. Fields*, a S.C. -- 345 S.C. 58, and I
23 believe it's *Guynan vs. Tenant Health Systems of Hilton*
24 *Head, Inc.* G-u-y-n-a-n is the first party. That's 383 S.C.
25 48.

1 Your Honor, in *Dawkins vs. Field* the court held, "As to
2 Respondent's argument that summary judgement was premature
3 because they did not have a full and fair opportunity for
4 discovery, we hold that under the unusual circumstance of
5 this case the trial court appropriately granted summary
6 judgement," and they cite other cases. They say, "We
7 furthermore agree that further discovery was unlikely to
8 create any genuine issue of material fact." And a later
9 case in *Guynan* the court -- the court recited the holding in
10 *Dawkins vs. Field* and said, "A party claiming summary
11 judgement is premature because they have not been provided a
12 full and fair opportunity to conduct discovery must advance
13 a good reason why the time was insufficient under the facts
14 of the case and why further discovery would uncover
15 additional relevant evidence and create a genuine issue of
16 material fact." We have taken two depositions and the
17 Defendant has done nothing more than noticing one deposition
18 to pursue discovery. For the Defendant to claim now on the
19 eve of this hearing, and at this hearing, that they need to
20 conduct all these depositions and that therefore summary
21 judgement is premature is simply illogical. Moreover, I
22 would point, Your Honor, to the affidavit that Artie White
23 gave in advance of September's hearing. In that affidavit
24 Mr. White said, and I'm summarizing, I think title is in
25 question because there hasn't been a title opinion rendered.

1 That's the only reason he gave. He also said, I believe
2 this case needs more discovery. They're now here before you
3 six months later on the same issue saying that they haven't
4 had time to depose these witnesses. Now, had they issued --
5 had they served interrogatories we would have answered them.
6 And moreover, Mr. Hobby and Mr. Knowlton were identified by
7 the Defendant as witnesses. Ms. Hobby has known that Terry
8 Williams was the trust accountant for years, because she's
9 the beneficiary of the trust. She's known that. So this
10 Rule 56(f) summary judgement being premature argument is
11 nonsense. It absolutely is appropriate under this case.
12 Moreover, I did file an affidavit in support of the initial
13 complaint in this action. I filed an original complaint. I
14 verified complaint. I incorporated that complaint in
15 paragraph 38 of my amended complaint in this action. I also
16 relied -- the only exhibit to my motion, I relied on the
17 request to admit that I read to Your Honor where the
18 Defendant admits on record that the property was sold, that
19 it was sold before April 20, 2012, and that Mr. Hobby owns
20 the property. Now, despite those admissions, despite the
21 findings in Magistrate's Court and in this court, she's
22 still saying he doesn't own the property. What it boils
23 down to, Your Honor, is whether -- whether that transaction
24 between the Trustee and Mr. Hobby was binding on the trust.
25 It was. Just as Mr. Johnson and I can stand before you and

1 place the terms of the settlement agreement in this case on
2 the record and make it therefore binding under Rule 43(k),
3 the Trustee had the authority to sell the property for a
4 fair -- for fair market value as he did.

5 Now, Ms. Hobby may not like the terms of the settlement
6 agreement that we placed on the record and it's enforceable,
7 but her action would be against Mr. Johnson, just as my
8 client's would be against mine if he's unhappy with it.
9 It's a difference between whether the Trustee could have
10 done it and whether he should have done it. There's no
11 question that the trust agreement is clear and unambiguous
12 on these issues.

13 What Mr. McDougall offers in both his affidavits for
14 the court is his opinion of what he thinks the trust
15 agreement says. That's irrelevant and it's inadmissible.
16 When the trust -- when a contract is clear and unambiguous
17 it's a legal issue for the court to simply apply the terms
18 of the trust. And that's what we're asking you to do, Your
19 Honor.

20 We've got -- I can go through the rest of it. I think
21 as far as his motion to amend, if -- I'm severely prejudiced
22 at this point. We're here -- the case is a year long. I'm
23 here at the summary judgement phase and he wants to add a
24 constructive trust claim. It raises the same factual issues
25 that have already been decided and about which there's no

1 genuine issue -- genuine dispute.

2 THE COURT: Let me ask you this as a practical matter.

3 MR. BRUNER: Yes, Your Honor.

4 THE COURT: Even if I were to grant your relief -- I'm
5 not talking about the Trustee's relief -- requested relief
6 on his motion. But if I were to grant your relief, we're
7 still in the posture of having to try an action for damages
8 for trespass, correct?

9 MR. BRUNER: There would be a damages hearing only,
10 Your Honor. Yes, sir. And what that would do is it would
11 streamline the trial. It would streamline the cost of this
12 litigation when we have other cases that are filed and there
13 may be more to be filed later.

14 THE COURT: Isn't the damages hearing contingent on
15 what happens in the Court of Appeals? The --

16 MR. BRUNER: On the possession claim?

17 THE COURT: Right, yeah.

18 MR. BRUNER: I don't know that it is, Your Honor. Now,
19 it's -- procedurally it'll be a little funky. But I have a
20 damages claim, and I think theoretically my damages run up
21 to the date of -- the date of the hearing. The date of the
22 trial in the damages case. If I continue to accrue damages
23 after that I've got a whole new claim. What I'd rather do
24 is --

25 THE COURT: Wouldn't it be -- wouldn't it be more

1 affective, or at least easier to try -- because you alluded
2 at the beginning of the hearing to -- if the appeal is still
3 pending at the time that the damages is tried, they're going
4 to -- you're going to have to argue future damages. The
5 trial on damages, assuming that you get a verdict in your
6 favor, it would be subject to appeal. A stay may be issued
7 in that case. Who knows. The Court of Appeals might do it,
8 they might not. Wouldn't it be more expedient to get some
9 final ruling from the Appellate Court on the ejectment
10 portion so that damages could be fixed?

11 MR. BRUNER: I don't think so. I think -- I think all
12 -- I think all we'd do in that case -- all we'd do is
13 exactly what the Defendant wants. All we do is allow her to
14 pay experts and her attorney rather than pay rent. All we
15 do is keep the status quo, which is we allow her to continue
16 living in a house as a trespasser when she's been deemed so.
17 I think if you grant my motion for partial summary judgement
18 and the only question is how much she has to pay, I think
19 that would -- that might give a wake up call and encourage
20 her to come to her senses so we can settle it.

21 MR. JOHNSON: Your Honor --

22 THE COURT: Yes.

23 MR. JOHNSON: -- I take exception to the continued
24 disparagement of my client who is only exercising her
25 rights.

1 THE COURT: Certainly.

2 MR. JOHNSON: And I hope --

3 THE COURT: I won't take that into account.

4 MR. JOHNSON: I appreciate it. Thank you.

5 THE COURT: This is a domestic action. I know what
6 we're dealing with. But go ahead.

7 MR. JOHNSON: Here's what I was going to say, Your
8 Honor. I think this case cries out for a trial on the
9 merits. Do it once, let it go. If you grant partial
10 summary judgement today she's going to ask me what should we
11 do, and I'm going to say, well, we'll appeal it. And we'll
12 take it up and then we'll come back to you two or three
13 years later and, you know, deal with the case at another
14 time. So --

15 THE COURT: Is partial immediately appealable?

16 MR. JOHNSON: Your Honor, you're taking the --

17 MR. BRUNER: I do not know, Your Honor. But in that
18 case, if that's what happens and he does immediately appeal
19 it, effectively what we've got is what Your Honor was, I
20 believe, indicating a few minutes ago. We've got the case
21 stayed and presumably the two cases will be consolidated, or
22 we'd have a resolution on the possession case first so that
23 when we do come before a jury we'll have finality of the
24 damages. And that is if she has moved out by then.

25 THE COURT: Finish, Mr. Johnson. I'm sorry.

1 MR. JOHNSON: And then unfortunately we'd come back
2 some years later, even for a damage hearing or a trial on
3 the merits, then we'd take off again. My observation -- I
4 mean, I've been doing this almost as long as Mr. Howser.
5 Far longer than Mr. Bruner. Is it -- appellate courts
6 really don't like summary judgement, and if there's any
7 little issue you raise it's going to be sent back down. I
8 think judicial economy would be set a trial date. That
9 always -- an early trial date helps settle it. And an early
10 trial date gets it behind everybody, if they've got to get
11 it behind them.

12 THE COURT: It's not going to settle though. That's
13 naive.

14 MR. JOHNSON: I believe in miracles. It may happen.
15 And I'm going to go to my client and say the judge asked
16 these questions. How about it. But it may be -- I mean, I
17 intend to pursue it.

18 THE COURT: Well, we can keep paying lawyers and we can
19 keep dancing around the central issue, but at some point in
20 time --

21 MR. JOHNSON: It's going to be decided.

22 THE COURT: Well, at some point in time it's going to
23 be decided and at some point in time the parties have to
24 decide how to part ways. And I can't make that decision for
25 them because there's so much emotion involved in it.

1 Clearly they've had the riot act read to them, I'm sure, by
2 the Family Court and by a number of other judges, and if
3 they're so fixed in their positions that it hasn't been
4 settled yet, it ain't going to get settled in the future.
5 And so, they'll simply -- somebody will have to have a
6 settlement forced upon them.

7 I appreciate y'all's positions. I think I have a good
8 understanding of what's at stake here. I'll issue a ruling
9 shortly. That will probably -- by shortly I probably mean
10 in about two weeks.

11 MR. HOWSER: Your Honor, may I just make one -- I
12 didn't argue the indemnity. She's seeking equitable
13 indemnity from my client, and I'll just briefly say she
14 doesn't come into court with clean hands. She didn't comply
15 with the court order. She hasn't vacated the premises. And
16 she is not entitled to equitable indemnity. And I won't say
17 any more in view of the length of time Your Honor has given
18 to us to argue.

19 THE COURT: I feel like I've got a good feel of it, but
20 we'll see where it goes. Thank you all.

21 MR. HOWSER: Thank you, Your Honor.

22 MR. BRUNER: I would ask, Your Honor, I've got one
23 housekeeping issue.

24 THE COURT: Sure.

25 MR. BRUNER: There is a -- there is a matter of the

1 appellate bond. I have -- I have submitted a motion to the
2 Magistrate's Court but that motion was not decided. Judge
3 Halfacre told me to come see the court who issued the order
4 affirming his order. And Mr. Johnson is aware of this.
5 He's been copied on the correspondence. I have not moved
6 yet. If Your Honor is willing to entertain it, I'll make a
7 motion on the record right now. Otherwise, I can move -- I
8 can file a motion when I get back to the office today. But
9 there is an appellate bond in place that Judge Halfacre set
10 last year of \$10,000 based on a six month time period for
11 the Magistrate Court appeal. I believe that unless she
12 posts an appellate bond against my client's sufficient
13 security, I'm entitled to the writ of ejectment. And I
14 would ask Your Honor to consider the appellate bond based on
15 that nature. Based on the statutes, it's not -- if she does
16 not post the bond then I get a writ of ejectment. It's a
17 motion technically, I think, for the Defendant to make to
18 stay the issuance of the writ of ejectment pending her
19 appeal. However, I'm bringing an issue before the court now
20 just to avoid confusion.

21 THE COURT: I thought that that -- I thought that the
22 issue of bond was usually -- I've never had this issue arise
23 in the civil context. It's for the trial court to decide?
24 I thought the appellate courts --

25 MR. BRUNER: The statute says it's for the court that

1 issued the judgement. So what does that mean? Is it -- did
2 you issue the judgement when you affirmed the Magistrate
3 Court's order, or -- and for purposes of the appeal, I
4 believe it's your order being appealed to the Court of
5 Appeals. So in a sense, that is the judgement. Judge
6 Halfacre seems to take that position. I disagree, which is
7 why I asked him to hear it, because I think the judgement
8 was what he entered on the record in Magistrate's Court. My
9 client is entitled to something, too, if he --

10 THE COURT: Right. But, I mean, what I was meaning is
11 I was sitting in an appellate capacity, so I tend to sort of
12 agree with you. But then we've got the same jurisdictional
13 limits that they raised at the initial hearing whenever that
14 was last fall.

15 MR. BRUNER: That's correct.

16 THE COURT: With Halfacre. Do you all have a position
17 on that?

18 MR. JOHNSON: Our position is we oppose his position.

19 THE COURT: Of course.

20 MR. BRUNER: The My Cousin Vinny opening statement.

21 MR. JOHNSON: But I really haven't studied it, Your
22 Honor. I haven't had --

23 MR. BRUNER: I need something -- I'm entitled, I
24 believe, to the writ of judgement if she's not going to put
25 up money to cover the damages my client is potentially

1 incurring right now.

2 MR. JOHNSON: I disagree with that. And I think this
3 court loses its jurisdiction to make those kind of
4 determinations once the appeal has started. But --

5 THE COURT: I'm not going to rule off the cuff on that.
6 I would suggest that you make an appropriate -- that you
7 make a motion with this court. Outline in it what it is
8 that you are seeking, both in terms of the amount of the
9 bond and the authority of this court to order that bond in
10 light of the fact that this court was sitting in an
11 appellate capacity. And that way I can have the benefit of
12 doing a little research myself.

13 MR. BRUNER: I'll be happy to submit that on briefs,
14 Your Honor, so that --

15 THE COURT: If you don't mind. That may be the best --
16 the most effective way to do this.

17 MR. BRUNER: If Mr. Johnson would agree to do that,
18 that would be fine for you to hear that on briefs.

19 MR. JOHNSON: No, I'm not going to agree to that, hear
20 it on brief. I think you file your motion and we'll --

21 THE COURT: Let's see what -- let's start off with --
22 I'm not sure what the law is on that question, so let's
23 start there, and then try and get a feel for whether I
24 should even be hearing that. If it is appropriate to hear
25 it, then how much do you feel is appropriate for her to post

1 by way of bond.

2 MR. BRUNER: And if you don't have jurisdiction, some
3 guidance that we can take to the Magistrate's Court. This
4 is similar to the summary ejectment claim where I believe
5 there was concurrent jurisdiction. Judge McMahon disagreed.

6 THE COURT: Right.

7 MR. BRUNER: And we had -- we had to have that order to
8 take to the magistrate so that we could proceed in
9 Magistrate's Court.

10 THE COURT: Let's just do it by the numbers and see
11 where we stand. Thank you.

12 - - - END OF TRANSCRIPT OF RECORD - - -

13 October 17, 2014

14 THE COURT: This is a motion for reconsideration on
15 Hobby vs. Hobby. I think it's Mr. Bruner on behalf of Mr.
16 Hobby, is that right, or --

17 MR. BRUNER: Yes, Your Honor.

18 THE COURT: Yeah, Yeah. And then Mr. Johnson on behalf
19 of Mary Hobby and Mr. Howser on behalf of the Trustee.

20 This is a motion for reconsideration on one of the
21 Hobby cases. I don't know the case number specifically.
22 We've already addressed the eviction issue a couple of
23 months back, but this was something that was -- the court
24 had issued an order many, many months ago on the underlying
25 issues involving the Trustee; the Trustee's power, the

1 Trustee's authority to convey the property. And I had not
2 realized a motion for reconsideration had been filed on
3 this. I think what has probably happened is it went to the
4 Clerk's office and either they didn't notice to put it on
5 the docket or what have you, but the parties were gracious
6 enough to come in here today once it became apparent. I was
7 under the impression that the thing was already on its way
8 to the Court of Appeals, but clearly Mary Hobby had moved
9 for reconsideration and wanted a hearing. So at this point
10 in time I'll turn the record over to you.

11 MR. JOHNSON: Thank you, Your Honor. Pope Johnson for
12 Mary Hobby. We are here on my motion to reconsider. Always
13 a tough motion to make to tell the judge he ought to -- he
14 made a mistake and ought to look back at it. But I think
15 for any number of reasons the court ought to reconsider its
16 order and allow the case to go to trial on its merits in
17 November or February, which is probably the next term of
18 court up there.

19 Your Honor, your order basically talked about the broad
20 authority given the Trustee to liquidate, the absolute right
21 to sell, this sort of thing. What it did not discuss or
22 really answer the question is, what is the restriction if
23 it's a sale to one of the transferors of the trust. And we
24 believe and submitted affidavits to that effect of two
25 lawyers that the right of the Trustee to sell to one of the

1 transferors is restricted and it's restricted in a fashion
2 that says it has to be arms -- it has to be arms length,
3 that the terms are fair, reasonable and reflect fair market
4 value, and any other terms mutually agreeable to the
5 parties. Your order contained an error in that statement
6 from the trust. Your order referred to "Fair, reasonable --
7 excuse me, reasonable, fair, and reflect fair market value,
8 or such other terms as may be mutually agreeable by the
9 party," where the document says "and". And what Your Honor
10 doesn't address is why there is that language -- that there
11 is a restriction, why is there a restriction, what purpose
12 was it put in there for and how do you interpret the
13 language.

14 So we believe that that is a fundamental issue in your
15 order and we ask that you expand on it in an order based on
16 this motion, and we believe this warrants the court to
17 reconsider it's order and setting this order aside.

18 So we're asking in this motion specifically why -- ask
19 the court to tell us why the proviso was included, the
20 purpose it serves, why sales to the transferor are subject
21 to a different standard than to a third party, whether the
22 opinions of the wife's two experts are correct or incorrect,
23 and if so, the basis for the conclusion. And we ask that
24 you, upon reconsideration, deny the husband's and the
25 Trustee's motions for summary judgement.

1 Summary judgement obviously shouldn't be granted and
2 further inquiry into the facts is warranted. We believe
3 that even if you decide nothing else, further inquiry into
4 the facts are warranted. The wife made an offer on December
5 the 8th to pay the husband \$127,231 in cash. Not a payment
6 to the trust. A payment to Mr. Hobby. Mr. Hobby's offer
7 was to pay her 42 and a half percent of \$138,125 and leave
8 the property in trust. There was no -- there was no written
9 acceptance of the offer. No contract of sale was prepared.
10 Proposed terms apparently were renegotiated between the
11 Trustee and Mr. Hobby leading up to the sale, and when and
12 why that occurred is unknown. But what we do know is it
13 didn't result in the property being left in the trust. The
14 contract was signed dated April 19, 2012 isn't remotely
15 similar to the terms of his original offer that we were told
16 he -- the letter offer he had.

17 We -- inquire into the facts are warranted to find out
18 why they were renegotiated and the basis for them. I mean,
19 suppose we take Mr. Hobby's deposition, or the Trustee's
20 deposition, and they said, well, we did that because we
21 wanted to take advantage of Mary. We've got to work
22 together to squeeze her out of that. Now, obviously I
23 wouldn't expect that to be the testimony. But if it was, it
24 would certainly be enlightening to the court.

25 The contract, as I said, wasn't similar to what was

1 originally offered and Mr. Hobby, under the contract, was to
2 pay \$138,125 in cash with credit of \$56,000 versus her offer
3 which was \$186,875. Mr. Hobby's letter offer of January the
4 3rd said nothing about a note and mortgage, and the two
5 payments of \$56,000 that's referred to in the court order
6 doesn't total the \$138,125 that he supposedly paid. His
7 affidavit claims that \$138,125 was paid; however, the
8 contract only gave credit for \$56,000.

9 We ask the court to consider these as being factual
10 disputes, whether the wife's offer dated March 20th of 2012
11 for \$186,875 made 24 days prior to the April 19, 2012
12 contract was superior or not to Mr. Hobby's offer, and the
13 court didn't go through any analysis to try and reconcile
14 what he offered originally, what the contract said, and what
15 his affidavit said. And those are facts which we believe
16 warrant further inquiry into.

17 The order refers to the explicit provisions of the
18 trust and giving the Trustee wide discretion. And it goes
19 on to say he can sell the trust property to either
20 beneficiary if the terms are fair, reasonable and fair
21 market value, or if the beneficiaries can mutually agree on
22 other terms. Again, the document doesn't say "or" it says
23 "and" in your analysis and your order T's off on the "or"
24 language.

25 So we're asking the court -- the court also said in

1 footnote that "The wife's interpretation is inconsistent
2 with the plain language in the trust agreement and would
3 frustrate the purpose of the trust as a liquidating trust,"
4 which is nothing but a conclusion without a basis for what
5 that conclusion was, and any explanation as to how it would
6 frustrate the trust, the propose of the trust, and would be
7 inconsistent with the plain language in the trust. Which,
8 of course, the plain language restricts the power of the
9 Trustee to deal with a transferor.

10 Now, the court made no acknowledgment of the difference
11 between the power if he was selling to a third party to a
12 beneficiary. We ask the court to compare the wife's March
13 20, 2012 offer and the April 19, 2012 contract and determine
14 which was superior and why. And that's the whole theory of
15 their side of it is Mr. Hobby's offer was high. But if you
16 analyze and look at the contract and look at her letter, we
17 say that it's not superior at all.

18 Finally, Your Honor, we ask the court to consider --
19 reconsider its conclusion that at all times the Trustee
20 acted impartially. That's on Page 7 of your order. To the
21 extent the Trustee renegotiated privately with Mr. Hobby for
22 a different deal on it than they had told Ms. Hobby, she
23 could compete against, we fail to see how that is acting
24 impartially.

25 And the court says that there's only one reasonable

1 interpretation of the contract. Tell us why there's only
2 one real -- one reasonable interpretation of the contract.
3 We ask respectfully that you review these issues raised by
4 our motion and issue an order addressing each one
5 specifically. That's our burden in coming for a
6 reconsideration specifically for appeal. But I think the
7 process of working through it will tell you that summary
8 judgement should not have been granted to anyone that day.
9 From a practical standpoint, this case is on the trial
10 roster in November and I think there's a term in February.
11 The facts could be presented fully. There could be a full
12 record made of what went on. There could be -- and then it
13 could go up one time. Where we are now is, if you stand by
14 your order, we'll have to take it up now. My experience is
15 the appellate courts are very -- are not inclined to sustain
16 summary judgement rulings in any event. They seem to get
17 reversed all the time. And why not set your order aside,
18 let us go to -- have a merits trial and be done with it.

19 Thank you, Your Honor.

20 THE COURT: Thank you. That perhaps is the best
21 argument, the logistical problem that -- I'll let you all
22 address what he's raised. At the same time, clearly Ms.
23 Hobby is going to appeal this, that's going to drive us out
24 for at least a year and a half, maybe two years more. If
25 you all were to -- if the Plaintiff would care for me to

1 reconsider, then we'll try to this in November or February.
2 I'm more than happy to do it that way. At the same time, I
3 am somewhat comfortable with the order that I issued. But
4 do you all want to speak to the merits of that other view,
5 gentlemen, or the issues he's raised?

6 MR. HOWSER: Your Honor, I am very comfortable with
7 your order. It's a 15 page order. It goes into very, very
8 detailed findings. We argued this at some length before
9 you. We appeared, I think, in late March or early April.
10 And I can address a couple of points that Mr. Johnson has
11 raised.

12 What he overlooks is, and all this was before the court
13 initially, the original order of the Family Court granting
14 the divorce and creating the trust used the term "or" in the
15 alternative, you know, terms that the parties might agree
16 on. The trust agreement itself used the word "and" rather
17 than "or". We went into great detail through our affidavit
18 of Mr. Walker, who is a former head of the Trust Department
19 of First National Bank, he was head of Trust Operations for
20 South Carolina National Bank, as to his interpretation.
21 That may be a matter to leave to the interpretation of the
22 court, which I think the court has done in its order. And I
23 would point out that in footnote 4 of your order, you
24 specifically find -- and this is on Page 6 of your order,
25 "That although White argues that Article 9(a)32 of the trust

1 agreement would require the Trustee to obtain her consent
2 prior to selling the house to the husband. Such an
3 interpretation is inconsistent with the provisions of the --
4 is inconsistent with the provisions of plain language.
5 Moreover, second interpretation would frustrate the purpose
6 of the trust as a liquidating trust." And I think that's
7 the whole key. And I would point out that how this all got
8 started was when Ms. Hobby made an offer to purchase this
9 property. The Trustee was under an obligation, as Trustee,
10 to convey that offer to Mr. Hobby. Mr. Hobby gave a better
11 offer, as determined by the Trustee based on his conferring
12 with the accountant for the Trustee. Mr. Johnson raises an
13 issue about the contract wasn't signed for such and such a
14 period of time. Part of that problem was Ms. Hobby, as she
15 was obligated to do, would not convey this property, which
16 was titled in her name, to the trust. So the Trustee had no
17 property for which he could technically sign a contract
18 until she finally, pursuant to threat of litigation,
19 conveyed the property to the trust. The Trustee has broad
20 discretion here. He relied on the findings of his
21 accountant, an accountant agreed to by the parties, to
22 determine that Mr. Hobby's offer was superior because, among
23 other things, that offer included an advancement of \$56,000
24 to the trust which the Trustee could use to pay obligations
25 of the trust to prevent many of those obligations from going

1 into default.

2 I just -- it seems to me that the intentions made by
3 Mr. Johnson -- and I don't mean to be disrespectful, but
4 they seem to be nitpicking with your order which is a very,
5 very thorough order. And if we're going to have an appeal,
6 let's go ahead and appeal this order and see where we stand
7 after that, because I think the Trustee has performed his
8 duties as required of him by law, has the protections of the
9 code, and quite frankly, when this trust was created it was
10 a way to try and resolve the issues, and he's in the middle
11 of the domestic fight that, I guess, could have been
12 resolved in the Family Court. But as someone said, if
13 someone assumed the position of Trustee under these
14 circumstances, what could he expect to be sued. And I think
15 Your Honor has addressed all the issues thoroughly and
16 there's no basis for Your Honor to reconsider and change his
17 order.

18 THE COURT: Thank you, Mr. Howser. Mr. Bruner, do you
19 want to chime in?

20 MR. BRUNER: Yes, sir. I fully agree with Mr. Howser,
21 as the court might expect, with respect to the merits of Mr.
22 Johnson's motion. There are no new arguments or evidence
23 being argued here.

24 This is really a case of -- I think in one of my
25 memorandum in one of these civil actions I called it

1 settlor's remorse. And that's really what we're here about.
2 There was an agreement. Ms. Hobby is unhappy about how that
3 agreement has played out, and that's the whole reason we're
4 here.

5 Your Honor correctly felt that -- found in his order
6 that the trust is clear and unambiguous. The court doesn't
7 need to take evidence or consider evidence to interpret an
8 agreement that's clear and unambiguous. You just apply it.
9 And that's exactly what Your Honor did. And in the court,
10 as Mr. Howser noted, correctly found that the Defendant's
11 interpretation is simply not workable.

12 THE COURT: It would give her or any other party, or
13 any other beneficiary under the trust, veto authority over
14 any actions of the Trustee.

15 MR. BRUNER: That's correct, Your Honor, and that's --
16 that defeats the whole purpose of forming this liquidating
17 trust.

18 The Defendant, Mr. Johnson mentioned that he'd like the
19 chance to conduct depositions and conduct discovery on
20 issues and facts he says exist. The fact of the matter is,
21 they've had ample opportunity to take depositions and
22 conduct discovery and they haven't. There have been some
23 depositions, but there's been ample opportunity to depose
24 Mr. Hobby and Mr. Knowlton, and those just simply haven't
25 been -- that opportunity hasn't been ceased by the

1 Defendant.

2 In essence, what the Defendant is asking the court to
3 do is kick this down the road to delay an inevitable appeal.
4 We disagree with that, Your Honor. We've been trying to
5 find a resolution to this from the beginning, as was evident
6 the last time we were before you with my motion in regards
7 to the supersedeas bond. We're just trying to bring this to
8 a head and bring this to a conclusion as quickly as
9 possible, and we think that upholding your order, going
10 ahead and briefing the appeal and letting the Court of
11 Appeals to take it up is the best way to do that.

12 So we ask that the motion be denied, Your Honor.

13 THE COURT: Thank you.

14 MR. JOHNSON: Your Honor, would you hear just a --

15 THE COURT: Go ahead, please. Yes, sir.

16 MR. JOHNSON: -- word or two from the nitpicker?

17 THE COURT: By all means.

18 MR. JOHNSON: Your Honor, Mr. Howser brings on the very
19 point, or the nub of the matter. And I would hand you your
20 order and Page 6 and let you look at the footnote and then
21 look at this language the first of the paragraph. And what
22 you'll see is at the top it talks about the document being
23 explicit giving the Trustee power to sell if it's fair, fair
24 market value and reasonable, or if the beneficiaries can
25 agree on something else. That is not what the trust

1 document says and your order is, if you go through it, (??)
2 is T'd off on that point. The footnote says it's
3 inconsistent with the plain language of the trust agreement.
4 What does that language mean and why was it necessary and
5 what does it accomplish. Your order would ignore that
6 language in the trust and just disregard it. And, of
7 course, if it wasn't there it would be inconsistent with the
8 plain language.

9 This matter came out of a divorce. A very bitter
10 divorce between the parties. And our affidavit from John
11 McDougall talks about he was there to protect the party from
12 having an asset go to the other party under terms that they
13 don't agree with. I mean, if they could agree to settle it,
14 to sell, they wouldn't have had the fight they had in the
15 divorce action or need to liquidate any trust. And --

16 THE COURT: And I do understand your position on that,
17 and perhaps that's the best argument that you have. Just so
18 that I'm fully understood. It's the very acrimony in that
19 divorce that, based upon Ms. Hobby's interpretation of the
20 trust agreement, that would essentially frustrate the trust
21 agreement. As a practical matter, currently she is residing
22 in the house. She has been there for the period of time
23 since the parties separated, and she doesn't want to leave.
24 And that's simply the brass tacks.

25 MR. JOHNSON: I understand.

1 THE COURT: Right. And that's where we are. And I do
2 understand that. If the court -- because that's where we
3 are. But if the court were to read the trust agreement with
4 the conjunctive "and" instead of the disjunctive "or" then
5 essentially there would be no way for the liquidating trust,
6 because she has no desire to leave the house. She has no
7 intention to leave the house. She really wants to leave the
8 house. So if she has to sign off on anything and everything
9 that is done in terms of liquidating any property placed
10 into the trust, if she has to mutually agree on the terms of
11 any liquidation, regardless of how fair, reasonable or what
12 have you the terms might be, she has the automatic authority
13 to frustrate the very underlying purpose of that trust. And
14 I do understand your position though on the "and" as opposed
15 to "or".

16 MR. JOHNSON: Well, Your Honor, she only has the --
17 either of them only have the ability to frustrate the sale
18 to the other party. It doesn't -- it only relates to a sale
19 from the other party. And that, Your Honor, is the only way
20 you can interpret that with the word "and" in the middle of
21 the two phrases is it takes two things. It takes fair
22 reasonable and fair market value and such other terms as
23 agreeable between the parties. They can go sell it to
24 anybody in the word and the Trustee has got -- he pretty
25 well has as wide a discretion as you get. The only person

1 that he can't sell it to without complying with the terms of
2 the trust is Mr. Hobby. So -- and Mr. McDougall's affidavit
3 described that that language was put in as a protection of
4 the parties from having the other party acquire the terms
5 they aren't satisfied with. And I believe --

6 THE COURT: And I do understand that position. And
7 again, that might be the strongest argument and it might be
8 where ultimately you win. The logistical problem, again
9 with the way your client acted, my understanding was that
10 both parties were given an opportunity to bid on this
11 property. From what I understand from the file, this is a
12 fairly unique property. It's a very nice house. A very
13 expansive house. I think it even has tennis courts. So
14 it's a very pretty piece of property that's going to have a
15 very specific buyer type clientele. The Trustee put it out
16 there. Okay. Give me bids husband, wife. Husband made an
17 offer. Wife had an opportunity to counteroffer. She did
18 not do that within the timeframe established by the Trustee.
19 At the time that this transaction took place, or at the time
20 that these offers were made, again, and the order reflects
21 this, but there was a cash need, or a need for cash infusion
22 on the trust. This was not -- and, of course, Ms. Hobby
23 wanted to stay in the house. So the Trustee's options as
24 far as getting a listing agent to list the house, locating a
25 buyer for an extremely expensive and unique piece of

1 property, all the while dealing with a person who clearly
2 wanted to remain in the house, getting her cooperation in
3 showing that house to any prospective buyers, that may have
4 very well been -- or that probably would have been more than
5 one could reasonable expect based on the timeframe that we
6 were dealing with. The long and the short of it, she had a
7 chance to make an offer on the place and she didn't do so
8 within the timeframe. And that is, of course, part of the
9 orders, or part of the court's consideration as well.

10 But I see you want to say something else, so go right
11 ahead, please.

12 MR. JOHNSON: I would like to make one more point, Your
13 Honor.

14 THE COURT: Sure.

15 MR. JOHNSON: Your order doesn't discuss it, and I
16 challenge you to tell us in a subsequent order, how Mr.
17 Hobby's offer changed from his January offer to the terms
18 under which he bought it.

19 THE COURT: Do you all want to address that? You all
20 care to go into that or --

21 MR. BRUNER: Your Honor, I think that's addressed in
22 Mr. Hobby's affidavit, the terms of his offer. All this was
23 argued before the court in March.

24 I would like to make one point though in response to
25 Mr. Johnson's argument about the limitation that applied, he

1 says, specifically to transfers to beneficiaries of trust.

2 THE COURT: All right. Go ahead.

3 MR. BRUNER: If he is correct -- if he is correct and
4 the Trustee was required to get consent from both of the
5 beneficiaries, from Mr. and Ms. Hobby, in order to sell the
6 house to either one of them, then why did Ms. Hobby make an
7 offer in the first place in December of 2011 that was the
8 low ball offer that Mr. Hobby was responding to with his
9 counter-offer. And moreover, if he's correct, how does she
10 get to stay in the house. If Mr. Johnson is correct and his
11 interpretation of the trust agreement is so, then Mr. Hobby
12 would have to consent to the Trustee selling the house to
13 Ms. Hobby. And she still doesn't get to stay in the house,
14 if they're correct. Neither one of them gets it and she
15 still has to move. I don't think that's what she wants. I
16 don't think that's her overall position. You know, I think
17 this is just clearly a case, as I said before, that she
18 doesn't like the application of the terms she agreed to as
19 part of the divorce.

20 MR. HOWSER: May I just say one thing. Not to argue,
21 but just to point something out, perhaps for the benefit of
22 the court.

23 Under the divorce decree on Page 8, paragraph 3,
24 continuing over to Page 9. The divorce decree says this.
25 "To effectuate a complete, fair and equitable apportionment

1 of marital assets and debts, the parties shall create a
2 trust." And then just skipping over to the next page in
3 subparagraph F it says, "Either party may purchase any asset
4 from the trust provided the sale and terms are reasonable,
5 fair and reflect fair market value or other terms mutually
6 agreeable to the parties." Somehow in the trust agreement
7 the word "or" got changed to "and". But the intent under
8 the divorce decree was to permit the Trustee to sell under
9 terms of a fair reasonable and reflect market value, or if
10 the parties wanted to agree on some other terms, say, less
11 than fair market value, then they could.

12 THE COURT: She can have it for a dollar.

13 MR. HOWSER: She can have it for a dollar.

14 THE COURT: Was the -- I recall at some point looking
15 at the divorce decree, or the order that came out of the
16 Family Court. Was that by consent? Was it something that
17 the parties had agreed to or was it something --

18 MR. HOWSER: Agreed to, and the judge went into great
19 detail to make sure that they understood and agreed to the
20 terms of the divorce decree. And I think it recites on Page
21 7, approval of agreement, and goes into a lot of detail
22 about what the court went into to make sure that the parties
23 understood what they were agreeing to.

24 THE COURT: All right. Go ahead.

25 MR. JOHNSON: The argument Mr. Howser makes there's a

1 difference between what's in the decree and what's in the
2 trust agreement is just another reason why further inquiry
3 into the facts and the factual inquiry is needed. Mr.
4 Bruner says Mr. Hobby's affidavit explains why what he
5 offered originally wasn't what he ended up with in terms of
6 buying the property. The terms are different. Normally you
7 would be entitled to take a deposition of Mr. Hobby, flesh
8 out the facts and see whether what he says -- whether Mr.
9 Knowlton agrees with it. But the court found that further
10 discovery was unnecessary because of the analysis of the --
11 based on the word "or". And if you were sitting as a
12 non-jury judge hearing all this and considering all the
13 affidavits, we'd be in a different situation. But the
14 question is really is further inquiry needed. Is there a
15 conflict or are there facts that are disputed. And when Mr.
16 Hobby buys the house, makes one offer, buys it on completely
17 different terms, there's -- you're talking about the -- his
18 contract being accepted before Ms. Hobby acted. There's no
19 acceptance of a contract. There's not the first written
20 document that would say that they accepted his original
21 offer because -- and we know that because when he bought it,
22 the terms under which he bought it are completely different.
23 And Ms. Hobby had made what we believe to be a superior
24 offer before that.

25 So for those reasons, Your Honor, we would ask that you

1 set your order aside and let us finish -- take a couple
2 depositions and be done with it.

3 THE COURT: Very good. I appreciate everyone's input.
4 I may have mentioned this back when we initially had the
5 hearings on this. I can count on a single hand the number
6 of times I have granted summary judgement in four years.
7 This was one of them. I would think as an initial matter
8 that the divorce decree obviously would, since it's the
9 instrument or it's the order of the court sets up the manner
10 in which the parties are going to finalize the equitable
11 distribution of the property, it would have to control and
12 supercede any subsequent document, especially since
13 obviously it's -- it's a product of something that the
14 parties agreed to at the time of the domestic litigation. I
15 will, however, take a second look at this, of course, and
16 will be issuing an order, if not by the end of the day --
17 I'm going to be out of pocket next week. But if I can't get
18 this looked at hard enough today then I intend to have
19 something within the week or 10 days.

20 All right, gentlemen?

21 - - - END OF TRANSCRIPT OF RECORD - - -

22

23

24

25

Certificate of Reporter

I, the undersigned, Tara T. Scott, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Newberry County, South Carolina, on the 12th day of March, 2014 and 17th day of October, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Tara T. Scott

Tara T. Scott, CVR

Circuit Court Reporter

Greenwood, South Carolina

January 19, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby)
Plaintiff,)

Civil Action No. 2013-CP-36-193

vs.)

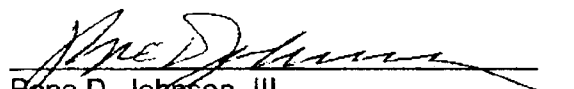
**DEFENDANT'S NOTICE OF MOTION
AND MOTION TO DISMISS**

Mary T. Hobby)
Defendant.)

FILED
NEWBERRY COUNTY
2013 MAY 9 AM 11:00
JACQUE S. HORTON
CLERK OF COURT

TO: THE PLAINTIFF and his attorney BENJAMIN C. BRUNER

YOU WILL PLEASE TAKE NOTICE that the Defendant will move to dismiss the complaint in this matter for lack of subject matter jurisdiction upon the grounds that the claim for summary ejection upon which all claims are based is a statutory claim within the jurisdiction of the magistrate court, not the circuit court.


Rope D. Johnson, III
Johnson & Barnette, LLP
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Columbia, SC 29211
803-799-9791
803-253-6084 (Fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
May 8, 2013

#1

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

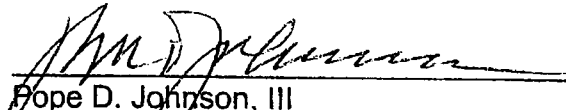
Raymond D. Hobby)
Plaintiff,)
vs.)
Mary T. Hobby)
Defendant.)
_____)

Civil Action No. 2013-CP-36-193

**DEFENDANT'S NOTICE OF MOTION
AND MOTION TO DISMISS**

TO: THE PLAINTIFF and his attorney BENJAMIN C. BRUNER

YOU WILL PLEASE TAKE NOTICE that the Defendant hereby moves pursuant to Rule 12(b)(1), SCRCP, to dismiss the amended complaint in this matter for lack of subject matter jurisdiction upon the ground that the subject matter of the amended complaint is related to trusts and is in the exclusive jurisdiction of the probate court pursuant to S.C. Code Ann. §62-1-302.


Pope D. Johnson, III
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pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
June 17, 2013

FILED
NEWBERRY COUNTY
JUN 18 2013 10 05 AM
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby)
Plaintiff,)

Civil Action No. 2013-CP-36-193

vs.)

CERTIFICATE OF SERVICE

Mary T. Hobby)
Defendant.)
_____)

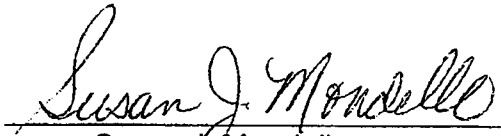
I, Susan J. Mondello, of Johnson & Barnette, LLP, hereby certify that I have served Benjamin C. Bruner, attorney for the defendant, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to him at the following address on the 17th day of June, 2013.

COUNSEL SERVED:

Benjamin C. Bruner
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260-1110

PLEADINGS:

Notice of Motion and Motion to Dismiss


Susan J. Mondello

FILED
NEWBERRY COUNTY
2013 JUN 18 AM 10 05
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Raymond D. Hobby,)
)
Plaintiff,)
)
v.)
)
Mary T. Hobby,)
)
Defendant.)
_____)

Case No.: 2013-CP-36- 0193

**NOTICE OF MOTION AND
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

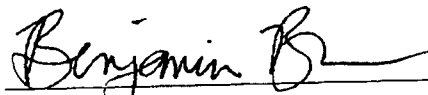
TO: THE DEFENDANT, ABOVE-NAMED

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Raymond D. Hobby ("Plaintiff"), by and through his undersigned counsel, will move before the Presiding Judge for the Eighth Judicial Circuit, on the tenth days after service hereof, or as soon thereafter as he can be heard, for an order of partial summary judgment against the Defendant pursuant to Rule 56(c), SCRCP, because there is no genuine issue of material fact in this matter as to liability. This Motion is made upon the following grounds:

- (1) This is a dispute over the use of real property ("Property") located in Newberry County.
- (2) There is no genuine issue of fact that the Property was sold;
- (3) There is no genuine issue of fact that Plaintiff has been the owner of the Property since April 19, 2012; and
- (4) There is no genuine issue of fact that Defendant has continued living on the Property after it was sold, without Plaintiff's permission and without making any payments to the Plaintiff.

Accordingly, Plaintiff is entitled to an order of judgment against the Defendant as to liability for damages, with a damages hearing to follow as the Court may schedule. This Motion is supported by the record in this case, by the Defendant's admissions, a true and accurate copy

of which are attached as **Exhibit A**, and may be further supported by memorandum, by affidavit, and by such cases as have been made and provided. Pursuant to Rule 11, SCRCP, the undersigned has no duty to consult with Counsel for the Defendant before filing this Motion.



James L. Bruner
Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
803-252-7693
Attorneys for the Plaintiff

July 8, 2013

EXHIBIT A

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
Raymond D. Hobby	)	Civil Action No. 2013-CP-36-193
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S RESPONSE TO
	)	PLAINTIFF'S FIRST REQUESTS
Mary T. Hobby	)	FOR ADMISSIONS
	)	
Defendant.	)	
	)	

The defendant responds to the Plaintiff's First Requests for Admissions dated May 23, 2013 as follows:

1. Admit the authenticity of the documents attached as Exhibits A through Q. If you deny the authenticity of any documents, or any portion thereof, please specify which ones you admit and which ones you deny, and state the basis for your denials.

RESPONSE: Admitted.

2. Admit the terms of the Trust allowed the Defendant to live on the Property until it was sold, or until she moved out.

RESPONSE: Admitted.

3. Admit the Defendant offered to purchase the Property in 2011.

RESPONSE: Admitted.

4. Admit the Defendant offered to purchase the property for \$225,000.

RESPONSE: Denied.

5. Admit the Plaintiff offered to purchase the Property for \$325,000.

RESPONSE: Denied.

6. Admit the Trustee sold the Property.

RESPONSE: Admitted.

7. Admit the Trustee sold the Property before April 20, 2012.

RESPONSE: Admitted.

8. Admit the Trustee sold the Property to the Plaintiff.

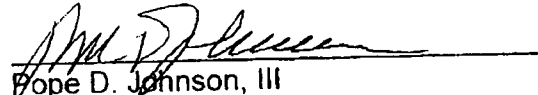
RESPONSE: Admitted.

9. Admit the Plaintiff paid the Trust \$325,000 for the Property.

RESPONSE: Denied.

10. Admit the Plaintiff owns the Property.

RESPONSE: Admitted that the plaintiff holds a quitclaim deed to the property.


Pope D. Johnson, III
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P.O. Drawer 11209
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803-253-6084 (Fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
July 1, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Raymond D. Hobby,)
)
Plaintiff,)

C/A No.: 2013-CP-36-0193

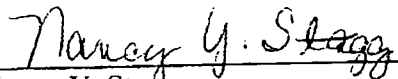
v.)

CERTIFICATE OF SERVICE

Mary T. Hobby,)
)
Defendant.)

I, Nancy Y. Stagg, a Legal Assistant with the law firm of Bruner, Powell, Wall & Mullins, LLC, attorneys for the Plaintiff, do hereby certify that on this 8th day of July, 2013, I served the Motion for Partial Summary Judgment upon the counsel for Defendant by depositing a copy of same in the U.S. Mail, First Class, postage prepaid, addressed as follows:

Pope D. Johnson, III, Esquire
Johnson & Barnette, LLP
PO Drawer 11209
Columbia, SC 29211-1209
Attorneys for Defendant


Nancy Y. Stagg

Columbia, South Carolina
July 8, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby,)
Plaintiff,)

C/A No.: 2013-CP-36-193

v.)

Mary T. Hobby,)
Defendant.)

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT'S MOTION
TO DISMISS AND IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff Raymond D. Hobby ("Plaintiff") offers the following Memorandum in Opposition to the Defendant's Motion to Dismiss and in support of the Plaintiff's Motion for Partial Summary Judgment in the above-referenced action. For the reasons set forth below, this is not a matter related to a trust, the Defendant's Motion to Dismiss should be denied, and the Plaintiff's Motion for Partial Summary Judgment should be granted.

FACTUAL AND PROCEDURAL BACKGROUND

This is an action arising out of Plaintiff's purchase of a house located at 544 Crowder Road in Newberry County ("the Property"). Plaintiff purchased the Property from a liquidating trust ("the Trust") that was created when the parties were divorced in 2010.

Prior to Plaintiff owning the Property, the Defendant owned it. The Divorce Decree required the Defendant to convey the Property into the Trust so it could be liquidated and the proceeds appropriately disbursed. (October 8, 2010 Divorce Decree, attached as Exhibit A.) The Plaintiff and Defendant are the only beneficiaries to the Trust.

On December 8, 2011, the Defendant offered to purchase the Plaintiff's interest in the Property from the Trust. (December 8, 2011 Letter from McDougall, attached as Exhibit B.) In her offer, the Defendant proposed "that the \$300,000 value of the [P]roperty be discounted by

25% or \$75,000 leaving a balance of \$225,000.” *Id.* Based upon that valuation, she offered to pay the Trust \$127,231 for the Property.

On January 3, 2012, the Plaintiff made a counteroffer to purchase the Defendant’s interest in the Property for \$138,125.00, based upon a valuation of \$325,000. Both the cash payment to the Trust and the property valuation were higher than the Defendant’s offer. The Trustee relayed the Plaintiff’s offer to the Defendant and gave her reasonable time to respond, but she failed to make a better offer. (Aff. of Francis B.B. Knowlton, ¶¶ 6-9, attached as Exhibit C.) In early February, the Trustee accepted Mr. Hobby’s offer. (Aff. of Knowlton, ¶ 11.)

On April 11, 2012, the Defendant conveyed the Property to the Trustee, something she was required to do years prior according to the October 8, 2010 Divorce Decree. (*See* General Warranty Deed from Def. to Trustee, attached as Exhibit D.)

On April 19, 2012, the Trustee and Plaintiff closed the sale of the Property, and the Plaintiff received a quitclaim deed to the Property. (*See* Aff. of Knowlton ¶¶ 11-14; Quitclaim Deed to Plaintiff, attached as Exhibit E.)

After Plaintiff acquired title to the Property, he demanded that the Defendant move out, but she refused. The Plaintiff then commenced an ejectment action in the Magistrate Court (“Magistrate’s Court Case”). (Notice to Quit, attached as Exhibit F.) The Defendant answered, alleging the Magistrate Court lacked subject-matter jurisdiction. (Def’s Answer in Magistrate’s Court Case, attached as Exhibit G.) In addition, the Defendant commenced an action in the Family Court (“Family Court Case”) and obtained an emergency order from the Family Court temporarily enjoining the Plaintiff from pursuing ejectment. *Id.* In the Family Court Case, the Defendant sought (i) a ruling that the Plaintiff’s quitclaim deed is void *ab initio*, (ii) for the Court to perform the Trustee’s job of determining who would be allowed to purchase the Property, and

(iii) for the Court to give her the right to live on the Property rent-free until all the Trust assets are liquidated. (January 7, 2013 Order, attached as Exhibit H at 3.) On January 7, 2013, the Family Court rejected the Defendant's arguments, held it lacked subject-matter jurisdiction, and issued an order dismissing her claims related to the Property. (January 7, 2013 Order at 5-7.) The Defendant still refused to move out.

Plaintiff contacted the Magistrate's Court to reschedule the Magistrate's Court Case for a hearing; however, the Court informed the Plaintiff that the matter was one for the Circuit Court. (See 1/18/2013 E-mail from Gordon Johnson, attached as Exhibit I.) Following the Magistrate's instructions, Plaintiff commenced this action and filed a Motion for Summary Ejectment. The Defendant contested the Motion, again arguing the Court lacked subject-matter jurisdiction. The Defendant argued the summary ejectment claim was in the exclusive jurisdiction of the Magistrate's Court based on S.C. Code Ann. § 15-67-610. (Def's Motion to Dismiss, attached as Exhibit J.) Judge McMahon agreed and issued an order on May 31, 2013 denying the Plaintiff's Motion for Summary Ejectment. (May 31, 2013 Order, attached as Exhibit K.)

The Plaintiff then proceeded with his summary ejectment claim in the Magistrate's Court. At trial before the Magistrate on June 28, 2013, the Defendant took a position directly contrary to the one she argued before Judge McMahon. The Defendant argued, as she does on her appeal, that the Magistrate's Court lacked subject-matter jurisdiction of the summary ejectment claim. The Magistrate disagreed, proceeded with the hearing, and ultimately ruled in favor of the Plaintiff. (See 7/19/2013 Return from Magistrate's Court, attached as Exhibit L; and Notice of Appeal, attached as Exhibit M.)

Currently, the Defendant's appeal from the Magistrate's order of judgment is before the Court. In addition, two motions are pending in the immediate case: the Defendant's Motion to

Dismiss pursuant to Rule 12(b)(1), SCRCP, and the Plaintiff's Motion for Partial Summary Judgment. Specifically, the Plaintiff seeks summary judgment as to liability on his First, Second and Fifth causes of action. For the reasons set forth below, the Defendant's Motion to Dismiss should be denied, and the Plaintiff's Motion for Summary Judgment as to liability should be granted.

DISCUSSION

I. The Defendant's Motion to Dismiss should be denied because this Court has subject-matter jurisdiction over the Plaintiff's claims.

The Defendant contends this Court lacks subject-matter jurisdiction over the Plaintiff's claims because the Probate Court has exclusive original jurisdiction. *See* Rule 12(b)(1), SCRCP.

The Probate Court is not a constitutional court and, therefore, its jurisdiction is defined by statute. *Judy v. Judy*, 393 S.C. 160, 169, 712 S.E.2d 408, 412 (2011), *reh'g denied* (Aug. 5, 2011). S.C. Code Ann. §§ 62-1-302 and 62-7-201 govern the Probate Court's jurisdiction over matters related to trusts. The general jurisdictional statute in the Probate Code provides,

To the full extent permitted by the Constitution, **and except as otherwise specifically provided**, the probate court has exclusive original jurisdiction over all subject matter related to. . . trusts, inter vivos or testamentary, including the appointment of successor trustees. . . ."

S.C. Code Ann. § 62-1-302(a) (emphasis added). Certain actions, however, may be removed to the circuit court. S.C. Code Ann. § 62-1-302(d).

The South Carolina Trust Code modifies the general jurisdiction statute by specifically providing,

Subject to the provisions of Section 62-1-302(d), the probate court has exclusive jurisdiction of proceedings initiated by interested parties **concerning the internal affairs of trusts**. Proceedings that may be maintained pursuant to this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts.

S.C. Code Ann. § 62-7-201(a) (emphasis added). With respect to the external affairs of a trust, the Trust Code confers concurrent jurisdiction to the Probate Court and the Circuit Court. S.C. Code Ann. § 62-7-201(c). External affairs of a trust include, but are not limited to, proceedings to determine the existence or nonexistence of a trust, actions by or against creditors or debtors of trusts, and other actions and proceedings involving trustees and third parties. *Id.*

In this case, the Trust sold the Property to the Plaintiff for \$325,000.00 to generate income to continue servicing the Trust obligations. (Aff. of Knowlton ¶ 5.) The Plaintiff's claims are not for a distribution from the Trust, they do not seek a declaration of rights of the parties, nor does he challenge the administration of the Trust. Instead, just as anyone else who buys real estate, the Plaintiff wishes to exercise his right to use and enjoy his Property. The Court need not determine the parties' rights or any other issue related to the internal affairs of the Trust. At most, the Plaintiff's claims relate to external affairs of the Trust. Accordingly, the Probate Court does not have exclusive original jurisdiction over the Plaintiff's claims.

It must be noted that the Defendant has raised several claims which *are* within the Probate Court's exclusive jurisdiction. The Defendant's counterclaim for a declaration of rights of the parties to the Trust, as well as the Defendant's third-party claims against the Trustee no doubt are matters which should be brought in the exclusive original jurisdiction of the Probate Court. Those claims, however, cannot undermine this Court's subject-matter jurisdiction over the Plaintiff's claims. The Defendant is certainly capable of filing her claims in the Probate Court if she wishes to prosecute them.

Accordingly, the Defendant's Motion to Dismiss pursuant to Rule 12(b)(1), SCRPC, should be denied.

II. The Plaintiff's Motion for Partial Summary Judgment should be granted because there is no genuine issue of material fact that Plaintiff has owned the Property since April 19, 2102 or that Defendant has lived on the Property without the Plaintiff's consent

The Plaintiff moves this Court for partial summary judgment as to liability on three of its causes of action. For the reasons discussed below, there is no genuine issue of material fact that the Plaintiff is the legal owner of the Property or that the Defendant has lived there for over one year without paying any rent. There is therefore no triable issue about the Defendant's liability. The only issue left to be decided is the amount of damages.

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

a. There is no genuine issue of fact that the Defendant is liable to the Plaintiff for trespass.

In his second cause of action, the Plaintiff prays for damages from the Defendant for trespass. "Trespass is any intentional invasion of the plaintiff's interest in the exclusive possession of his property." *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 357, 559 S.E.2d 327, 337 (Ct. App. 2001). "To prove a trespass, a party must establish: (1) that he was in legal possession of the property; (2) that the defendant [or his agent] voluntarily entered upon the plaintiff's property; and (3) that such entry was made without the plaintiff's permission." Ralph King Anderson, Jr., *South Carolina Requests to Charge – Civil*, 2002 § 4-43; see also Michael G. Sullivan, *Elements of Civil Causes of Action* 245-48 (2000). "For a trespass action to lie, 'the act must be affirmative, the invasion of the land must be intentional, and the harm caused by the invasion of the land must be the direct result of that invasion.' " *Hawkins v. City of Greenville*,

358 S.C. 280, 297, 594 S.E.2d 557, 566 (Ct. App. 2004) (quoting *Mack v. Edens*, 320 S.C. 236, 240, 464 S.E.2d 124, 127 (1995)). See also *Coll. of Charleston Found. v. Ham*, 585 F. Supp. 2d 737, 750 (D.S.C. 2008) and *West v. Newberry Elec. Co-op.*, 357 S.C. 537, 544, 593 S.E.2d 500, 503 (Ct. App. 2004). “The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means of entry, or the extent of damage. The entry itself is the wrong.” Anderson, *S.C. Requests to Charge – Civil* § 4-43.

In this case, the Defendant does not dispute that she has continued to live on the Property after the Plaintiff obtained possession on April 19, 2012. Instead, she appears to contest that the Plaintiff owns the Property and claim that she has a right, regardless of who owns it, to continue living there rent free. Consequently, only the first and third elements are in dispute.

i. Plaintiff alone has legal possession of the Property.

In an action for trespass, the possession a party is required to prove may be actual or constructive. *Hawkins v. City of Greenville*, 358 S.C. 280, 296, 594 S.E.2d 557, 566 (Ct. App. 2004). It therefore may be proven by a properly executed and recorded deed. In this case, the Defendant does not dispute that the Trustee sold the Property to the Plaintiff prior to April 20, 2012. (Def’s Resp. to Pl.’s First Requests for Admissions ¶¶ 6, 7, 8, attached as Exhibit A to Pl.’s Motion for Partial Summary Judgment.) In fact, the Defendant concedes the Trustee delivered a quitclaim deed to the Plaintiff. (Def’s Resp. to Pl.’s First Requests for Admissions ¶¶ 1, 10.) In addition to this evidence, it is well-established in South Carolina that a deed valid on its face is presumed to be valid. See *Cummings v. Varn*, 307 S.C. 37, 45, 413 S.E.2d 829, 834 (1992). The quitclaim deed the Trustee delivered to the Plaintiff satisfies all the statutory recording requirements and was properly recorded in the Newberry County Clerk of Court’s Office. The Defendant has offered no evidence to disprove the validity of the deed. Therefore,

there is no genuine issue of material fact that Plaintiff is the legal owner and has peaceable possession of the Property.

Nevertheless, the Defendant argues through an Affidavit of Arthur E. Whitee, III that an issue of fact exists as to title. In his affidavit, Mr. White opines that ownership of the Property is in question because no title opinion has been rendered. (Aff. of Arthur E. White, III ¶ 6.) As an initial matter, neither his affidavit nor any other part of the record contains any evidence qualifying Mr. White as an expert with respect to any issue in this case. Rather, Mr. White simply attests that he is a licensed attorney and that he has been hired as the Defendant's expert. (Aff. of Arthur E. White, III ¶ 1.) This Court has no evidence that Mr. White has knowledge, skill, experience, training or other education that qualifies him to render an opinion that will assist the trier of fact in this case.¹ See Rule 702, SCRE. Therefore, the entire affidavit contains inadmissible opinion testimony.

Furthermore, nothing in Mr. White's affidavit creates a genuine issue of fact that the Plaintiff does not own the Property. Rather, the purported expert simply expresses his own opinions on legal issues which are for this Court to decide. At the most, Mr. White speculates that there may be another owner somewhere, and we will not know for certain until an exhaustive title search has been performed, proving beyond any doubt that the Trustee held title to convey to the Plaintiff. This testimony improperly raises the Plaintiff's burden of proof and ignores the fact that before the Trustee owned the Property, the Defendant owned it and had there for over thirty (30) years. (Deed from Def. to Trustee; November 12, 2012 Aff. of Def. ¶ 15, attached as Exhibit N.) Furthermore, the Court does not need a title opinion to take judicial notice of the deeds on file with the Newberry Clerk of Court.

The Defendant has proven ownership of the Property, and the Defendant has failed to

¹ According to Todd & Johnson, LLP's web site, Mr. White graduated from law school in 2009.

present any evidence to the contrary. Accordingly, there is no triable issue about Plaintiff's ownership of the Property.

ii. There is no evidence that the Defendant has permission to continue living on the Property.

Contrary to the Defendant's claims, the record contains no evidence that the Defendant has the Plaintiff's permission or a right to live on the Property. Still, the Defendant argues the Trust agreement and the Plaintiff's written offer to purchase the Property give her that right. (May 17, 2013 Aff. of Def., attached as Exhibit O.)

As discussed above, the Defendant has admitted that she was allowed to live on the Property until it was sold. (Def's Responses to Pl.'s First Requests for Admissions ¶ 2.) She also admitted the Trustee sold the Property to the Plaintiff last year. (*Id.* at ¶¶ 6, 7, 8.) Therefore, by virtue of her own admissions, the Defendant has conceded that her right to use the Property has expired. The Defendant contends, nevertheless, that she should not be required to move out because the Plaintiff's written offer to purchase the Property included an offer allowing her to continue living there. (May 17, 2013 Aff. of Def.) The Plaintiff's written offer to the Trustee does include an offer to leave the Property in the Trust. (*Id.* at 3.) What the Defendant ignores, however, is the lack of any language in the Plaintiff's written offer allowing her to continue living there rent free. Contrary to the Defendant's belief, the Plaintiff offered to leave the Property in the Trust "to maximize the properties [sic] value for any future sale opportunities," (*Id.* at 3) not to provide her a free place to live indefinitely.

Therefore, the only reasonable conclusion based upon the evidence in the record is that the Defendant has trespassed on the Plaintiff's real property since April 19, 2012. As a result, the Court should grant the Plaintiff's motion, issue an order against the Defendant as to liability and schedule a damages hearing.

b. There is no triable issue that the Defendant has willfully refused to vacate the Property after her right to live there terminated.

The Plaintiff's first cause of action seeks damages pursuant to the South Carolina Residential Landlord and Tenant Act (RLTA). The RLTA defines a "tenant" as "a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others[.]" S.C. Code Ann. § 27-40-210(15). A "landlord" is "the owner, lessor, or sublessor of the premises[.]" S.C. Code Ann. § 27-40-210(6). Finally, "'rental agreement' means all agreements, written or oral, and valid rules and regulations adopted under Section 27-40-520 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises[.]" S.C. Code Ann. § 27-40-210(12). The Defendant does not own the Property, but she has lived there since the Divorce Decree to the exclusion of others. Therefore, she is a "tenant" under the RLTA. The Plaintiff is a "landlord" because he owns the Property. Finally, the Defendant had a right to use and occupy the Property she did not own under the Trust. Therefore, the Trust was a "rental agreement" for purposes of the RLTA that expired when the Trustee sold the Property.

S.C. Code Ann. § 27-4-750 provides, "If the rental agreement is terminated, the landlord has a right to possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees." In addition, S.C. Code Ann. § 27-4-770(c) provides:

If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. **If the holdover is not in good faith, the landlord may recover reasonable attorney's fees. If the tenant's holdover is a wilful violation of the provisions of this chapter or the rental agreement, the landlord may also recover an amount not more than three months periodic rent or twice the actual damages sustained by him, whichever is greater and reasonable attorney's fees.** If the landlord consents to the tenant's continued occupancy, Section 27-40-310(d) applies.

(emphasis added).

According to the Defendant's own admissions in this case, there is no genuine issue of fact that the Plaintiff bought the Property, nor is there any factual issue that her right to live there expired when the Property was sold. Yet, the Defendant has refused to move out for over one year. Therefore, pursuant to the RLTA, the Plaintiff is entitled to judgment against the Defendant for reasonable rents. Furthermore, because the Defendant has refused to move out for over a year, despite her admissions, her conduct constitutes a willful violation of the RLTA. Consequently, there is no genuine issue of fact that the Defendant is liable to the Plaintiff for damages and reasonable attorney's fees pursuant to S.C. Code Ann. § 27-4-770(c).

It is anticipated that the Defendant will argue that the Plaintiff claim for damages under the RLTA requires the Court to construe or interpret the terms of the Trust, thereby rendering this claim a trust-related matter over which the Probate Court has exclusive original jurisdiction. As discussed in Section I above, however, this Court, at the very least, has concurrent jurisdiction over this claim. Furthermore, the thrust of the Plaintiff's claim is not the existence of a rental agreement; it's the absence of one. The Defendant claims she has a right to live on the Property, but she can point to no rental agreement or other contract to support her claim. For more than one year, she has lived on Property she does not own, to the exclusion of the legal owner, without paying—or even offering to pay—any rent.

Therefore, the Court should grant the Plaintiff's motion, enter an order against the Defendant as to liability pursuant to the RLTA and schedule a damages hearing.

c. There is no issue of fact that the Defendant is liable to the Plaintiff on his quantum meruit claim.

“The elements of a *quantum meruit* claim are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant

of the benefit under conditions that make it unjust for him to retain it without paying its value.” *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616-17, 703 S.E.2d 221, 225 (2010).

As discussed above, the Defendant does not dispute that she has lived on the Property since April 19, 2012, when the Trustee closed the sale to the Plaintiff. Nor does the Plaintiff contend she has paid the Plaintiff for living on the Property. Furthermore, the Defendant has offered no evidence creating triable issue about the Plaintiff’s ownership of the Property, as discussed above. Accordingly, the only reasonable conclusion based upon the record in this case is that the Defendant has lived on the Plaintiff’s property for over one year without paying any rent. As a result, there is no genuine issue of fact that the Defendant is liable to the Plaintiff under a theory of quantum meruit.

Therefore, the Court should grant the Plaintiff’s motion as to liability on his quantum meruit claim, enter an order finding the Defendant liable, and schedule this matter for a damages hearing.

CONCLUSION

Contrary to the various arguments the Defendant has asserted throughout the tortured history of this matter, the issues before the Court are simple. The Plaintiff has asserted several claims seeking damages from the Defendant based upon her refusal to vacate the Property after he purchased it. The Defendant has admitted her right to live on the Property expired when the Property was sold, and she has further admitted the Trustee sold the Property to the Plaintiff and gave a quitclaim deed on April 19, 2012. Based upon these admissions, together with the affidavits and pleadings, there is no genuine issue of material fact precluding this Court from entering judgment against the Defendant as to liability only. Accordingly, the Court should grant

the Plaintiff's motion and schedule this matter for a damages hearing.

A handwritten signature in black ink, appearing to read "Benjamin B.", with a long horizontal flourish extending to the right.

James L. Bruner

Benjamin C. Bruner

Bruner, Powell, Wall & Mullins, LLC

P.O. Box 61110

Columbia, SC 29260

803-252-7693

Attorneys for the Plaintiff

September 3, 2013

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Mary Tripp Hobby,

Plaintiff,

vs.

Raymond D. Hobby,

Defendant.

FILED
NEWBERRY COUNTY

2010 OCT 8
IN THE FAMILY COURT
EIGHTH JUDICIAL CIRCUIT

JACKIE S. HARRIS
CLERK OF COURT

FINAL ORDER AND DIVORCE DECREE

Docket No. 2005-DR-36-56

Plaintiff's Attorneys:

John O. McDougall
Pete Currence

Hearing Dates:

November 30, 2009
December 1-3 and 23, 2009
September 27, 2010

Defendant's Attorneys:

James E. Bryan, Jr.
Timothy E. Madden

Judge:

Joseph W. McGowan, III

Court Reporter:

Lisa A. Amick

INTRODUCTION

This document is a Final Order and Divorce Decree in this civil action, issued as a result of the trial which commenced on November 30, 2009, was conducted over several days (identified above), and ended on September 27, 2010.

Based on the pleadings, financial declarations, evidence, orders previously issued, stipulations of the parties, and applicable law, this Court makes the following findings of fact and conclusions of law and enters this order.

JURISDICTION AND VENUE

Plaintiff and Defendant are citizens and residents of Newberry County, South Carolina, and have so resided for many years. The parties were married to each other on June 24, 1978.

During their marriage they had four children. These children are Landon Riner Hobby, whose date of birth is April 21, 1981; Grayson Tyler Hobby, whose date of birth was April 11, 1984, and who died on October 24, 1999; Patrick Reid Hobby, whose date of birth is August 21, 1985; and Michael Kenneth Hobby, whose date of birth is April 22, 1987. Plaintiff and Defendant live separate and apart, and have so resided since June 15, 2005. This civil action commenced by Plaintiff filing a Summons and Complaint on February 17, 2005. Thereafter, the parties attempted reconciliation and Plaintiff filed a Summons and Supplemental Complaint on October 19, 2005. In this matter, Plaintiff seeks a divorce from Defendant, equitable apportionment of marital property, alimony and related relief. Defendant does not oppose Plaintiff's action for divorce, joins in her request for an equitable apportionment of marital property, and seeks similar relief incident to the dissolution of a marriage. This Court maintains personal jurisdiction over the parties. The issues presented are within the exclusive jurisdiction of this Court (See S.C. Code §63-3-530 (1976, as amended)). This Court is the appropriate venue for the determination of the issues raised by the pleadings and addressed in this order.

ISSUES

The issues for determination are:

1. Is Plaintiff entitled to a divorce from Defendant on the grounds of adultery?
2. What are the marital assets and debts and how should these assets and debts be apportioned between the parties?
3. Is Plaintiff entitled to alimony from Defendant, and if so, what type and in what amount?

4. Should Defendant be required to contribute to Plaintiff's attorney's fees and costs and if so in what amount?

FACTS RELEVANT TO MULTIPLE ISSUES

In every divorce action such as this one, the Family Court must make findings of fact to support the conclusions of law and order issued. See Rule 26(a) SCRFC. Because of the equitable nature of the Family Court, many of the facts which this Court is required to find relate to more than one issue. In this section of this order, the Court details findings of fact relevant to multiple issues.

The length of the parties' marriage is twenty-seven (27) years to the date of separation, and thirty-two (32) years to the date of the issuance of this order.

The parties' living children (identified above), while now over the age of eighteen, were not fully emancipated at the commencement of this litigation and were economically dependent on the parties for some time during the pendency of this civil action.

Plaintiff's date of birth is [REDACTED]. At the time of marriage she was twenty-five (25) years old. When she initially filed this civil action she was fifty-two (52). She is now fifty-seven (57). She is in reasonably good health. She has a college degree. For a period of time early in the marriage she taught in the public school system, and accrued some benefits in a retirement plan sponsored by the State of South Carolina, which benefits continue to exist, and which are awarded to her by this Order. She has not worked outside the marital home for many years, and is not presently employed and does not have earned income.

Defendant's date of birth is [REDACTED]. At the time of marriage he was twenty-four (24) years old. When Plaintiff initially filed this civil action Defendant was forty-nine (49) years old. He is now fifty-six (56). He is in reasonably good health. He has a college

degree. He operates Hobby Construction Company, Inc., a corporation which is a marital asset and which builds water and sewer systems and installs pipeline associated with these systems. He also works with and owns a majority interest in several affiliated and related entities; Hobby Construction Co., Long Utility Corporation, Seaside Utilities, Inc., Seaside Environmental Constructors, Inc., West/Hobby LLC, Utility Supply, Inc., and South Atlantic Construction, Inc., known collectively as the "Hobby Entities." Some of the stock in these entities is marital property (and other stock is owned by third parties). His earned income varies based on the business opportunities and performance of the companies. His current earned income is uncertain due to a number of challenges faced by these businesses. He has retirement benefits which were earned and accrued during the marriage, all of which are being equitably apportioned by this Order.

Although inquiry and efforts were made, there is no possibility of reconciliation of the marriage.

Defendant committed adultery during the marriage. His actions were independently corroborated, and not condoned. There is no collusion between the parties for purposes of obtaining a divorce.

**FACTS AND CONCLUSIONS SPECIFICALLY RELATED
TO EQUITABLE APPORTIONMENT**

During the marriage the parties accumulated significant assets and incurred certain debts. By statute each party holds a vested special equity and ownership right in all marital property, which equity and ownership right are subject to apportionment as of the date of the commencement of this litigation. See South Carolina Code § 20-3-610 (1976, as amended). This action commenced on February 17, 2005. The parties dispute the value of many assets

and debts. Valuation of assets and debts of the type owned by these parties is challenging, particularly in recessionary economic times and when litigation transcends several years. It is appropriate to consider fluctuations in value which occur during the pendency of the action. See, e.g., Fields vs. Fields, 342 S.C.182, 536 S. E.2d 684 (Ct. App. 2000). It is also appropriate for the Court to value marital assets at date of filing. See, e.g., Dixon vs. Dixon, 334 S.C. 222, 512 S.E.2d 539 (Ct. App. 1999).

Each party contributed to the acquisition, preservation and maintenance of the marital property in various ways. Plaintiff contributed directly through earnings made early in the marriage, and indirectly as a homemaker and parent in the later years of the marriage. Defendant contributed directly throughout the marriage, and during the pendency of the action. Defendant also contributed indirectly through active involvement in the lives of the children and indirect contributions to the acquisition, preservation, maintenance and improvement to marital assets.

Most of the assets and debts of the parties constitute marital property, although the parties dispute the character of some items.

The parties own several hundred acres of land in Newberry County, South Carolina, on which they both reside. Both desire, and it is appropriate, to continue to reside on this property for a reasonable period of time. By previous order of this Court the parties are afforded use and possession of other real estate they own located in Edisto Beach, South Carolina. It is appropriate for each of them to have use of this real estate until it is sold, or otherwise distributed.

Given the complexity of the financial holdings of the parties, there are tax issues which will arise and/or which follow the assets. These taxes may be mitigated by some of the losses which occurred during the pendency of the action.

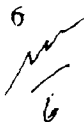
Many of the assets owned as of the date of filing were encumbered, or have become encumbered in the support of other assets during the pendency of the action. The debts, liens and encumbrances follow the assets, and are being apportioned by the terms of this order.

This Court is required to make a final equitable apportionment of the parties' marital property. See S.C. Code § 20-3-620 (A) (1976, as amended). This Court has the authority to direct a party to execute and deliver any deed, bill of sale, note, mortgage or other document necessary to carry out the order equitably apportioning the marital property. See S.C. Code § 20-3-660 (A) (1976, as amended). This Court also has the authority and discretion to order a public or private sale of marital property and the terms of such a sale. See S.C. Code § 20-3-660 (A) (1976, as amended). Moreover, this Court may use any reasonable means to achieve equity between the parties. See S.C. Code § 20-3-660 (B) (1976, as amended).

FACTS AND CONCLUSIONS SPECIFICALLY RELATED TO ALIMONY

The parties enjoyed a comfortable standard of living commensurate with others similarly situated in higher income brackets and of significant net worth. They owned and enjoyed resort property at the coast and in the mountains, together with associated amenities. They educated children in public and private schools. They own collectibles and recreational vehicles and items.

Because of economic challenges presented by the economy and related to investments, the current and reasonably anticipated income of each party and/or from their assets is difficult to determine at this time.

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APPROVAL OF AGREEMENT

Settlements between litigants are encouraged. In determining whether or not to approve a settlement this Court must find (1) the existence of an agreement; (2) the agreement was entered into freely and voluntarily; and (3) the agreement is fair and equitable from procedural and substantive perspectives.

After many years of litigation and several days of trial, the parties reached an agreement to resolve the financial issues presented by this litigation. The terms of this agreement were presented to the Court on September 27, 2010.

There is no indication that either party was forced or under any duress or coercion at the time he or she reached and entered the terms of the agreement or at the hearing on September 27, 2010. Each party entered the terms and participated in the hearing seeking approval of the terms free of any mind-altering or judgment-impairing substances. The parties entered the terms freely and voluntarily.

The parties negotiated and entered the terms of their agreement with benefit and advice of independent experienced counsel. Each party is satisfied with the representation provided to him or her by his or her attorney.

There was extensive and exhaustive discovery conducted during the pendency of this civil action. Each party fully disclosed all assets and debts to the other. Each party is familiar with the assets, debts, income and expenses of the other party.

The parties' agreement reflects a resolution of the legal issues which is within the range of fairness given this Court's experience. This agreement is the product of compromise and negotiation. Upon review of the Equitable Apportionment Act (S.C. Code §20-3-620, *et. seq.*

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(1976, as amended)), the Alimony Statute (S.C. Code §20-3-130, et. seq. (1976, as amended)), and other applicable law, the parties' agreement is fair and equitable.

Therefore, the terms of the parties' agreement are fair and equitable from both procedural and substantive perspectives.

The terms of the parties' agreement, identified at the hearing, should, therefore, be adopted, approved and are hereby incorporated into, merged and made the Order of this Court.

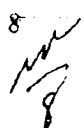
NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. Plaintiff is granted an absolute divorce from Defendant on the statutory grounds of adultery.

2. To effectuate this Final Order and Divorce Decree, additional documents including but not limited to a trust or trusts, deeds, bills of sale, assignments, and similar transfer instruments must be prepared. Each party shall act reasonably and cooperate in the preparation and timely execution of the documents necessary to effectuate these terms and the intent of this Order.

3. To effectuate a complete, fair and equitable apportionment of marital assets and debts, the parties shall create a trust. The following terms shall govern the parties in the creation and operation of this trust and/or are relevant regarding each party's interest in this trust and the assets and debts to be placed in it.

- a. This trust is created pursuant to this Order. To the extent necessary, the parties are the Transferors of the assets and debts into trust.
- b. This trust shall be created pursuant to and under South Carolina law.
- c. This trust shall be a liquidating trust, so that the trustee is required, in a commercially reasonable and orderly fashion, to manage and sell the

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assets and debts held by the trust and, over a reasonable period of time, to distribute all of the net proceeds from liquidation to the parties as provided in these terms.

- d. The Trustee shall be a person or entity mutually agreeable to the parties. If the parties are unable to agree on a single person or entity to serve as trustee, then each party shall name a trustee, and the two trustees named by the parties shall select a third, co-trustee, and the three co-trustees shall administer the trust.
- e. The Trustee shall act in a fiduciary capacity with respect to both parties.
- f. Either party may purchase any asset from the trust, provided the sale and terms are reasonable, fair, and reflect fair market value or other terms mutually agreeable to the parties. The purchase of an asset from the trust may be accomplished in any reasonable means directed by the trustee, including a like-kind distribution to the other party in recognition of an asset purchased by one party.
- g. Except as otherwise detailed in this Order, Defendant shall be the beneficiary of fifty-seven and ½ percent (57.5%) of the trust.
- h. Except as otherwise detailed in this Order, Plaintiff shall be the beneficiary of forty-two and ½ percent (42.5%) of the trust.
- i. For the first year of existence, the trust shall make minimum monthly distributions to Plaintiff in the amount of Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00). These distributions represent a special

interest in the trust held by Plaintiff and are not taxable to her or charged against her proportionate/beneficial share of the trust.

j. The trust shall distribute Two Hundred Twenty Five Thousand and 00/100 Dollars (\$225,000.00) to Plaintiff and Two Hundred Thousand and 00/100 Dollars (\$200,000) to Defendant as a special interest in the trust, which is not part of his or her proportionate share, for each party's attorney's fees and litigation expenses related to this civil action. If practical, and subject to discretion of the Trustee, the payments of \$225,000 to Plaintiff and \$200,000 to Defendant shall be paid in a manner in which the payments are non-taxable to each of the parties with the payments being paid from the corpus of the trust rather than income, or partly income, of the trust.

k. For so long as the trust owns the Hobby Construction Company, Inc., or the related construction and utility companies¹, Defendant shall not compete in business with the entities owned by the trust, except and unless permitted to do so by the Trustee. It is the intent of the parties that Defendant shall continue to work and participate in each of the Hobby construction and utility companies throughout the period that the trust owns these entities in the manner in which he was working and participating in these entities at the date of filing of this action (February 17, 2005) and at the date of the signing of this document.

¹ Hobby Construction Co., Long Utility Corporation, Seaside Utilities, Inc., Seaside Environmental Constructors, Inc., West/Hobby LLC, Utility Supply, Inc., South Atlantic Construction, Inc.

- l. The trust shall pay the reasonable attorney's fees, accountant's fees, and costs incurred to prepare the trust instrument, any and all transfer documents related to it, and similar expenses.
- m. The assets to be transferred into the trust shall consist of those detailed on the schedule attached as Schedule A, as such assets exist as of the date of transfer, regardless of the manner in which a party or the parties currently hold title ownership.
- n. The trust is created pursuant to the *S.C. Code* and other authority which empowers the Family Court to use any means or methods reasonable necessary to effectuate an equitable apportionment of marital property. Each party contributed, directly and indirectly, to the acquisition, preservation, maintenance, and other obligations associated with the marital estate which is becoming the property of the trust, and each party holds an equitable interest in each of the assets placed into the trust in the same percentage as he or she is a beneficiary of the trust. This equitable ownership exists irrespective of the current title ownership of any asset.
- o. Defendant shall be reasonably compensated for his services in connection with the Hobby Construction Company, Inc., and the related construction utilities². His compensation and benefits of employment shall be reasonable in scope and amount. The trustee shall determine reasonable compensation, benefits of employment and the scope and terms of employment of Defendant.

² Hobby Construction Co., Long Utility Corporation, Seaside Utilities, Inc., Seaside Environmental Constructors, Inc., West/Hobby LLC, Utility Supply, Inc., South Atlantic Construction, Inc.

- p. The trustee shall have the discretion to employ Plaintiff in a consulting capacity or otherwise so that Plaintiff may be eligible for health insurance coverage provided by Hobby Construction Company, Inc.
- q. The company entities, i.e., Hobby Construction Company, Inc. (HCC), Long Utility Corporation (LUC), Seaside Environmental Constructors, Inc. (SEC), Seaside Utilities Inc. (SU), and South Atlantic Construction, Inc. (SAC) currently have a bonding relationship with Travelers Bond and Financial Company (Travelers). These companies are currently being monitored by Travelers and monthly combined P&L statements are being generated for Travelers. When the entities bid a project and request a bond from Travelers, they also provide a work in progress report. The Trustee will cooperate with each of the parties, the companies, and Travelers in order to facilitate the companies receiving maximum bonding capacity from Travelers. The Trustee will be granted absolute authority to have direct contact with Travelers and CPA Steve Sealey if necessary regarding the combined P&L statements, bids, work in progress reports, compensation of officers, and for any other purpose. The companies and Defendant will provide the Trustee with copies of all communications exchanged between the companies and Travelers to include bids, requests for bonds, work in progress reports, and other written communications (including emails).
- r. The parties own 737 acres of land in Newberry County, South Carolina, which is being placed in the trust. The parties have previously received

proposed contracts on certain portions of the 737 acres for the cutting of timber. The Trustee shall accept appropriate bids to have the previously-identified timber cut on this property within the next twelve (12) months. The funds derived from the sale of this timber shall be equally distributed to the parties. The Trustee shall determine if any other timber should be cut and if so the proceeds generated therefrom shall be the property of the Trust.

- s. The Trustee shall provide Plaintiff sole and exclusive use of the property known as the marital home of the parties together with the surrounding three (3) acre's of land until such property is sold, or until vacated by her. The Trustee shall provide Defendant sole and exclusive use of the property known as the Smith House and the immediate surrounding acreage until such property is sold or until vacated by him. The Trustee shall provide Defendant access to and use of the farm acreage and amenities until sold or restricted by the Trustee. During the period of time that each party occupies the respective residence, the trust shall pay the taxes, insurance, and general maintenance of these properties, general maintenance to be defined as any reasonable and necessary repair or maintenance to the residence on each of these properties which exceeds a cost of \$500. Neither party shall incur an expense for which he or she expects reimbursement or payment by the trust which exceeds \$500, except in case of emergency, without written authorization (email is sufficient) of the Trustee to incur such expense. Each party shall be

responsible for his/her own utility bills, i.e., electricity, cable, telephone, etc.

- t. The corporate entities, Hobby Construction Co., Inc., Long Utility Corporation, Seaside Utilities, Inc., Seaside Environmental Constructors, Inc., West/Hobby LLC, Utility Supply, Inc., South Atlantic Construction, Inc., shall not pay for the personal expenses of Defendant and Defendant shall only be reimbursed for verifiable business expenses as determined or directed by the Trustee.
- u. By the temporary order the parties have use of one of the Edisto properties (3709 Village Court). For so long as this property and 3711 Village Court is owned directly or indirectly by the trust, Plaintiff shall have the reasonable right to use 3709 and Defendant the reasonable right to use 3711, under terms and conditions directed by the Trustee. If one of these properties is sold and one remains, the Trustee shall provide for the equal right of use to the parties of the remaining property as long as it is controlled by the trust.

2. Outside of the trust, by way of equitable apportionment, Defendant shall receive the assets detailed on Schedule B. With respect to these assets, the parties are further bound as follows:

- a. Colonial Real Estate Investments, Inc. has filed a civil action in the United States District Court, *Colonial Real Estate Investments, Inc., Plaintiff, vs. Raymond D. Hobby, Defendant*, Civil Action File No. 8:10-CV-01653-RBH, filed in the United States District Court, District of South Carolina,

Greenwood Division. Defendant denies he has any obligation to Colonial Real Estate Investments, Inc., or any other entity regarding the issues raised in the Complaint filed by Colonial Real Estate Investments, Inc. Defendant acknowledges that if there is any debt to Colonial Real Estate Investments, Inc. which arose after February 17, 2005, such debt was incurred without Plaintiff's specific or direct knowledge, and Plaintiff shall not be responsible for any such debt or obligation if it exists. Even if such debt exists, the parties dispute whether the debt is marital and/or divisible by the Family Court.

b. There are entities known as Maggie Valley Resort, LLC, Maggie Valley Development Company, LLC, and Maggie Valley Resort Management, LLC. Defendant, Raymond D. Hobby, shall receive any interest that he may have in such entities, free and clear of any claim and/or interest from Plaintiff, Mary T. Hobby. Plaintiff shall not be responsible for any debts regarding these entities.

3. Outside of the trust, by way of equitable apportionment of marital assets, Plaintiff shall receive the assets detailed on Schedule C.

4. Recognizing the minimum monthly distributions to Plaintiff for the first year of the trust are being paid in lieu of alimony or spousal support from Defendant, the amount of Defendant's permanent alimony or spousal support shall be determined after the first year of the existence of the trust by the Family Court. Plaintiff's entitlement to permanent alimony or spousal support is as though it was ordered by the Court and this alimony is modifiable and terminable in accordance with South Carolina law. The alimony payments shall be taxable

income to Plaintiff and tax-deductible to Defendant. Plaintiff may seek a temporary order regarding the amount of alimony which is to be paid after the expiration of the Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00) minimum monthly trust distributions required by this Order. Plaintiff may seek this relief prior to the expiration of one year from the commencement of the required minimum monthly trust distributions of Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00). As to the \$7,500 minimum monthly trust distributions to Plaintiff, if practical, the payments shall be paid from the corpus of the trust, rather than income, or partly income, of the trust, subject to the discretion of the Trustee.

5. Each party represents and warrants to the other that he or she fully disclosed to the other each and every asset in which he or she held a legal, equitable, or other economic interest as of the date of the filing of this civil action, and/or as of September 27, 2010. If it is subsequently determined that either party owned any asset as of the date of the filing of this civil action, or as of the date the parties entered these terms, which asset was not disclosed to the other party and apportioned either to the trust or one of the parties by the terms stated hereinabove, then such asset shall become the property of the trust and liquidated and distributed between parties in the same manner as all of the other assets on Schedule A.

6. Neither party shall pay or contribute to the other party's attorney's fees or costs incident to this civil action other than the required distribution by the trust as detailed above.

7. The parties shall be bound by the temporary order and stipulations previously entered until such time as the Trust is created and begins the distributions to Plaintiff as required by these terms.

8. This Court retains jurisdiction for the interpretation, enforcement, and, to the extent necessary to effectuate these terms, the issuance of subsequent orders regarding this Final Order and Divorce Decree.

AND IT IS SO ORDERED.



Joseph W. McGowan, III
Judge of the Family Court
Eighth Judicial Circuit

Lauren, South Carolina

10/8, 2010

SCHEDULE A

1. All stock in Hobby Construction Company, Inc.
2. All stock in Long Utility Corporation
3. All stock in Seaside Utilities Incorporation
4. All stock in Seaside Environmental Constructors Inc.
5. All interest in West/Hobby LLC
6. Any interest in Utility Supply Incorporated
7. Any interest in South Atlantic Construction Inc.
8. Any interest in Edisto Pipe Dreams LLC
9. Any interest in RDH LLC
10. Any interest in Shuho LLC
11. Any interest in Good Golfer LLC
12. Any interest in the residence and 740 acres located at 544 Crowder Road, Kinards, South Carolina and/or any adjacent acreage.
13. Any interest in the building and land located on Highway 34 in Newberry County (the Hobby Construction Office).
14. Any interest in the building and land for Long Utility Office in Simpsonville, South Carolina.
15. Any interest in the building and land for the Seaside Utilities Office in Moncks Corner and/or Murrells Inlet, South Carolina.
16. The real property located on Highway 76 in Kinards, South Carolina.
17. The real property known as lots 54 and 55 in Laurens County, South Carolina.
18. 3711 Village Court, Edisto, South Carolina.

19. 231 Highlands Loop, Maggie Valley, North Carolina.
20. Mountain Chase Condos (units 4040 and 4046), Maggie Valley, North Carolina.
21. Almond Station Property, Swain County, North Carolina.
22. Highway 34 land
23. 317 Hwy 221 South, Greenwood, South Carolina real property with improvements
24. Highway 34/Garmany Road land
25. The real property in downtown Newberry, South Carolina located on Main Street (1008, 1010-1012, 1014, 1016, and 1018).
26. 3114 Myrtle Street, Edisto Beach.
27. 3116 Myrtle Street, Edisto Beach.
28. Crowder Road (108 acres)
29. 4 acres across the street from Smith house
30. Any real estate remaining (if any) from 213 acres in Kinards sold 10/19/2005
31. 11795 Bush River Road ("Smith House")
32. The furnishings and personal property located in any Edisto property or Mountain Chase Condos.
33. Any loans receivable from Hobby Construction Company, Inc. or related entities and/or loans payable to this company and these entities.
34. The Edisto Yacht Club membership.
35. Any interest in the building located at 1326 College Street, Newberry (Helig Myers).

SCHEDULE B

1. Any money in any checking, savings or depository account in his name which is not on Schedule A, including but not limited to the accounts at Newberry Federal Bank, Carolina First Bank, and First Community Bank as reflected on exhibits filed during this civil action.
2. The remaining in his interest in the Principal Financial 401k after the apportionment of fifty percent of this asset to Plaintiff as detailed on Schedule C.
3. Fifty percent of the cash surrender value (including passive changes in value during the pendency of the action) of the Fidelity life insurance policy on Defendant's life, which Plaintiff shall pay directly to Defendant.
4. Any interest in Maggie Valley Resort, LLC, Maggie Valley Development Co., LLC, and Maggie Valley Resort Management, LLC.
5. Any interest he has, if any exists, in Timber Resource Group, Inc.
6. Any interest he has, if any exists, in Cellular Systems of Newberry.
7. Any interest he has, if any exists, in JTJ of Lynches River.
8. Any interest he has, if any exists, in EDHO, LLC.
9. Any interest he has, if any exists, in In-Site Support Services, Inc.
10. Any interest he has in the Lake Marion house and property.
11. Any interest he has in the Spring Creek land.
12. Any funds received by him, if any, from the sale of any real property owned by him at the date of filing which was sold during the pendency of this civil action, and which

Defendant represents was invested in the preservation or maintenance of other assets during the pendency of this civil action.

13. Any furniture, furnishings or personal property in his possession or control and/or received by him through gift or inheritance, subject to the claims of Plaintiff which shall be resolved in arbitration if necessary as detailed below.
14. His tools and tool boxes.
15. Any vehicles or watercraft titled in his name which are not the property of Hobby Construction Company, Inc.
16. His guns.
17. His coins and currency collection.
18. His Rolex watches.
19. His personal items located at the Edisto property and/or mountain condos.

ARBITRATION PROVISION: IN THE EVENT THE PARTIES ARE UNABLE TO RESOLVE CLAIMS EACH MAKES TO THE FURNITURE AND PERSONAL PROPERTY IN THE POSSESSION OR CONTROL OF THE OTHER OR IN THE EDISTO OR MOUNTAIN CONDOS THEN THEY SHALL SUBMIT THEIR DISPUTE TO BINDING ARBITRATION WITH FORMER FAMILY COURT JUDGE STEVE BARTLETT OR ANOTHER MUTUALLY AGREEABLE ARBITRATOR. IN SUCH EVENT THE ARBTRATION SHALL BE CONDUCTED WITHOUT LAWYERS. THE ARBITRATOR SHALL RESOLVE THE CLAIMS OF EACH PARTY IN A MANNER WHICH IS FAIR, EQUITABLE AND CONSISITENT WITH SOUTH CAROLINA LAW. EACH PARTY SHALL PAY FIFTY PERCENT OF ANY FEES CHARGED BY THE ARBITRATOR.

SCHEDULE C

1. Any money in any checking, savings or depository account in her name which is not on Schedule A, including but not limited to the accounts at Bank of America and First Community Bank as reflected on exhibits filed during this civil action.
2. Fifty percent of Defendant's interest in the Principal Group 401k, as such interest existed on the date of filing of this civil action, together with any passive increases or decreases in value through and including the date of apportionment. Plaintiff shall receive her interest pursuant to a Qualified Domestic Relations Order or similar instrument which does not create an immediate taxable event to either party.
3. Her interest in retirement plan(s) sponsored by the State of South Carolina.
4. The Horace Mann life insurance policy on her life.
5. The Fidelity life insurance policy and any cash value remaining in this asset after the apportionment of fifty percent of the cash surrender value to Defendant as detailed on Schedule B.
6. The Lee County real estate, as detailed on the Stipulations dated September 20, 2010.
7. Any furniture, furnishings or personal property in her possession or control and/or received by her through gift or inheritance, subject to the claims of Defendant, which shall be resolved in arbitration if necessary, as detailed on Schedule B, and the shotgun she won at auction.
8. The 2005 Cadillac she drives.
9. Her jewelry.
10. Her personal items at the Edisto property and/or mountain condos.

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Mary Tripp Hobby

vs.

Raymond D. Hobby

Plaintiff,

Defendant.

IN THE FAMILY COURT
EIGHTH JUDICIAL CIRCUIT

SUPPORT INFORMATION SHEET

Docket No. 2005-DR-36-56

Check appropriate box:

- ☒ No spousal or child support ordered. (No other items should be completed.)
☐ If support is ordered to be paid directly or through the Court, you must complete BOTH pages (as applicable).

Obligation Type	Child Support	Medical Support	Spousal Support
Amount	\$	\$	\$
Collection Costs (5%)	\$	\$	\$
Payment Frequency			
Payment Start Date			
Weekly	☐	☐	☐
Bi-weekly	☐	☐	☐
Monthly	☐	☐	☐
Semi-monthly (1st & 16th)	☐	☐	☐
Semi-monthly (15th & 30th)	☐	☐	☐
Total Arrearage Amount	\$	\$	\$
Wage Withholding			
Required by S.C. Code Ann. §63-17-1420	☐	☐	☐
Ordered	☐	☐	☐
Not Ordered	☐	☐	☐

Custodial Parent (if applicable): _____

*****OBLIGOR'S DESIGNATION STATEMENT: PAYMENT OF COURT COSTS*****

I acknowledge that if ordered to pay support through the court, now or in the future, S.C. Code Ann. § 63-3-370, as amended, requires that I pay court collection costs in an amount equal to five (5) percent of any support payment.

If support is paid through the Court or through a centralized wage withholding system, I designate that an amount equal to five (5) percent of my support payments be applied and distributed in payment of court collection costs, not support. I authorize the deduction of the fee from every payment made by me or on my behalf.

I acknowledge that should I not pay the full amount due, that an arrearage will accrue and that the Clerk of Court may take enforcement action against me for failure to pay all amounts ordered by the Court.

If an amendment to the law changes the amount of court collection costs, this designation authorizes deduction of court collection costs in the amount established by law.

Date: _____, 20____

Signature of Person paying Support

SCCA 446 (12/2009)

IDENTIFYING INFORMATION ON THIS PAGE

A. OBLIGEE/PAID TO:

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Email Address: _____ Phone: _____
SSN: _____ Gender: _____ Race: _____ Height: _____ Weight: _____
Date of Birth: _____ Scars: _____
Driver's License Number: _____ Driver's License Issuing State: _____
Employer: _____
Employer Address: _____

B. OBLIGOR/PAID BY:

Name: _____
Address: _____
City: _____ State: _____ Zip: _____
Email Address: _____ Phone: _____
SSN: _____ Gender: _____ Race: _____ Height: _____ Weight: _____
Date of Birth: _____ Scars: _____
Driver's License Number: _____ Driver's License Issuing State: _____
Employer: _____
Employer Address: _____

C. CHILDREN

CHILDREN'S NAMES	DATE OF BIRTH	SSN
1.		
2.		
3.		
4.		
5.		
6.		

PREPARED BY

TITLE

DATE

EXHIBIT B

McDougall & Self, L.L.P.

Attorneys at Law
791 Greenlawn Drive, Suite 4
P. O. Box 90860
Columbia, South Carolina 29290
Telephone: (803) 776-3130 - Telecopier: (803) 776-7748

John O. McDougall*†
Michael W. Self*
Peter G. Currence
Ryan A. McLeod*

Alyssa H. Richardson

E-mail: jom@mcdougallandself.com

Reply to Columbia

December 8, 2011

Sumter Office
21 East Calhoun Street
P.O. Box 2197
Sumter, South Carolina 29151-2197
Telephone: (803) 778-5062
Telecopier: (803) 778-6908

Website: www.mcdougallandself.com

VIA E-MAIL AND U.S. MAIL

Mr. Francis B. B. Knowlton
Attorney at Law
Nelson, Mullins, Riley & Scarborough, LLP
Post Office Box 11070
Columbia, SC 29211

Re: Hobby vs. Hobby
544 Crowder Road (with surrounding 3 acres)

Dear Frank:

This is to advise and confirm that Mary Hobby would like to purchase the 544 Crowder Road property, with surrounding 3 acres, (her home) from the Liquidating Trust.

I believe that Mary has previously provided you with a complete copy of the Summary Appraisal Report of Hubert M. Bedenbaugh, Jr., provided as of November 23, 2011, which reflects that he appraised this property at \$300,000. Since you have previously been provided with a complete copy of his appraisal, I am attaching only the first three pages of his report with this letter.

I am enclosing a copy of page 4 of 9 of the Marital Assets Addendum dated November 29, 2009, and you will note in Item 9(a)(1) that it confirms that both CPA McKay and CPA Sealey valued this property at that time at \$325,000.

I am enclosing copies of the summary I have received from Mary Hobby regarding the taxes and homeowner's insurance that she has paid on this property, this year, which total \$3,729.19, along with verification of these payments.

Although Mary Hobby believes that the home is worth substantially less than \$300,000, she is willing to base her offer of purchase of this property on that appraised value. For your information, a well needs to be added to the house because the deeded property to Mary does not include an existing well. The cost of digging a new 6" pipe well is approximately \$5,000. The bills Mary previously paid for repairing the existing well amount to \$1,104.21. The power to Mary's property is attached to the red barn behind the house which is not on

†DIPLOMATE, AMERICAN COLLEGE OF FAMILY TRIAL LAWYERS
†FELLOW, INTERNATIONAL ACADEMY OF MATRIMONIAL LAWYERS
*FELLOW, AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

Mr. Francis B. B. Knowlton
December 8, 2011
Page 2

her deeded property. This line needs to be detached and separate meters put in place. The estimated cost will be \$2,000.

As we have determined from the attempted sale of a number of properties since the Liquidating Trust was established, the likelihood that the property could be sold at this time for its appraised value is remote. Therefore, taking into consideration that there will be no cost of sale, that the sale will be immediately consummated, Mary proposes that the \$300,000 value of the property be discounted by 25% or \$75,000 leaving a balance of \$225,000.

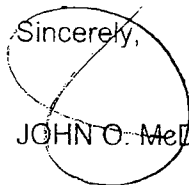
Considering that she is entitled to distributions from the Liquidating Trust in the amount of 42.5% and Ray Hobby is entitled to distributions from the Trust in the amount of 57.5%, if the \$225,000 were in the Liquidating Trust to be distributed at this time, of the \$225,000, \$95,625 would be distributed to Mary Hobby and \$129,375 would be distributed to Ray Hobby. Of the \$3,729.19 which Mary has paid toward taxes and insurance on this property, 57.5% should be attributed to Ray (\$2,144) and 42.5% to Mary (\$1,585), thereby reducing the amount due to Ray to \$127,231.

Based upon the above and the enclosures, Mary is willing to immediately pay into the Trust \$127,231 and consent to these funds being immediately distributed to Ray Hobby for his interest in this property.

The above agreement would not affect the distributions from the Liquidating Trust for legal fees to each of the parties (\$225,000 to Mary T. Hobby and \$200,000 to RDH) as provided in the Liquidating Trust.

After you have had an opportunity to review the above and the attachments, please advise as to whether it is suitable to you as Trustee of the Hobby Family Liquidating Trust and Raymond D. Hobby for Mary T. Hobby to purchase the 544 Crowder Road property as proposed.

With kind regards.

Sincerely,

JOHN O. McDOUGALL

JOM:srb

Enclosures

cc: Mrs. Mary T. Hobby (via e-mail only)

EXHIBIT C

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Raymond D. Hobby,)
)
 Plaintiff,)

C/A No.: 2013-CP-36-0193

v.

**AFFIDAVIT OF
FRANCIS B.B. KNOWLTON**

Mary T. Hobby,)
)
)
 Defendant.)

PERSONALLY APPEARED BEFORE ME, Francis B.B. Knowlton, who, being first
duly sworn, deposes and says:

1. I am over 18 years of age.
2. I have personal knowledge of the information contained in this Affidavit.
3. I am the Trustee for the Hobby Family Liquidating Trust ("the Trust") that was created pursuant to the Divorce Decree finalizing the parties' divorce.
4. One of my duties under the Trust is to liquidate the Trust assets, including the property located at 544 Crowder Road in Kinards, South Carolina ("the Property").
5. In late 2011 and early 2012, the Trust needed operating income, and I believed selling the Property was a proper way to provide that necessary capital.
6. Within that time frame, the Defendant contacted me and offered to purchase Mr. Hobby's interest in the Property for \$127,231, based on a purchase price of \$225,000.
7. I notified Mr. Hobby about the Defendant's offer, and he offered to purchase the Home for \$325,000. Mr. Hobby's offer included a cash payment to the Trust of \$138,125.00, which amount represented the Defendant's 42.5% interest the Home. The Plaintiff gave a note for the remainder of the purchase price that was secured by a purchase-money mortgage.

8. I notified the Defendant about the counteroffer Mr. Hobby made to purchase the Home, and she requested over one month to respond.

9. I could not allow the Defendant that amount of time without the Trust defaulting on its loans, but I did allow the Defendant a reasonable time to respond and gave her a deadline. However, the Defendant failed to make a counteroffer by the deadline.

10. I believe the counteroffer Mr. Hobby made was more beneficial to the Trust than the Defendant's original offer. In addition, I believe Mr. Hobby's offer brought much needed cash to keep the Trust from going broke.

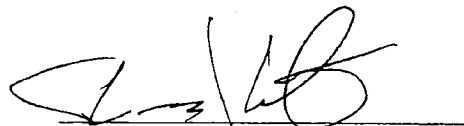
11. Therefore, I accepted Mr. Hobby's offer in early February and sold the Property.

12. Weeks later, I received an offer from the Defendant to purchase the Property. By that time, I had already entered into an agreement to sell the Property to Mr. Hobby.

13. On April 19, 2012, I, as Trustee, executed the Quitclaim Deed attached as **Exhibit A**.

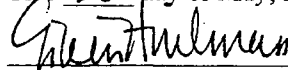
14. My intention was to sell the Property to generate cash for the Trust, as it is a liquidating trust.

FURTHER AFFIANT SAYETH NOT.


Francis B.B. Knowlton

SWORN TO and subscribed before me

This 20 day of May, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 4/26/2014

1826

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

NEWBERRY COUNTY	
ASSESSOR	
TAX MAP #	96-12
PART OF MAP #	QUIT-CLAIM DEED
TAX YEAR	2013
<i>Mary C. Amos</i>	

201200011322
Filed for Record in
NEWBERRY COUNTY, SC
JACKIE B. BOWERS, CLERK OF COURT
04-19-2012 At 11:01 am.
DEED 10.00
STATE 845.00
COUNTY 357.50
Book 1619 Page 118 - 119

COPY

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS, an action (Docket No. 2005-DR-36-56) was initiated by Mary T. Hobby in the Newberry County Family Court for the Eighth Judicial Circuit seeking, among other relief, a divorce from Raymond D. Hobby, and in conjunction with such relief, the equitable apportionment of the marital assets;

WHEREAS, in connection with the equitable apportionment of the marital assets, Raymond D. Hobby and Mary T. Hobby, each of whom are citizens and residents of Newberry County, South Carolina, have agreed and are required to transfer various items of real and personal property, as encumbered, to The Hobby Family Liquidating Trust (the "Liquidating Trust") created pursuant to that certain Final Order and Divorce Decree dated October 8, 2010 by the Honorable Joseph W. McGowan, III, Judge of the Newberry County Family Court, Eighth Judicial Circuit (the "Divorce Decree");

WHEREAS, the Property (as defined below) was among the items of real property to be transferred to the Liquidating Trust pursuant to the Divorce Decree;

WHEREAS, the Liquidating Trust desires to convey any interest in the Property which the Liquidating Trust may have or have had to Raymond D. Hobby; and

WHEREAS, the Liquidating Trust has agreed to issue this Quit-Claim Deed in order to convey its interest in the Property, if any, and Raymond D. Hobby has agreed to accept this Quit-Claim Deed.

NOW, THEREFORE, for and in consideration of the foregoing recitals, and also in consideration of the sum of Three Hundred Twenty-Five Thousand and 00/100 Dollars (\$325,000.00), the receipt and sufficiency of such consideration being hereby acknowledged, to the extent the Liquidating Trust is vested or may hereinafter become vested, by virtue of a conveyance from Mary T. Hobby or otherwise, in any interest in the Property, the Liquidating Trust, as Grantor, has remised and forever quit-claimed unto Raymond D. Hobby, as Grantee, and by these presents, Grantor does hereby remise, release and forever quit-claim unto the Grantee, his heirs, successors and assigns, all its right, title and interest in and to the following (the "Property"):

All that certain piece, parcel and lot of land with the improvements thereon, situate, lying and being located on Crowder Road, in the County of Newberry, State of South Carolina, being shown and designated as containing 2.75 acres, more or less, on plat of survey prepared for Raymond D. Hobby, by Antech Surveying, Inc., PLS 11072, dated May 26, 2005, recorded in Plat Book C122

FILED
NEWBERRY COUNTY
JACKIE B. BOWERS
CLERK OF COURT
APR 26 PM 10 26
2012

EXHIBIT A

at Page 4 in the Office of the Clerk of Court for Newberry County. Said plat is incorporated herein for a more full and complete description as to the metes and bounds of said property.

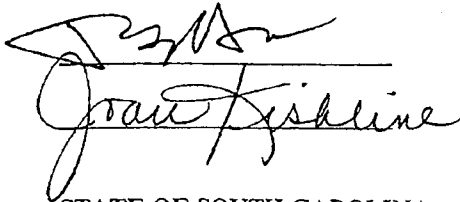
Together with a forty (40') foot right-of-way easement for ingress and egress to said property as shown on said plat.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining.

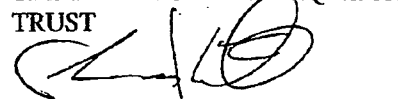
TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Grantee, his heirs and assigns, forever so that neither the said Grantor nor its successors or assigns, nor any other person or persons, claiming under it or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

WITNESS THE HAND AND SEAL of the Grantor's duly authorized signatory authority this 19th day of April, 2012.

Signed, sealed and delivered
in the presence of:


Joan A. Kishline

THE HOBBY FAMILY LIQUIDATING
TRUST


Frank B.B. Knowlton, Trustee

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

ACKNOWLEDGMENT

I, Joan A. Kishline, Notary Public for the State aforesaid, do hereby certify that the above-named Frank B.B. Knowlton, as Trustee of The Hobby Family Liquidating Trust, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 19 day of April, 2012.

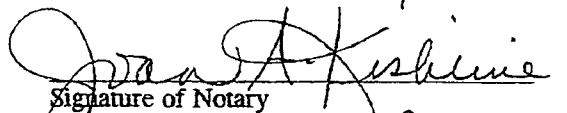

Signature of Notary
My commission expires: 9/18/2017

EXHIBIT D

NO TITLE EXAMINATIONGENERAL WARRANTY DEED

STATE OF SOUTH CAROLINA	)	Grantee's Address:
	)	Meridian, 17 th Floor
COUNTY OF NEWBERRY	)	1320 Main Street
	)	Columbia, SC 29201

KNOW ALL MEN BY THESE PRESENTS that **Mary T. Hobby**, in consideration of One Dollar (\$1.00) and pursuant to that certain Final Order and Divorce Decree dated October 8, 2010 by the Honorable Joseph W. McGowan, III, Judge of the Newberry County Family Court, Eighth Judicial Circuit (Docket No. 2005-DR-36-56), has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto **Frank B. B. Knowlton, Trustee of The Hobby Family Liquidating Trust Agreement**, its successors and assigns forever:

All that certain piece, parcel and lot of land with the improvements thereon, situate, lying and being located on Crowder Road, in the County of Newberry, State of South Carolina, being shown and designated as containing 2.75 acres, more or less, on plat of survey prepared for Raymond D. Hobby, by Adtech Surveying, Inc., PLS 11072, dated May 26, 2005, recorded in Plat Book C122 at Page 4 in the Office of the Clerk of Court for Newberry County. Said plat is incorporated herein for a more full and complete description as to the metes and bounds of said property.

Said conveyance includes a forty (40') foot right-of-way easement for ingress and egress to said property as shown on said plat.

Derivation: This being the same property conveyed to Grantor by deed of Raymond D. Hobby, recorded on June 27, 2005, in the Register of Deeds Office for Newberry County, South Carolina, in Deed Book 1067 at page 39.

TMS# 96-12

This conveyance is subject to any and all existing reservations, easements, rights of way, zoning ordinances and restrictive covenants that may appear of record or on the premises.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining thereto; to have and to hold all and singular the premises before mentioned unto the Grantee, and the Grantee's successors and assigns, forever.

And, the Grantor does hereby bind himself and his heirs, successors and assigns to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's successors and assigns and against every person whomsoever lawfully claiming or to claim the same or any part

thereof.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal this 11th day of April, 2012.

SIGNED, sealed and delivered
in the presence of:

Frank Partridge
Susan R. Seelmer

Mary T. Hobby (SEAL)
Mary T. Hobby

STATE OF SOUTH CAROLINA)
COUNTY OF Newberry)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 11th day of April, 2012 by
Mary T. Hobby.

Susan R. Seelmer
Notary Public for South Carolina

My commission expires: 7-1-2013

STATE OF SOUTH CAROLINA
COUNTY OF Newberry

**AFFIDAVIT FOR TAXABLE OR
EXEMPT TRANSFERS**

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred designated as a 2.75 acre tract located on Crowder Road, in Newberry County, bearing Newberry County Tax Map Number 96-12, and was transferred by Mary T. Hobby to Frank B. B. Knowlton, Trustee of The Hobby Family Liquidating Trust Agreement pursuant to that certain Final Order and Divorce Decree dated October 8, 2010 by the Honorable Joseph W. McGowan, III, Judge of the Newberry County Family Court, Eighth Judicial Circuit (Docket No. 2005-DR-36-56), on April 11, 2012.

3. Check one of the following: The deed is

(A) SUBJECT to the deed recording fees as a transfer for consideration paid or to be paid in money or money's worth.

(B) SUBJECT to the deed recording fees as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or a transfer to a trust or as a distribution to a trust beneficiary.

(C) X EXEMPT from the deed recording fee because of Exemption Number 8. (See Information section of affidavit). (If exempt, please skip items 4-7 and go to item 8 of this affidavit)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?

Check: Yes No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (see Information section of this affidavit):

(a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$.

(b) The fee is computed on the fair market value of the realty which is \$.

(c) The fee is computed on the fair market value of the realty as established for property tax purposes which is \$.

5. Check Yes or No to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remains on the land, tenement or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance

is \$ _____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: _____

(b) Place the amount listed in item 5 above here: _____. (If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here.

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$ _____.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as attorney for Grantor.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

By: Mary T. Hobby (SEAL)

SWORN to before me this 11th
day of April, 2012

Dusan R. DeLeon (SEAL)

Notary Public for South Carolina

My Commission Expires: 7-4-2013

1022b

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

NEWBERRY CO. Y	
ASSESSOR	
TAX MAP #	96-12
PART OF MAP #	QUIT-CLAIM DEED
TAX YEAR	2013
<i>Mary C. Amos</i>	

201300011312
Filed for Record in
NEWBERRY COUNTY, SC
JACKIE S. BOWERS, CLERK OF COURT
04-18-2013 AT 11:01 am.
DEED 10.00
STATE 845.01
COUNTY 357.50
Book 1817 Page 118 - 119

COPY

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS, an action (Docket No. 2005-DR-36-56) was initiated by Mary T. Hobby in the Newberry County Family Court for the Eighth Judicial Circuit seeking, among other relief, a divorce from Raymond D. Hobby, and in conjunction with such relief, the equitable apportionment of the marital assets;

WHEREAS, in connection with the equitable apportionment of the marital assets, Raymond D. Hobby and Mary T. Hobby, each of whom are citizens and residents of Newberry County, South Carolina, have agreed and are required to transfer various items of real and personal property, as encumbered, to The Hobby Family Liquidating Trust (the "*Liquidating Trust*") created pursuant to that certain Final Order and Divorce Decree dated October 8, 2010 by the Honorable Joseph W. McGowan, III, Judge of the Newberry County Family Court, Eighth Judicial Circuit (the "*Divorce Decree*");

WHEREAS, the Property (as defined below) was among the items of real property to be transferred to the Liquidating Trust pursuant to the Divorce Decree;

WHEREAS, the Liquidating Trust desires to convey any interest in the Property which the Liquidating Trust may have or have had to Raymond D. Hobby; and

WHEREAS, the Liquidating Trust has agreed to issue this Quit-Claim Deed in order to convey its interest in the Property, if any, and Raymond D. Hobby has agreed to accept this Quit-Claim Deed.

NOW, THEREFORE, for and in consideration of the foregoing recitals, and also in consideration of the sum of Three Hundred Twenty-Five Thousand and 00/100 Dollars (\$325,000.00), the receipt and sufficiency of such consideration being hereby acknowledged, to the extent the Liquidating Trust is vested or may hereinafter become vested, by virtue of a conveyance from Mary T. Hobby or otherwise, in any interest in the Property, the Liquidating Trust, as Grantor, has remised and forever quit-claimed unto Raymond D. Hobby, as Grantee, and by these presents, Grantor does hereby remise, release and forever quit-claim unto the Grantee, his heirs, successors and assigns, all its right, title and interest in and to the following (the "*Property*");

All that certain piece, parcel and lot of land with the improvements thereon, situate, lying and being located on Crowder Road, in the County of Newberry, State of South Carolina, being shown and designated as containing 2.75 acres, more or less, on plat of survey prepared for Raymond D. Hobby, by Adtech Surveying, Inc., PLS 11072, dated May 26, 2005, recorded in Plat Book C122

FILED
NEWBERRY COUNTY
JACKIE S. BOWERS
CLERK OF COURT
APR 26 PM 10 26
2013

EXHIBIT E

at Page 4 in the Office of the Clerk of Court for Newberry County. Said plat is incorporated herein for a more full and complete description as to the metes and bounds of said property.

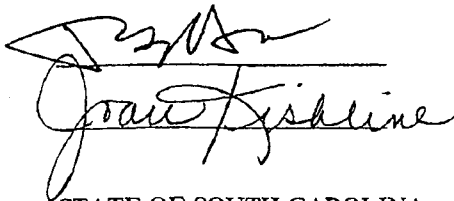
Together with a forty (40') foot right-of-way easement for ingress and egress to said property as shown on said plat.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Grantee, his heirs and assigns, forever so that neither the said Grantor nor its successors or assigns, nor any other person or persons, claiming under it or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

WITNESS THE HAND AND SEAL of the Grantor's duly authorized signatory authority this 19th day of April, 2012.

Signed, sealed and delivered
in the presence of:


Joan A. Kishline

THE HOBBY FAMILY LIQUIDATING
TRUST


Frank B.B. Knowlton, Trustee

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

ACKNOWLEDGMENT

I, Joan A. Kishline, Notary Public for the State aforesaid, do hereby certify that the above-named Frank B.B. Knowlton, as Trustee of The Hobby Family Liquidating Trust, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 19 day of April, 2012.

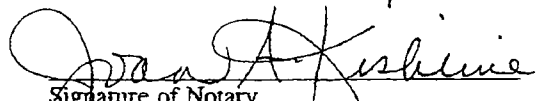

Signature of Notary
My commission expires: 9/18/2017

EXHIBIT F

STATE OF SOUTH CAROLINA

2012CV3610100450
CIVIL CASE NUMBER

COUNTY OF NEWBERRY

IN THE MAGISTRATE'S COURT
NOTICE TO QUIT PREMISES

Raymond Hobby
11795 Bush River Road
Kinards, SC 29355
(803) 924-0015

PLAINTIFF(S)

Vs

Mary T. Hobby
544 Crowder Road
Kinards, SC 29355

DEFENDANT(S)

Upon an affidavit filed by the plaintiff which states you:

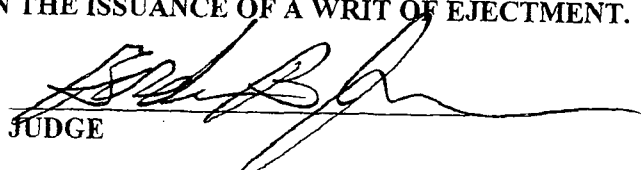
Mary T. Hobby NEEDS TO VACATE THE PROPERTY
defendant(s), are a trespasser(s) and are occupying the premises at **544 Crowder Road, Kinards, SC 29355** without permission of the owner of said premises. You are required to immediately vacate the premises or contact the:

Newberry Central Traffic Court Court
3239 Louis Rich Drive
Newberry, SC 29108
Phone: (803) 321-2144 Fax: (803) 321-2172

within five (5) days to show cause, if any you can, why you should not be ejected from these premises.

FAILURE TO VACATE THE PREMISES OR TO CONTACT THIS OFFICE WITHIN FIVE (5) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

Dated: May 2, 2012


JUDGE

PERSONALLY appeared before me, the undersigned deponent, who being duty sworn, says that s/he served the herein Notice to Quit Premises/Rule to Show Cause on _____

20____ at _____ ☐ AM ☐ PM on the _____ day of _____,

Sworn to and subscribed before me
this _____ Day of _____, 20____

Sheriff's Deputy or Constable

NOTARY PUBLIC or JUDGE
My Commission Expires: _____

EXHIBIT G

STATE OF SOUTH CAROLINA)

2012CV3610100450
CIVIL CASE NUMBER

COUNTY OF NEWBERRY)

IN THE MAGISTRATE'S COURT

ANSWER

Raymond Hobby
11795 Bush River Road
Kinards, SC 29355
(803) 924-0015
PLAINTIFF(S)

COPY

Vs

Mary T. Hobby
544 Crowder Road
Kinards, SC 29355
DEFENDANT(S)

On May 14, 2012, I was served with a Complaint requiring me to answer within thirty days from the date of service. My Answer, which is hereby filed with the Newberry County Summary Court, is as follows:

CHECK ONE:

A. ☒ I contest the jurisdiction of the court based on the following: (use additional pages if necessary)
The Newberry Family Court, Case No. 2012DR36-194, issued the attached emergency Order prohibiting Raymond D. Hobby from pursuing eviction proceedings pending a hearing in the Family Court. (See attached Court Order.)

B. ☐ I admit everything in the complaint and do not want a trial.

C. ☐ I admit that I am responsible, but not for the total amount claimed by the Plaintiff(s) because: (use additional pages if necessary)

D. ☒ I deny that I am responsible at all because: (use additional pages if necessary)
In the event jurisdiction lies in the Magistrate's Court, I request a jury trial because the property was improperly transferred to the Plaintiff by the Trustee and should have been held in trust until the Family Court could resolve the issues pending this real estate matter.
YOU MUST FILE THIS DOCUMENT WITH THE COURT WITHIN THIRTY DAYS

THE DEFENDANT/PLAINTIFF STATES THAT THE INFORMATION CONTAINED IN THIS ANSWER IS TRUE AND CORRECT TO THE BEST OF HIS/HER KNOWLEDGE

DATED: May 16, 2012

SIGNATURE OF DEFENDANT(S) (OR ATTORNEY) W. Frank Partridge, Jr.

Attorney for Defendant, Mary T. Hobby

IF MORE THAN ONE DEFENDANT, ALL MUST FILE ANSWER

PLEASE RETURN TO:

Newberry Central Traffic Court
3239 Louis Rich Drive,
Newberry, SC 29108
Phone: (803) 321-2144 Fax: (803) 321-2172

MV2

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

FILED IN THE FAMILY COURT OF THE
COUNTY OF NEWBERRY EIGHTH JUDICIAL CIRCUIT
2012 MAY 15 P 3:41

Mary T. Hobby,

Plaintiff,

vs.

Raymond D. Hobby,

Defendant.

POWERS
COURT

EMERGENCY ORDER

Docket No. 2012-DR-36-194

This matter is before the Court pursuant to the Summons and Complaint and Notice of Motion and Motion of Plaintiff wherein Plaintiff seeks, *inter alia*, an emergency/expedited hearing in this matter. It appears that this Court has jurisdiction of the parties and the subject matter to this action based upon the pleadings of Plaintiff. It further appears that Plaintiff has alleged extenuating circumstances justifying an emergency/expedited hearing in this matter and for an Emergency Order to be issued in this matter pending the expedited hearing.

NOW, THEREFORE, based upon the foregoing, it is

ORDERED that the hearing in regard to the above referenced matter be, and hereby is, set for the 18th day of May, 2012, at 11:30am., or as soon thereafter as this matter can be heard, on an expedited basis; it is further

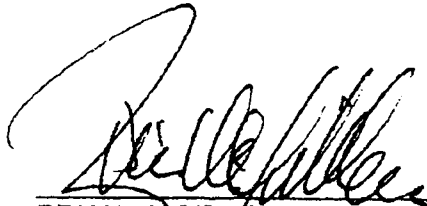
ORDERED that this Emergency Order is being issued without precedential value and without prejudice at the *pendente lite* hearing scheduled in this matter; it is further

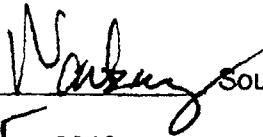
ORDERED that this Emergency Order, Notice of Motion and Motion, Summons and Complaint may be served by any individual over the age of twenty-one (21) who is not a party or an attorney for either party in this action; it is further

ORDERED that pending the expedited hearing scheduled in this matter for the 15th day of May, 2012, at 11:30 a.m., that Defendant, Raymond D. Hobby, be, and  hereby is, prohibited from pursuing eviction proceedings against Plaintiff, Mary T. Hobby, regarding the 544 Crowder Road property, Kinards, South Carolina 29355; it is further

ORDERED that this Emergency Order is being issued without precedential value and without prejudice at the hearing scheduled in this matter.

AND IT IS SO ORDERED.


BRIAN M. GIBBONS
JUDGE, FAMILY COURT


Mary T. Hobby
South Carolina
May 15, 2012

FILED
FAMILY COURT
2012 MAY 15 PM 3:41
CROWDER
COURT

EXHIBIT H

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Mary T. Hobby,

Plaintiff,

vs.

Raymond D. Hobby,

Defendant.

IN THE FAMILY COURT

EIGHTH JUDICIAL CIRCUIT

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

Docket No.: 2012-DR-36-194

FILED

NEWBERRY COUNTY

2013 JUN 13 PM 12 38

JACKIE S. BOWERS

CLERK OF COURT

JACKIE S. BOWERS
CLERK OF COURT

2013 APR 26 AM 10 26

NEWBERRY COUNTY

FILED

Plaintiff's Attorney:

John O. McDougall

Michael B. Brackett

Hearing Date:

November 13, 2012

Defendant's Attorney:

Timothy E. Madden

Winston I. Marosek

Judge:

Deborah Neese

Guardian Ad Litem:

None

Court Reporter:

Angela Berry

2013 JAN -7 P 2 46

FILED
NEWBERRY COUNTY

This Order addresses the Motion to Dismiss filed by Defendant on July 12, 2012, a hearing on which was held before the undersigned on November 13, 2012. Based on the affidavits, arguments presented by counsel at the hearing, and applicable law, this Court makes the following findings of fact and conclusions of law and enters this Order.

Plaintiff and Defendant are citizens and residents of Newberry County, South Carolina and have so resided for more than one year prior to the commencement of this civil action.

Defendant and Plaintiff were married on June 24, 1978, and divorced by a Final Order and Divorce Decree ("Divorce Decree") filed October 8, 2010 in Docket No. 2005-DR-36-56. The Divorce Decree approved the agreement of the parties. The Divorce Decree required the parties to create a liquidating trust and transfer the vast majority of their marital assets into the

trust. By the terms of the Divorce Decree, certain provisions were ordered to be included to the trust. In compliance with the Divorce Decree, Plaintiff and Defendant created and signed the Hobby Family Liquidating Trust Agreement (the "Trust") on December 9, 2010 and December 6, 2010, respectively.

One of the assets which the Divorce Decree required to be transferred to the Trust is the former marital home and three (3) surrounding acres (the "Crowder Road Property"). At the time of the entry of the Divorce Decree, the Crowder Road Property was titled solely in Plaintiff's name. By the terms of the Trust, the Trustee is granted various powers, including but not limited to the power to:

sell or dispose of . . . any property, real or personal, constituting a part of the Trust Estate . . . for cash or on credit . . . at such times and upon such terms and conditions as it may deem best . . . (See Trust, Article IX(a)(vi)).

By operation of its own terms, the Trust is a liquidating trust, so that assets and debts owned by it are managed and controlled and disposed of in the manner directed by the Trustee, with distributive benefits flowing to Plaintiff and Defendant in accordance with the terms of the Trust.

Beginning in December, 2011, over a year after the entry of the Divorce Decree, Plaintiff and Defendant individually negotiated with the Trustee for the purchase of the property after the Trustee gave notice of an intention to sell the Crowder Road Property. Both Plaintiff and Defendant presented offers to purchase the Crowder Road Property from the Trust. On or about February 9, 2012, the Trustee accepted Defendant's offer to purchase the Crowder Road Property from the Trust. On April 11, 2012, Plaintiff transferred the Crowder Road property to the Trust by general warranty deed. On April 19, 2012, the Trustee transferred the Crowder Road property to Defendant by quitclaim deed after Defendant paid the Trust in accordance with the offer accepted by the Trustee.

Plaintiff remained in the possession of the Crowder Road Property, and on May 15, 2012, filed this action seeking (1) alimony (as permitted by the Divorce Decree), (2) a declaration that the Trustee's Deed to Defendant for the Crowder Road Property is void ab initio, (3) a determination of whether Plaintiff or Defendant should be allowed to purchase the Crowder Road Property, (4) exclusive possession of the property until all of the Trust assets are liquidated; (5) an order prohibiting Defendant from pursuing eviction proceedings against Plaintiff during the pendency of the case, (6) discovery rights, and (7) attorney's fees and costs.

With the filing of this action, Plaintiff also filed Motion for Temporary Relief in May 15, 2012 seeking (1) an emergency hearing on Defendant's eviction proceedings against Plaintiff; (2) an emergency order prohibiting Defendant from pursuing eviction proceedings against Plaintiff; (3) temporary alimony; (4) sole and exclusive use of the Crowder Road Property during the pendency of this action; (5) discovery rights, and (6) attorney's fees and costs.

On May 15, 2012, the Family Court issued an Emergency Order prohibiting Defendant from pursuing eviction proceedings against Plaintiff regarding the Crowder Road Property.¹ In the Emergency Order, the Court scheduled an expedited hearing for May 18, 2012. Counsel for the parties agreed to continue the hearing until June 4, 2012, and allowed the provision of the Emergency Order prohibiting Defendant from pursuing eviction proceedings against Plaintiff to remain in effect until the next hearing, without prejudice to either party.²

On July 12, 2012, Defendant filed a Motion to Dismiss in which he requested the Court dismiss Plaintiff's Complaint (as it related to the relief requested concerning the Crowder Road

¹ As of the date of the hearing on November 13, 2012, Plaintiff remained in possession of the Crowder Road Property.

² The hearing was continued a second time to November 13, 2012, in the Consent Order of Continuance dated August 30, 2012.

Property) pursuant to Rules 12(b)(1), (6), and (7) of the South Carolina Rules of Civil Procedure.

In summary, Plaintiff contends the Family Court maintains jurisdiction to hear the issues raised in Plaintiff's Complaint concerning the Crowder Road Property based on the language of the Trust, which states:

The parties to this Agreement hereby acknowledge and agree that the exclusive jurisdiction for matters involving this Trust or any matters related thereto is the Family Court for the Eighth Judicial Circuit Newberry County, South Carolina, and waive any right to object or otherwise take issue with the convenience of such forum.

Plaintiff further argues the "subject matter" before the Court concerning the Crowder Road Property involves the equitable division of an asset and the purpose of the Trust provision cited above is to ensure the fair and equitable liquidation of the assets of the Trust. Plaintiff contends the Trustee is the agent of the Family Court for the purpose of equitable apportionment. Plaintiff relies on Thomas v. McGriff, 368 S.C. 485, 629 S.E.2d 359 (2006), for the proposition of concurrent jurisdiction with the Probate Court. Plaintiff also argues the Court has jurisdiction over the contract (the Trust) between the parties and because the Trust apportions marital property, this Court maintains jurisdiction to hear and determine the issues raised by Plaintiff's Complaint.

In summary, Defendant argues the Family Court lacks subject matter jurisdiction over the subject matter of Plaintiff's Complaint because the subject matter does not fall within S.C. Code § 63-3-530 (jurisdiction of the Family Court) and the Probate Court maintains exclusive jurisdiction over matters related to trusts. Defendant further contends the subject matter of Plaintiff's Complaint is not the equitable division of an asset, but rather the administration of an independent Trust.

The Family Court is a court of limited jurisdiction. It maintains exclusive jurisdiction over those matters specified in S.C. Code § 63-3-530 (1976, as amended). Those matters include, but are not limited to:

1. actions under the provisions of the Uniform Interstate Family Support Act;
2. actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney's fees and costs, if requested by either party in the pleadings;
3. actions for and related to the adoption of children and adults; and
4. actions for termination of parental rights, whether such action is in connection with an action for adoption or apart therefrom.

Pursuant to S.C. Code § 62-1-302 (1976, as amended), the Probate Court maintains exclusive original jurisdiction over all subject matter related to trusts.

The subject matter of Plaintiff's Complaint does not fall within S.C. Code § 63-3-530 (1976, as amended). The subject matter of Plaintiff's Complaint as it relates to the Crowder Road Property concerns an independent trust and transactions occurring after the entry of the Divorce Decree and after the formation of the Trust. Specifically, Plaintiff's Complaint as it relates to the Crowder Road Property concerns the actions of the Trustee of the Trust (whether the Trustee's Deed dated April 19, 2012 is null and void; whether Defendant or Plaintiff should be allowed to purchase the Crowder Road Property from the Trust; whether the property should be held in the Trust; and whether Plaintiff should be entitled to exclusive use of the property). The equitable distribution of the marital property was accomplished in the Divorce Decree. While the vast majority of the marital property was transferred into the Trust, the Trustee's powers and duties do not include the equitable distribution of Trust property. The Trust contains

specific provisions concerning the powers and duties of the Trustee as it relates to the property of the Trust. While the Trust contains language concerning the exclusive jurisdiction of the Family Court for matters involving the Trust or any matters related thereto, individual parties cannot confer subject matter jurisdiction upon this Court. November 4, 2008 Bluffton Town Council Election v. Fulgham, 385 S.C. 632, 637, 686 S.E.2d 683, 686 (2009) ("The lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court."); State v. Richburg, 304 S.C. 162, 165, 403 S.E.2d 315, 317 (1991) (. . . "parties cannot, by their actions or agreements, confer subject matter jurisdiction upon the trial court . . .").

Upon careful review, this Court does not have jurisdiction to hear and determine so much of Plaintiff's Complaint as it relates to the relief requested concerning the Crowder Road Property (whether the Trustee's Deed dated April 19, 2012 is null and void; whether Defendant or Plaintiff should be allowed to purchase the Crowder Road Property from the Trust; whether the property should be held in the Trust; and whether Plaintiff should be entitled to exclusive use of the property). While the Divorce Decree required the creation of a trust containing certain terms, and also included language by which the Family Court retained jurisdiction to interpret, enforce, and to the extent necessary, effectuate the terms of the Divorce Decree, the parties themselves settled and created the Trust and signed it more than six weeks after the entry of the Divorce Decree. The language in the Divorce Decree which retained jurisdiction for certain purposes is not sufficiently broad to include a retention of jurisdiction to resolve any dispute arising out of the actions or conduct of the Trustee or the administration of the terms of the Trust. After the entry of the Divorce Decree, no marital property was acquired and the Family Court maintains jurisdiction only over marital property. There is no indication the Trust was ever

reviewed by the Family Court. There is no challenge presented by Plaintiff that the Trust is in fact the product of the Family Court Order or that the Trust contains terms or provisions different from those required by the Divorce Decree.

Actions related to the administration of a Trust are within the exclusive jurisdiction of the Probate Court pursuant to S.C. Code § 62-1-302. As such, the Family Court lacks jurisdiction to hear and decide the issues set forth in Plaintiff's Complaint concerning the Crowder Road property.

NOW, THEREFORE, IT IS ORDERED Plaintiff's Complaint filed May 15, 2012, as it relates to the Crowder Road Property is dismissed.

AND IT IS SO ORDERED.

Deborah Neese
Judge of the Family Court

_____, South Carolina

Dated: _____

EXHIBIT I

From: Raymond Hobby
To: Ben Bruner
Subject: FW: FW: Dismissal of emergency order
Date: Friday, April 12, 2013 4:37:56 PM

Raymond D. Hobby

Hobby Construction Company, Inc.

P.O. Box 457

Newberry, SC 29108

803-276-8828 Office

803-276-6545 Fax

From: Gordon Johnson [mailto:gjohnson@newberrycounty.net]
Sent: Friday, January 18, 2013 10:29 AM
To: 'Raymond Hobby'
Cc: danielpatterson@charter.netOther; Judy Sanders; 'KAYE BEDENBAUGH'
Subject: FW: FW: Dismissal of emergency order

Mr. Hobby we have reviewed your Case #2012CV3610100450 and the Family Court Order. We have discussed this with our Probate Court and we are forwarding you their response. We agree this matter may be a Case for our Circuit Court and if it is not then the Circuit Court will remand it to the proper Court.

Gordon B. Johnson
Newberry County Magistrate
803-321-2144
gjohnson@newberrycounty.net

From: Kelly Nobles [mailto:knobles@newberrycounty.net]
Sent: Friday, January 18, 2013 9:40 AM
To: gjohnson@newberrycounty.net
Subject: Re: FW: Dismissal of emergency order

Good Morning:

I've now had the opportunity to review the Family Court Order you sent. To date, I've had no involvement with the administration of the Hobby Family Liquidating Trust Agreement. Although 61-2-302 (3) gives jurisdiction to the Probate Court to hear matters relating to trusts, 61-1-302 (d) also allows such a matter to be removed to Circuit Court. As this matter is not presently before this Court, I'm merely giving you my thoughts, but it seems Circuit Court may be the better venue to resolve/settle this dispute.

Kelly B. Nobles
Judge of Probate
Newberry County
Post Office Box 442
Newberry, South Carolina 29108
(803) 321-2118
-----Original Message-----

From: Gordon Johnson
Date: 1/15/2013 11:26:29 AM
To: 'Kelly Nobles'
Subject: FW: Dismissal of emergency order

Good morning Judge I hope you are well We have an issue between a divorced couple we would like to discuss I am sending you an Order we received from Family Court for your review

thanks

Gordon B. Johnson

Newberry County Magistrate

803-321-2144

gjohnson@newberrycounty.net

From: Raymond Hobby [mailto:rhobby@hobbyconstruction.com]
Sent: Monday, January 14, 2013 11:06 AM
To: gjohnson@newberrycounty.net
Subject: Dismissal of emergency order

Gordon, Attached please find Judge Neese's order to dismiss the emergency order granted by Judge Gibbon's which stayed the eviction of Mary Hobby at the 544 Crowder Road property. This

proceeding needs to be rescheduled and ruled upon. I would appreciate expediting this process as I have lost 10 months of income as a result of this action. Let me know. Thanks Ray

Raymond D. Hobby

803-276-8828 Office

803-924-0015 Cell



FREE Animations for your email

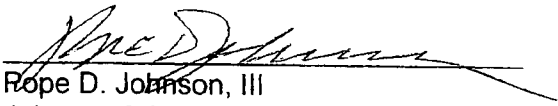


EXHIBIT J

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
Raymond D. Hobby	)	Civil Action No. 2013-CP-36-193
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S NOTICE OF MOTION
	)	AND MOTION TO DISMISS
Mary T. Hobby	)	
	)	
Defendant.	)	
_____	)	

TO: THE PLAINTIFF and his attorney BENJAMIN C. BRUNER

YOU WILL PLEASE TAKE NOTICE that the Defendant will move to dismiss the complaint in this matter for lack of subject matter jurisdiction upon the grounds that the claim for summary ejection upon which all claims are based is a statutory claim within the jurisdiction of the magistrate court, not the circuit court.


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Attorney for the Defendant

Columbia, South Carolina
May 8, 2013



EXHIBIT K

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY) FOR THE EIGHTH JUDICIAL CIRCUIT
Raymond D. Hobby,)
Plaintiff,) Civil Action No. 2013-CP-36-0193
v.)
Mary T. Hobby,)
Defendant.)

**ORDER DENYING MOTION FOR
SUMMARY EJECTMENT OF
TRESPASSER AND DENYING MOTION
FOR TEMPORARY INJUNCTION**

FILED
NEWBERRY COUNTY
JAN 8 2014

This matter came before the Court for hearing on Plaintiff's Motion for Summary Ejectment of Trespasser and Motion for Temporary Injunction. Present at the hearing were Benjamin C. Bruner, attorney for the Plaintiff, and Pope D. Johnson, III, attorney for the Defendant.

Based on the affidavits, arguments presented by counsel at the hearing, and applicable law, this Court DENIES the Plaintiff's Motion for Summary Ejectment; and DENIES the Plaintiff's Motion for Temporary Injunction.

Motion for Summary Ejectment

Plaintiff seeks an Order of the Court pursuant to Chapter 67 Title 15 of the South Carolina Code of Laws directing the Defendant, Mary T. Hobby, to vacate the property at issue in this action within, upon the following grounds:

1. The property at issue in this case is the former marital home located at 544 Crowder Road in Kinards, South Carolina (the "Property");
2. Plaintiff and Defendant were divorced on October 8, 2010;
3. Defendant conveyed the Property into a liquidating trust pursuant to the divorce decree;

4. Plaintiff purchased the property from the trust on April 19, 2012, as evidenced by the quitclaim deed attached to the Verified Complaint;
5. Although she conveyed the property away, Defendant never moved out of the home on the Property;
6. After he bought the Property, Plaintiff demanded the Defendant move out, but she refused;
7. Plaintiff commenced an action in the Magistrate's Court and served Defendant with a notice to quit the property on May 14, 2012;
8. On May 15, 2012, Defendant obtained an Emergency Order temporarily enjoining Plaintiff from pursuing ejectment;
9. On January 7, 2013, the Family Court entered an Order granting Plaintiff's Motion to Dismiss and releasing the temporary injunction against Plaintiff;
10. Plaintiff subsequently attempted to reschedule the hearing in Magistrate's Court, but the Magistrate has declined, citing jurisdictional concerns; and
11. Plaintiff further alleges he is the owner of the property and Plaintiff has no colorable claim of possession to the property, yet she remains on the property and refuses to move out or pay for her use of the Property.

The Defendant has moved to dismiss the Motion for lack of subject matter jurisdiction upon the grounds that the Motion for Summary Ejectment of Trespassers is a statutory claim within the jurisdiction of the magistrate court. This Court agrees.

ANALYSIS

Article V, Section 11 of the South Carolina Constitution states that "[t]he Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law. Summary Ejectment of Trespasser actions are controlled by S.C. Code Ann. § 15-67-610 through 640. S.C. Code Ann. § 15-67-610 provides that:

If any person shall have gone into or shall hereafter go into possession of any lands or tenements of another without his consent or without warrant of law, the owner of the land so trespassed upon may apply to any **magistrate** to serve a notice on such trespasser to quit the premises, and if, after the expiration of five days from the personal service of such notice, such trespasser refuses or neglects to quit then such **magistrate** shall issue his warrant to any sheriff or constable requiring him forthwith to eject such trespasser, using such force as may be necessary. (emphasis added)

S.C. Code Ann. § 15-67-610 et seq. specifically grant the magistrate court the authority to issue warrants pursuant to this section. Further, S.C. Code Ann. § 15-67-640 specifically provides that "Either party to these proceedings shall have the right of appeal....pending the determination of his appeal by the circuit court." "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue*, 388 S.C. 138, 147-48, 694 S.E.2d 525, 529 (2010). Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. *Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009).

Here, the statute's language is plain, unambiguous, and conveys a clear, definite meaning. The legislature intended to grant the magistrate the exclusive jurisdiction to hear motions and issue warrants pursuant to this section, and intended the Circuit Court to have appellate

jurisdiction. Therefore, pursuant to Article V, Section 11 of the South Carolina Constitution, this Court lacks jurisdiction and declines to hear this matter.

Motion for Temporary Injunction

Plaintiff seeks a Temporary Injunction pursuant to Rule 65, SCRCP, restraining the Defendant from continuing to trespass on the property at issue in this action. This Court declines to grant the Temporary Injunction.

An Injunction is a drastic remedy issued by the court in its discretion to prevent irreparable harm suffered by the plaintiff. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). To obtain an injunction, the plaintiff must allege facts sufficient to constitute a cause of action for injunction and demonstrate the injunction is reasonably necessary to protect the legal rights pending in the litigation. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct.App.2002). To establish a cause of action for injunction, the plaintiff must show "(1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law." *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2005) (Citing *Scratch Golf*, 361 S.C. at 121, 603 S.E.2d at 908).

A. Irreparable Harm

The Defendant argues Plaintiff has not suffered irreparable harm entitling her to injunction relief because the harm he alleges can be remedied by monetary damages alone. This Court agrees. The Plaintiff alleges the Defendant has been trespassing on the Property in excess of one year. The Plaintiff also alleges the Defendant has sold or attempted to sell Plaintiff's personal property. If the Plaintiff prevails, monetary damages will remedy the harm alleged.

B. Success on the Merits

This Court finds that the Plaintiff has made a prima facie showing entitling the plaintiff to injunctive relief.

C. Inadequate Remedy at Law

The Defendant argues the Plaintiff has an adequate remedy at law because he can recover money damages for his injuries. This Court agrees.

The purpose of an injunction is the preservation of the status quo. *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Cl. App. 2005). A temporary injunction is used to preserve the subject of controversy in the condition which it is at the time of the order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation. *Id.*

Plaintiff alleges the Property was transferred to him by general warranty deed on or about April 11, 2012, and that Defendant has been trespassing on the property for more than one year. It further appears from the record before this Court that the Defendant has been living on the Property since at least 2005 when the parties initially separated. To preserve the status quo during the pendency of the litigation requires the Defendant remain on the property until a full investigation can be had on the matter. For these reasons, Plaintiff's Motion for Temporary Injunction is DENIED.

IT IS THEREFORE ORDERED that the Plaintiff's Motion for Summary Ejectment is DENIED.

IT IS FURTHER ORDERED that the Plaintiff's Motion for Temporary Injunction is DENIED.



AND IT IS SO ORDERED.



R. Kifox McMahon
Presiding Judge,
Eighth Judicial Circuit

Newberry, South Carolina
May 31, 2013

EXHIBIT L



NEWBERRY COUNTY CENTRAL COURT

3239 Louis Rich Drive • Newberry, SC 29108

Ron Halfacre

Newberry County Magistrate

803-321-2144

rhalfacre@newberrycounty.net



July 19th, 2013

Return of appeal

In reference to Raymond Hobby vs. Mary Hobby (civil case #) 2012CV3610100450, the Court held a trial on June 28th, 2013 at 9:30 A.M. at the courtroom located at 3239 Louis Rich Drive, Newberry, SC 29108.

The following parties were present at the trial:

Raymond Hobby (Plaintiff)

Mary Hobby (Defendant)

(Attorney for the Defendant) Pope D. Johnson, III

The Court took testimony from all parties and witnesses, which was electronically recorded. The Court ruled that the Plaintiff, Raymond Hobby proved his case against the Defendant, Mary Hobby.

The hearing was recorded electronically and the court will provide a transcript of the record if requested at the defendant's expense. A disk containing a copy of the trial is enclosed.

In reference to Raymond Hobby vs. Mary Hobby (civil case #) 2012CV3610100450, the Court held a hearing on July 19th, 2013 at 10:30 A.M. at the courtroom located at 3239 Louis Rich Drive, Newberry, SC 29108 for the purpose of hearing a motion for reconsideration of judgment and to set a bond amount for an appeal. The Court heard from all parties, which was electronically recorded. The Court gave bond in the amount of \$10,000 pending the appeal ruling of on this case.

Respectfully submitted this 19th day of July, 2013.

Ron Halfacre

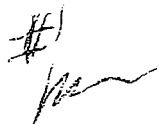
Magistrate of Newberry County

EXHIBIT M

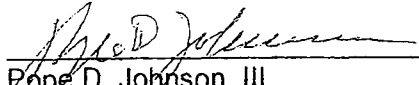
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
Raymond D. Hobby	)	Civil Action No.
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF INTENTION TO APPEAL
	)	
Mary T. Hobby	)	
	)	
Defendant.	)	
_____	)	

The Defendant hereby gives notice of her intent to appeal the judgment in the above-referenced action rendered on June 28, 2013, a copy of the judgment being attached hereto and incorporated herein. The grounds for appeal are as follows:

1. The Magistrate erred as a matter of law in failing to dismiss this action for lack of subject matter jurisdiction;
2. The Magistrate erred as a matter of law in failing to continue the hearing and permit the trustee, Frank Knowlton, to be joined as a party or third party defendant to the action;
3. The Magistrate erred as a matter of law in failing to grant the motion to dismiss and/or in failing to grant judgment in favor of the defendant based upon the doctrine of *res judicata*, which bars the plaintiff's claim since the plaintiff has sought the relief in the circuit court proceeding;
4. The Magistrate erred as a matter of law in failing to make a finding and set forth the basis thereof that the defendant was in possession of the property in question without warrant of law, there being no evidence submitted by the plaintiff to establish the same; and
5. The Magistrate erred as a matter of law in granting the plaintiff relief based upon the fact that the matter had been pending without a decision for an extended period of time and such was irrelevant to the issues to be determined.



The defendant moves the Court to determine what bond, if any, must be posted pursuant to Section 15-67-620.


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**Attorney for the Defendant and Third
Party Plaintiff**

Columbia, South Carolina
July 1, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

RAYMOND D. HOBBY)
)
PLAINTIFF)
)
VS)
)
MARY T. HOBBY)
DEFENDANT)

2012CV3610100450
CIVIL CASE NUMBER

IN THE MAGISTRATE OFFICE

JUDGMENT

THE ISSUES IN THIS ACTION WERE TRIED BEFORE A MAGISTRATE AT NEWBERRY
COUNTY CENTRAL COURT BEFORE JUDGE JOHNSON/HALFACRE IN A JURY/~~NON-~~
JURY PROCEEDING, ON THE ____ 28TH DAY OF JUNE 2013 AT WHICH TIME, A
VERDICT FOR THE PLAINTIFF/DEFENDANT (CIRCLE ONE) WAS RENDERED
~~EVICT~~ION/OR NO EVICTION (CIRCLE ONE).

DATED: 6-28-13

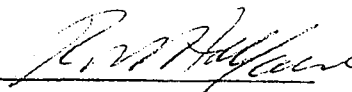

MAGISTRATE

EXHIBIT N

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Mary T. Hobby,

Plaintiff,

vs.

Raymond D. Hobby,

Defendant.

IN THE FAMILY COURT FOR THE
EIGHTH JUDICIAL CIRCUIT

**AFFIDAVIT OF
MARY T. HOBBY**

**Docket No.
2012-DR-36-194**

PERSONALLY APPEARED before me Mary T. Hobby who, being duly sworn,
deposes and says:

HISTORY

1. Ray and I were married on June 24, 1978 and we had four (4) children. Three of our children are emancipated. Our son, Grayson Tyler Hobby, died on October 24, 1999 after being terminally ill for seven years. I last worked a full-time job as an Art Teacher for Clinton Elementary School in 1983 – twenty-seven (27) years ago. My teaching certificate expired well over twenty (20) years ago.

2. I was a housewife and mother responsible for raising our four (4) children, managing our household, and supporting Ray and our various corporations throughout our marriage. I am currently 60 years of age, in poor health, and I am unemployed as I have not worked outside the home since 1983.

3. After 32 years of marriage, I was granted a divorce from Ray on the ground of adultery on September 27, 2010. We resolved all marital issues by way of an Agreement which was court-approved at the time of our divorce. As contemplated in

our Agreement, The Hobby Family Liquidating Trust Agreement (hereafter "Trust") was executed in December 2010. Frank Knowlton was appointed as Trustee. However, the Family Court retained "jurisdiction for the interpretation, enforcement, and, to the extent necessary to effectuate the terms (of the Liquidating Trust), the issuance of subsequent orders regarding this Final Order and Divorce Decree. The Hobby Family Liquidating Trust Agreement specifically provided that the exclusive jurisdiction for matters involving the Trust or any matters related thereto is the Family Court for the Eighth Judicial Circuit, Newberry County, South Carolina, and both parties waive any right to object or otherwise take issue with the convenience of such forum. Ray and I had numerous assets and debts and we have been crushed by the downturn of the economy. The Liquidating Trust was agreed to by Ray and me to effectuate a very difficult method of equitably apportioning our marital estate with Ray receiving 57.5% of the funds from the estate and with me receiving 42.5% of the funds from the estate.

ALIMONY

4. As contemplated in our Agreement and as ordered by the Court, Ray was to continue paying \$6,500 per month in temporary alimony until such time as Trust was put into effect. Ray's temporary alimony obligation had been established based upon my Preliminary Financial Declaration dated October 25, 2005 [Exhibit 1]. Ray's last direct alimony payment was made to me in August 2011.

5. The Trust was to make \$7,500 per month **TAX FREE** distributions in lieu of direct alimony or support payments from Ray during the first year of the Trust. As was contemplated, the Trust has made twelve (12) payments of \$7,500 per month **TAX FREE** to me. The first payment was received on October 5, 2011 for the month of September

2011. The last payment received was for the month of August, 2012. I am requesting retroactive alimony to September 2012 since I received the last payment of \$7,500 per month from the Trust in August 2012.

6. Ray's direct payments of alimony or spousal support should have begun at the end of the twelve (12) payments made by the Trust, or for the month of September, 2012. I have had absolutely no financial support from Ray and/or the Trust for the months of September, October, and November, 2012, despite my requests for distributions from the Trust.

7. I have made efforts to find employment but have been unsuccessful. It is extremely difficult to find employment in today's job market and because of my age (currently 60 years of age) and work history. I have not had employment outside of the companies owned by Ray and me since 1983 when I was employed as an Art Teacher for Clinton Elementary School in Laurens County School District #56. I have applied for the following employment opportunities:

- (a) Wells Fargo Bank (teller).
- (b) Family Dollar Stores (retail sales clerk).
- (c) Komatsu America Corporation (purchasing coordinator).
- (d) CVS Pharmacy (retail sales clerk).
- (e) Palms Bar & Grill (hostess).
- (f) Wal-Mart (trainee/cashier/manager).
- (g) Advantage Sales & Marketing (retail project manager).
- (h) Ingles (cashier/assistant manager).
- (i) Stokes Trainer Cadillac (sales/accounting assistant).
- (j) Cato (sales associate).
- (k) Fashion Exchange (sales associate).
- (l) Sally's (sales associate).
- (m) BiLo (cashier/flowerist/manager).
- (n) Roper Temporary Agency (office assistant).
- (o) Laurens County School District #56 (teacher's aide/substitute teacher).
- (p) Food Lion (cashier).
- (q) Banker's Life & Casualty (agent).

- (r) YMCA (desk clerk).
- (s) Newberry Observer (advertising/sales).
- (t) Hallmark Cards (traveling sales/stock representative).
- (u) Newberry College (administrative assistant/secretary and art teacher).
- (v) Gallman Personnel (temporary agency for any position for which I am qualified).
- (w) TitleMax (office assistant).
- (x) Picture Me Portrait Studios (photographer).
- (y) Newberry County Sheriff's Department (911 operator).

8. I have purchased the books and on-line course materials for the ExamFX Online Course at a cost of \$115 in an effort to be a life & casualty insurance agent. I am currently studying the course materials. I also received a certificate to be a JMI Inspector from an on-line course to be able to inspect homes, mobile homes, and commercial buildings before the buildings can be insured.

9. I had cataracts removed from both eyes, one in June 2010 and the other in October 2010. I returned for a checkup in June 2011 and my surgeon strongly recommended that I have additional laser surgery to correct the vision in both my eyes. My right eye is the worst and is in serious need of this surgery. In January 2012, I injured my neck at C7/8 and was on heavy pain medications for several months and was under doctor orders not to make any legal or financial decisions while on these medications.

10. I am in desperate need of alimony so that I can provide for my basic living expenses and attempt to maintain a semblance of the lifestyle to which Ray and I enjoyed during our marriage and to which Ray continues to enjoy. If I am required to move from the marital home my monthly expenses will be approximately \$1,735 greater than I will need if I remain in this property.

CONTINUED EXCLUSIVE USE OF HOME

11. As contemplated by our Agreement and the Trust, I have had the use and possession of our former marital residence and surrounding acreage located at 544 Crowder Road, Newberry, South Carolina. Ray and I are entitled under the terms of the Trust to purchase property from the Trust if we are in agreement. Because the Trustee placed so much pressure on me to transfer the marital residence into the Trust and because I was fearful to do so, I made an offer to purchase my home from the Trust. I did so thinking that it would have to be an offer agreeable to Ray as well as the Trustee. Even though both Ray and I made identical offers to purchase the marital residence (all offers are attached as Exhibits to my pleadings), the Trust deeded the residence to Ray in spite of the fact that my offer put more "cash" into the Trust.

12. I didn't initially transfer our marital home into the Trust because I was fearful that the Trustee would not pay the taxes and insurance on this property, would allow the delinquency to remain, and allow this property to be sold at a tax sale. My initial fears were confirmed when I had to pay the taxes and insurance on this property and the Trustee has refused to reimburse me from the Trust. My worst nightmare was that the Trustee would otherwise dispose of this property without allowing me to exercise my right to purchase this property from the Trust which has happened. I believe that the Trust owes me reimbursements for taxes and insurance that I paid prior to December 2011 in the amount of \$3,729.19 and \$1,342.44 for quarterly insurance payments made on this property from January to October 2012, or a total of \$5,071.63.

13. Since the Final Decree/Agreement, I have had use of the following properties:

- (a) 544 Crowder Road property (which I have maintained without reimbursement from the Trust); and,
 - (b) 3709 Village Court at Edisto Beach (which has been maintained by the Trust).
14. Since the Final Decree/Agreement, Ray has use and possession of the following properties:
- (a) 231 Highlands Loop, Maggie Valley, North Carolina (which is a property I believe was occupied by Ray's paramour, Lori Jenkins, and her children prior to and after the divorce litigation was commenced between us);
 - (b) 502 Glenview, Maggie Valley, North Carolina (which is a property which I believe has been occupied by Ray and his paramour and her children after Ray and Lori Jenkins broke up, which is owned by the Good Golfer, LLC, an asset of the Trust);
 - (c) 11795 Busch River Road, Kinards, South Carolina a/k/a "Smith house" (which is in close proximity to the 544 Crowder Road property, which has been occupied by Lori Jenkins and her family, Ray's second paramour and her family, Ray's current paramour and her family, and others);
 - (d) 3711 Village Court, Edisto Island, South Carolina (which I believe is being used by Ray, his paramours and others);
 - (e) 2201 Point Street, Edisto Beach and Mountain Chase Condos, Unit 3037, Maggie Valley, North Carolina (which are owned by Edisto

Pipe Dreams, LLC; to the best of my knowledge each of these properties are in fact maintained by the Trust. Ray has had sole and exclusive use and possession of these properties except that these must be shared with others in Edisto Pipe Dreams, LLC); and,

- (f) Mountain Chase Condos, Units 4040 and 4046, Maggie Valley, North Carolina (to the best of my knowledge each of these properties are in fact maintained by the Trust. Ray has had sole and exclusive use and possession of these properties).

15. I request that I be allowed the continued use and possession of the 544 Crowder Road residence since it has been my home for thirty-three (33) years. It is also impossible and impractical for me to make any type of financial decisions as to a permanent residence until the Court determines the amount of Ray's permanent alimony obligation and until the assets of the Trust are distributed.

16. I have obtained an estimate as to the costs to move from my current residence. If I relocate to the same general area, the costs should be approximately \$1,300. If I were to relocate over a hundred miles away, the costs should be approximately \$3,500.

17. Under the terms of the Trust the vast majority of our marital assets are under the control of the Trustee and I have no access to my percentage of the marital estate. However, the Trust is continuing to pay all of Ray's bills and is maintaining and operating all of the marital assets (including several businesses in which Ray is actively involved). It is therefore impossible and impractical for me to make any type of financial

decisions as to a permanent residence until the Trust makes distributions of my 42.5% of the marital assets.

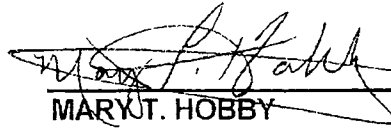
ATTORNEY'S FEES & COSTS

18. It was contemplated in our Agreement that Ray's permanent alimony or spousal support obligation would be set by the Court after the end of the first year of payments by the Trust. I filed litigation in anticipation of this need on May 15, 2012.

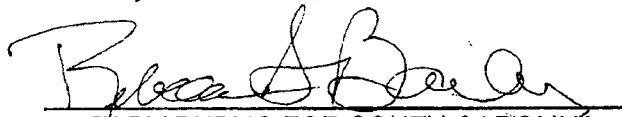
19. A hearing was initially scheduled on May 18, 2012 that had to be continued due to a conflict with Ray's attorney. The hearing was then rescheduled for June 4, 2012 but was cancelled due to recusal by all resident judges for the Eighth Judicial Circuit. The hearing then had to be rescheduled at a time when a visiting or out of circuit judge would be available. This has caused the determination of Ray's alimony or spousal support obligation on a temporary basis to be postponed for six (6) months.

20. As state previously, under the terms of the Trust the vast majority of our marital assets are under the control of the Trustee. Because of this, I have no access to funds from which to pay my attorney. In fact, my attorney is owed a substantial amount of funds from the Trust was has not been paid.

21. I request that Ray and/or the Trust be required to advance the sum of \$20,000 in order for me to prepare my case on a basis of parity.


MARY T. HOBBY

SWORN TO before me this
12th day of November, 2012.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 1-23-2014

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

Mary T. Hobby,)

Plaintiff,)

vs.)

Raymond D. Hobby,)

Defendant.)

IN THE FAMILY COURT FOR THE
EIGHT JUDICIAL CIRCUIT

Docket No. 05-DR-36-56

PRELIMINARY
FINANCIAL DECLARATION OF
Mary T. Hobby

ATTORNEY / CLIENT
COPY

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Emma I. Bryson
McDougall & Self L.L.P.
791 Greenlawn Drive
Columbia, SC 29209

Telephone: (803) 776-3130

Attorneys for Plaintiff

HOBBY V HOBBY

PRELIMINARY
FINANCIAL DECLARATION OF

MARY T. HOBBY

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	<u>TAB</u>
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FINANCIAL DECLARATION PAGE 2: TOTAL EXPENSES	2
FINANCIAL DECLARATION PAGE 3: PROPERTY SUMMARY	3
BUDGET FORM	4
NOTES TO FINANCIAL DECLARATION	5

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE FAMILY COURT FOR THE
EIGHTH JUDICIAL CIRCUIT

DOCKET NO: 05-DR-36-56

Mary T. Hobby,
Plaintiff,
vs.
Raymond D. Hobby,
Defendant.

PRELIMINARY
FINANCIAL DECLARATION
OF
MARY T. HOBBY

HUSBAND
Raymond D. Hobby
Address: P.O. Box 457
Newberry, SC 29108
Age: 51
SSN: [REDACTED]
Occupation: Contractor
Employer: Hobby Construction Co., Inc.
Address: P.O. Box 457
Newberry, SC 29108

WIFE
Mary T. Hobby
544 Crowder Road
Kinards, SC 29355
53
Homemaker

Note

Ref.

PART A: INCOME AND EXPENSE INFORMATION

	HUSBAND	WIFE
(a) Gross monthly income from:		
Salary and wages (including commissions, bonuses and overtime) payable weekly/		
1 monthly/etc. \$41.62 per week		\$ 180.35
Pensions and retirement		
Social Security		
Disability and unemployment insurance		
Public assistance		
Child Support		
Taxable Alimony		
Dividend and interest income		
Rents		
2 Other: Cash from Husband to Wife, \$400.00 per week.		1,733.33
TOTAL MONTHLY INCOME:		1,913.68
(b) Itemize deductions from gross income:		
3 Income Taxes (Federal)		
3 Income Taxes (State)		
4 Social Security		13.80
Disability insurance		
Medical or other insurance		
Retirement or pension fund		
Savings Plan		
Other:		
TOTAL DEDUCTIONS:		13.80
(c) NET MONTHLY INCOME:		\$ 1,899.88

* NOTES & ATTACHMENTS ARE AN INTEGRAL PART OF THIS FINANCIAL DECLARATION*

Estimated Monthly Expenses (Specify which part is the custodial parent and list name and relationship of all members of the household whose expenses are included):

The following are the actual and reasonably anticipated expenses of Wife as estimated by Wife:
(Please refer to the Budget Form at Tab 5 for details.)

Note
Ref.

	HUSBAND	WIFE
Rent		
Note or mortgage payments (residence)		
Real Property Taxes (residence)		\$ 648.64
Real Property Insurance (residence)		204.66
Maintenance (residence)		2,440.56
Food and household supplies		975.00
Utilities		885.33
Telephone		74.48
Laundry		50.00
Clothing		400.00
Medical		898.83
Dental		69.92
Insurance (life, health, accident, inc.)		
Children's expenses		
Payment of child/spousal support		
School		
Entertainment		2,020.00
Incidentals		918.66
Auto expenses (ins., tax, oil, repair)		610.04
Auto payments		
Other installment payment (s)		
(Insert total here and itemize below)		

Creditor's Name / For	Balance	Monthly Pmt

Other:		
2nd Home Expenses - Edisto Beach, SC		TBD
2nd Home Expenses - Maggie Valley, NC		TBD
TOTAL EXPENSES:		\$10,196.14

Other debts and obligations NOT payable in monthly installments:

Creditor's Name	For	Date Payable	Balance
TOTAL OTHER DEBTS AND OBLIGATIONS			

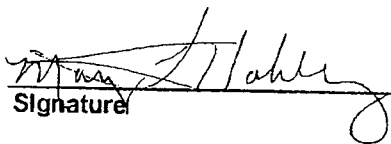
* NOTES & ATTACHMENTS ARE AN INTEGRAL PART OF THIS FINANCIAL DECLARATION*

Page Two

10/25/05

	Marital Property Under Control of		Non-Marital Property Under Control of	
	Husband	Wife	Husband	Wife
Cash on hand				
Money in checking accounts				
Money in savings accounts				
Money in credit union				
Money in any other accounts or deposits				
Retirement or pension fund				
Life insurance cash value				
Value of any stocks & bonds				
Value of real estate				
Value of all other property				
TOTAL PROPERTY	38,664,205	**		

Per Husband's
Bank Filed
Financial Statement
attached.


Signature

SWORN to and subscribed before

me on this 25 day of OCTOBER, 20 .


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: JULY 28, 2014

** Information necessary to complete the valuation of property, including Husband's various interests in closely held entities, is not available at this time. This work in process. See Husband's Bank Filed Personal Financial Statement dated 12/31/04 attached, which was received from Arthur State Bank per Wife's subpoena.

NOTES AND ATTACHMENTS ARE AN INTEGRAL PART OF THIS FINANCIAL DECLARATION

RAYMOND D. HOBBY
STATEMENT OF FINANCIAL POSITION 12-31-04

ASSETS

CASH

\$ 416,605

INVESTMENTS IN WHOLLY OWNED CORPORATIONS:

	BOOK VALUE & APPRAISAL
HOBBY CONSTRUCTION CO., INC.	\$ 4,925,750
LONG UTILITY CORPORATION	\$ 3,265,800
TIMBER RESOURCE GROUP, INC.	\$ 200,000
SEASIDE UTILITIES, INC.	\$ 4,865,650
EDISTO PIPE DREAM, LLC	\$ 1,625,000
IN-SITE CORPORATION	\$ 75,000
SOUTH ATLANTIC CONSTRUCTION CO.	\$ 1,275,000
EDHO	\$ 775,000
	<u>\$ 17,007,100</u>

REAL ESTATE:

PERSONAL RESIDENCE	\$ 765,000
992 ACRES, BUILDINGS, ETC.	\$ 3,072,000
LOTS IN LAURENS, SC	\$ 60,000
HOBBY CONSTRUCTION OFFICE	\$ 725,000
76 BY-PASS BLDG & LAND	\$ 470,000
TACO BLDG HIGHWAY 219	\$ 400,000
HIGHWAY 76 - 2 LOTS	\$ 150,000
MOUNTAIN CHASE CONDOS	\$ 615,000
LAKE MURRAY PROPERTY	\$ 125,000
EDITH MATTHEWS	\$ 600,000
GARMANY ROAD PROPERTY	\$ 17,000
* LONG UTILITY OFFICE & SHOP	\$ 265,000
* SEASIDE UTILITIES OFFICE	\$ 180,000
88 ACRES ON HIGHWAY 34	\$ 660,000
COLLEGE STREET BLDG	\$ 150,000
DOWNTOWN BLDGS & APTS	\$ 1,225,000
MOUNTAIN PROPERTY	\$ 100,000
10 ACRES INDUSTRIAL PARK-LAND & BLDG	\$ 650,000
HWY 219 PROPERTY	\$ 625,000
BISHOPVILLE PROPERTY	\$ 370,000
3711 VILLAGE CT, EDISTO & DOCKS	\$ 1,625,000
3712 VILLAGE CT, EDISTO & DOCKS	\$ 600,000
SOUTH ATLANTIC PROPERTY	\$ 95,000
RINGER PROPERTY	\$ 125,000
COCKRELL ROAD PROPERTY	\$ 150,000
LAKE MARION HOUSE & PROPERTY	\$ 225,000
HIGHLANDS LOOP	\$ 185,000
HAWKS NEST	\$ 25,000
109 BERRY STREET	\$ 145,000
SPRING CREEK	\$ 30,000
MAGGIE VALLEY RESORT & DEV	<u>\$ 11,450,000</u>
	\$ 25,779,000

PERSONAL PROPERTY

LOANS RECEIVABLE

VESTED RETIREMENT & IRA

LIFE INSURANCE

\$ 1,395,000
\$ 880,000
\$ 175,000
\$ 215,000
\$ 45,955,705

LIABILITIES

MORTGAGES PAYABLE

PALMETTO FARM CREDIT

EDISTO PIPE DREAM

COCKRELL ROAD

SOUTHTRUST - MTN. CHASE

1st Refinance

MAGGIE VALLEY RESORT & DEV

\$ 1,433,000
\$ 82,000
\$ 100,000
\$ 172,600
\$ 415,000
\$ 5,100,600
\$ 7,302,600
\$ 38,664,205

NET WORTH

P. 2

8092768888

Hobby Const

Aug 22 05 05:01p

ASB 9.13.05 0027

BUDGET FORM

This Budget Form is provided to help you in filing out a part of the Financial Declaration form which you will sign under oath, file with the Family Court and possibly be cross-examined about. The numbers and items on this Budget Form compare to the items on the second page of the Financial Declaration form. All expenses must be stated on a monthly basis.

In calculating your monthly expenses, be exact and accurate to the extent possible. Review your records carefully. Do not rely solely on your memory or estimates. You should base your calculations on your historical expenditures if you reasonably expect those expenses to be repeated in the future. If you expect your current expenses to vary from your historical expenditures, so note on the Budget Form. If you must estimate or project your expenses, so state on the Budget Form and explain your basis for your estimate or projection. Please keep us advised of any changes to your expenses so that your Financial Declaration may be timely updated. Thank you.

1. Rent (Residence)

2. Note or mortgage payments (residence; primary & secondary)

(a) 1st mortgage payment

(b) 2nd mortgage payment

TOTAL

None

3. Real property taxes (residence; primary & secondary)

(a) city real estate taxes

(b) county real estate taxes

(c) other real estate taxes

TOTAL

Wife's estimate, \$7,783.73/year
per Wife's call to Court House

648.64

4. Real property insurance (residence; primary & secondary)

(a) homeowner's ins.

Per SC Farm Bureau Mutual Ins. Co.

204.66

(b) renter's insurance

statement dated 7/27/05,

(c) other jewelry

\$2,455.97 per year.

(d) flood, earthquake &

other insurance

(Mortgage Insurance)

TOTAL

204.66

5. Maintenance (residence; primary & secondary)

(a) ordinary maintenance, upkeep & repairs	Wife's estimate for electricians, plumber's, handyman, etc., \$6,000/year	500.00	
(b) major repairs	(Historically paid or repaired by Husband)	TBD	
(c) appliance repair & replacement	(Wife's estimate to replace)	TBD	
(d) furnishings & fixture repair/replacement		TBD	
(e) exterminator & termite bond		40.00	per Wife
(f) heat/A/C maintenance-service contract		50.00	per Wife
heat/A/C unit to be replaced \$14,000/15 years		78.00	per Wife
(g) yard maintenance	per quote from Townsend's Lawn Ser.	750.00	
(h) cleaning service	Historically, \$100/week per Wife	433.33	
(i) window cleaning	Twice per year @ \$200 per Wife	33.33	
(j) annual flowers and plants	per quote from Townsend's Lawn Ser.	85.00	
(k) furniture			
(l) hardware store items		60.00	per Wife
(m) security	per 7/27/05 ADT statement	62.99	
(n) carpet cleaning	per ServPro quote	47.91	
(o) regime fee			
(p) pool maintenance	\$600 X 6 mos = \$3600/year	300.00	per Wife
TOTAL		2,440.56	

6. Food and household supplies

(a) food products		800.00	per Wife
(b) beverages			
(c) non-entertain. meals out	see item #17-e		
(d) household & cleaning supplies (not laundry)		100.00	per Wife
(e) paper goods		75.00	per Wife
TOTAL		975.00	

7. Utilities

(a) electricity	Marital Res., \$373.38	559.86	
18-month average	Bunk House, \$62.89		
per statement from Util. Co.	Pond House, \$123.59		
(b) gas	Wife's estimate per call to Newberry	148.80	
(c) fuel oil	Natural Gas Co.		
(d) water/sewer			
(e) sprinkler system			
(f) garbage pickup	\$14/week per quote	60.67	
(g) cable television	Wife's estimate	116.00	
TOTAL		885.33	

8. Telephone		
(a) basic service	Complete Choice Plan	48.53
(b) long distance charges	Unlimited Long Distance	25.95
TOTAL	<i>per quote from Bell South</i>	74.48
9. Laundry and Cleaning		
(a) laundry supplies	INCLUDED IN GROCERIES AND HOUSEHOLD SUPPLIES	-----
(b) dry cleaning (includes clothing, draperies, fur storage, etc.)	Wife's estimate	50.00
TOTAL		50.00
10. Clothing (determine monthly expenses whether or not paid for by cash, credit or credit card, being sure to include purchases at back to school and Christmas time):		
(a) yourself		400.00 per Wife
(b) your spouse		
(c) your children		
TOTAL		400.00
11. Medical		
(a) prescription drugs		319.00 per Wife
(b) vitamins/nonpresc.drugs		
(c) doctor office visits (includes physical exams)		40.00
(d) eye exams	Wife's estimate, \$139/year.	11.58 per Wife
(e) corrective lenses	Glasses, \$479 & Contacts, \$140	51.58 per Wife
(f) counseling, Psychologist, Psychiatrist, etc.	S. Laney, \$110/week	476.67 per Wife
TOTAL		898.83
12. Dental		
(a) outstanding bills requiring monthly payments		
(b) regular visits/cleaning	\$40 co-payment X 2/year = \$80/year	6.67 per Wife
(c) anticipated extensive dental work	\$170, bonding & \$589 whitening	63.25
(d) orthodontics		
TOTAL		69.92

13. Insurance (life, health, accident, but not deducted from paycheck and not including real estate insurance)

- (a) life
- (b) Health/hospitalization & dental
- (c) disability
- (d)

Per Wife, provided by Husband.

TOTAL

14. Children's expenses

- (a) tuition and school expenses
- (b) summer activities
- (c) children's clothes

TOTAL

15. Payment of child/spousal support

16. School

- (a) private school tuition
- (b) PTO - other school fees
- (c) books and supplies
- (d) school lunches and meals away from home
- (e) school activities (field trips, band, sports, etc.)
- (f) summer camps
- (g) other - additional expenses

TOTAL

17. Entertainment	<i>Wife's estimate to replace trips historically paid for by Husband. Estimate based on Wife's call to Linda Long Travel, Inc.</i>	<u>1,000.00</u>
(a) trips/vacations		
(b) social obligations/rec. (incl. club dues)	<i>Wife's estimate</i>	<u>70.00</u>
(c) educational books		
(d) meals out	<i>Wife's estimate to replace meals out historically paid for by Husband.</i>	<u>950.00</u>
(e)		
TOTAL		<u><u>2,020.00</u></u>

18. Incidentals		
(a) hair care	<i>Wife's estimate</i>	<u>48.33</u>
(b) cosmetics	<i>Wife's estimate</i>	<u>135.00</u>
(c) books	<i>Wife's estimate</i>	<u>72.00</u>
(d) tailor/alterations		
(e) personal trainer	<i>Wife's estimate for 8 hrs per month</i>	<u>240.00</u>
(f) YMCA dues	<i>\$220/year per Wife</i>	<u>18.33</u>
(g) pet care		
(h) perfumes		
(i) subscriptions	<i>Wife's estimate</i>	<u>15.00</u>
(j) film & camera supplies	<i>Wife's estimate</i>	<u>100.00</u>
(k) gifts	<i>Wife's estimate</i>	<u>250.00</u>
(l) internet service	<i>Wife's estimate</i>	<u>40.00</u>
TOTAL		<u><u>918.66</u></u>

19. Auto Expenses		
(a) insurance	<i>per 10/10/05 quote from Traveler's</i>	<u>75.00</u>
(b) gas and oil	<i>Wife's estimate, \$60/week</i>	<u>260.00</u>
(c) repairs & maint.		
(d) licenses and tags		
(e) personal property tax	<i>Wife's estimate, \$1,456.00/year</i>	<u>121.33</u>
(f) motor club	<i>per Wife's call to Court House</i>	
(g) car wash	<i>Wife's estimate</i>	<u>40.00</u>
(h) cell phone	<i>per Wife's call to Verizon, 1350 mins/mo</i>	<u>79.99</u>
(i) car phone	<i>On Star, 100 mins per mo per Wife</i>	<u>19.99</u>
(j) satellite radio	<i>per XM radio statement, \$41.18/3 mos</i>	<u>13.73</u>
TOTAL		<u><u>610.04</u></u>

20. Auto payments

=====

21. Installment Payments

<u>Balance</u>	<u>Payment</u>

TOTAL

=====

22. Other (specify)

(a) 2nd Home Expenses - Edisto

TBD

(b) 2nd Home Expenses - Maggie Valley

TBD

(c)

(d)

TOTAL

=====

23. Total Expenses (1-22 above)

10,196.14

HOBBY v HOBBY
DOCKET #05-DR-36-56
NOTES TO WIFE'S FINANCIAL DECLARATION

1 SALARY AND WAGES:

Wife indicates she receives \$41.62 per week from Hobby Construction Co., Inc.

\$	41.62	per week
	52	
\$	2,164.24	per year
\$	180.35	expressed monthly

2 OTHER: CASH FROM HUSBAND TO WIFE:

Wife indicates she receives \$400.00 per week from Husband.

\$	400.00	per week
	52	
20,800.00		per year
\$	1,733.33	expressed monthly

3 FEDERAL AND STATE INCOME TAX:

Federal and state income taxes for Wife are based on the projected 2005 gross income as presented on page one using the 2005 individual income tax rates, single filing status, standard deduction with one personal exemption. The projected annual federal income tax is zero and the projected annual state income tax is zero.

4 SOCIAL SECURITY:

Social security is based on the 2005 social security wage base of \$90,000.00 at 6.2% and Medicare at 1.45% of total salary/wages. The projected annual social security tax is \$165.55 or \$13.80 expressed monthly.

10/24/05

44

purchase price but allowed him to pay only for my interest. This means the funds that were paid for my interest have been used to pay trust expenses and my ex-husband's share has not been paid to the trust or used to pay expenses of the trust. I have not had an opportunity to conduct discovery. I have asked for records from the trustee but the records have not been provided. I am filing a third party complaint against the trustee. I ask that the court not take any action on the plaintiff's motions until I have had an opportunity to conduct discovery and join the trustee as a third party defendant.

SWORN TO AND SUBSCRIBED BEFORE ME

this 17 day of MAY, 2013

Donna W. Rankin

Notary Public for South Carolina

Mary T. Hobby
Mary T. Hobby

My Commission Expires: 2-19-2014

H2H

Frank B. Knowlton
Nelson, Mullins, Riley & Scarborough L.L.P.
Post Office Box 11070
Columbia, SC 29211

January 3, 2012

Re: Hobby vs. Hobby 544 Crowder Road (with surrounding 3 acres)

Dear Frank,

I greatly appreciate the opportunity to make an offer to purchase the property in Kinards, SC, 544 Crowder Road and surrounding acreage. It is my opinion that this property is essential to the value of the overall property holdings that surround it and being extracted from the farm will drastically damage the total value of the property. Therefore I would extend an offer to the trust to purchase Ms. Hobby's interest of 42 ½ % to maintain the most value and marketable position for the overall property.

I am offering to purchase this property for \$138,125.00 as is where is. This is based on the 42 ½ % of the full \$325,000.00 appraisal that was used in the evaluation of material assets at the time of divorce and was agreed on by both parties. No broker discounts, no commissions, no reductions for any reasons.

I am further offering to leave this asset in the Trust to maximize the properties value for any future sale opportunities and receive no distributions until the property is sold and all trust liabilities are satisfied.

According to Ms. Hobby's appraisal it contends the property isn't worth that amount. I, as stated above disagree not only for the overall value of the total farm but feel the size, quality and location of the home keeps it at the former numbers.

As to reimbursements for expenses to Ms. Hobby for taxes, maintenance and repairs, these should be denied. If there is any devaluation or cost to maintain this property it should be borne by Ms. Hobby for failure to comply with the final divorce order to convey this property into the trust. As you know I personally have not asked to date for any reimbursements for funds I have advanced on behalf of trust assets, taxes, maintenance, repairs, mortgage payments, interest or any other cost associated. This will be accounted for when the trust is solvent and has adequate cash flows.

Knowing the Trust is still struggling and has urgent needs for cash flow, I propose this transaction take place as immediate as possible. I can close in a matter of days should you find this proposal acceptable.

I respect your consideration and request to reserve the right to counter offer if any additional offers are presented that exceed this proposal.

Sincerely,
Raymond D. Hobby

mthobby

From: Frank Knowlton [frank.knowlton@nelsonmullins.com]
Sent: Thursday, February 09, 2012 9:53 AM
To: Sharon Barkley; John McDougall
Cc: mthobby
Subject: RE: Hobby vs. Hobby

John, thanks for your letter yesterday. Unfortunately time is not on our side and, in my opinion, Mary has had plenty of time to come up with a counter-offer. She has apparently had Ray's counter since January 23 (18 days). The Trust is now past due in most or all of the loan payments which it is required to service. Therefore, I have no choice but to accept what is clearly the superior offer and use the cash advance to service the loans for February. Thanks, Frank

-----Original Message-----

From: Sharon Barkley [mailto:sbarkley@mcDougallandself.com]
Sent: Wednesday, February 08, 2012 4:22 PM
To: Frank Knowlton
Cc: 'mthobby'
Subject: Hobby vs. Hobby

Mr. Knowlton,

Please see attached correspondence from John McDougall, with enclosure, in regard to the above referenced matter.

Sharon

Sharon R. Barkley
Legal Assistant to John O. McDougall
McDougall & Self, L.L.P.
Post Office Box 90860
Columbia, SC 29290
Telephone: 803.776.3130
Facsimile: 803.776.7748

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=====

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mthobby

From: Frank Knowlton [frank.knowlton@nelsonmullins.com]
Sent: Monday, January 30, 2012 1:33 PM
To: John McDougall
Cc: mthobby ; Sharon Barkley
Subject: RE: Offer to Purchase 544

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category LEGAL/ATTORNEY

Thanks John.

Nelson Mullins

Frank B. B. Knowlton

Partner
frank.knowlton@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP

Meridian, 17th Floor
1320 Main Street, Columbia, SC 29201
Tel: 803.255.9588 Fax: 803.256.7500

www.nelsonmullins.com
(View Bio <<http://www.nelsonmullins.com/attorney/columbia/frank-knowlton>>)

From: John McDougall [mailto:jom@mcDougallandself.com]
Sent: Monday, January 30, 2012 12:51 PM
To: Frank Knowlton
Cc: 'mthobby'; 'Sharon Barkley'
Subject: RE: Offer to Purchase 544

Frank, I will try to get Ms Hobby to respond asap. John

From: Frank Knowlton [mailto:frank.knowlton@nelsonmullins.com]
Sent: Monday, January 30, 2012 10:36 AM
To: John McDougall
Cc: mthobby ; Sharon Barkley
Subject: RE: Offer to Purchase 544

John, I am not opposed to giving her some time to respond but the mortgages will go into default if I cannot get funds in pretty quickly. Any delays in responding to her are purely my fault as a result of year end business so I apologize for the inconvenience. In any event, 43 days won't work as all of the loans will be defaulted by that time. Frank

Nelson Mullins

Frank B. B. Knowlton

Partner

frank.knowlton@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP

Meridian, 17th Floor

1320 Main Street, Columbia, SC 29201

Tel: 803.255.9588 Fax: 803.256.7500

www.nelsonmullins.com

(View Bio <<http://www.nelsonmullins.com/attorney/columbia/frank-knowlton>>)

From: John McDougall [mailto:jom@mcdougallandself.com]

Sent: Monday, January 30, 2012 10:14 AM

To: Frank Knowlton

Cc: 'mthobby '; 'Sharon Barkley'

Subject: RE: Offer to Purchase 544

Frank, As you are aware our office closes @ 5:00pm each day, to include Fridays. Since your email was sent after our office was closed this past Friday, I have not had a chance to review your email of 1/27/12 @ 5:20pm until this time. I do not know whether Ms Hobby has had an opportunity to review it at all since your email was not sent to her when you sent it to me. As you are aware Ms Hobby made an offer to purchase this property on 12/8/11. Ms Hobby did not receive a response to her offer until 1/20/12 (which was sent at 5:12pm on Friday afternoon after our office was closed for the weekend) some 43 days after she made her proposal. I would think that you would extend to her the same courtesy that was extended in behalf of Mr Hobby and the trust and provide her with a 43 day period to respond to Mr Hobby's proposal. She may not need that long, however, she certainly needs more than 1 week to do so. John

From: Frank Knowlton [mailto:frank.knowlton@nelsonmullins.com]

Sent: Friday, January 27, 2012 5:20 PM

To: John McDougall

Cc: mthobby ; Sharon Barkley

Subject: RE: Offer to Purchase 544

John, at this time, the Trust does not have sufficient funds to pay the expenses of the Trust in February and beyond. Unless a better offer is received, I have no other choice than to accept this offer to purchase 544 Crowder Road. Due to the timing of the obligations to pay the mortgage payments in February, I intend to close on this offer by January 31, 2012. Please let me know if you have any questions. Thanks, Frank

Nelson Mullins

Frank B. B. Knowlton

Partner

frank.knowlton@nelsonmullins.com

mthobby

From: Frank Knowlton [frank.knowlton@nelsonmullins.com]
Sent: Thursday, April 12, 2012 5:16 PM
To: John McDougall
Cc: Sharon Barkley; Raymond D. Hobby; Mary Hobby; Tim Madden
Subject: Re: Hobby vs. Hobby

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category LEGAL/ATTORNEY

Are you contending I need a court order every time I sell an asset. I don't see that in the Trust document anywhere. Please point that out.

Mary failed to submit a bid superior to Rays offer and the Trust desperately needed these funds to operate.

I strongly encourage you to seek court review if you believe I have breached the letter or spirit of the Trust Agreement.

I will not stand idly by while you levy threats like this and will gladly defend my decisions to the court.

I am copying all interested parties.

Sent from my iPhone

On Apr 12, 2012, at 4:46 PM, "John McDougall" <jom@mcdougallandself.com> wrote:

Frank, You have a fiduciary relationship to both parties. Both parties have been given the right to purchase property from the trust. Quite frankly, since this is a contested issue and since you have a fiduciary relationship to both parties, I believe it is a violation of your fiduciary relationship to Mary Hobby for you to sell this property to Ray Hobby without a court order authorizing you to do so and you may be opening yourself up to civil liability to do so. All that Mary Hobby has requested from you is that the property not be transferred to Ray Hobby without a court order authorizing the transfer. She does believe that she should be permitted to purchase the property as offered. This should be a decision made by the Family Court. If you do, then whatever happens, happens. John

From: Frank Knowlton [mailto:frank.knowlton@nelsonmullins.com]
Sent: Thursday, April 12, 2012 4:04 PM
To: Sharon Barkley
Cc: jamesebryan@prtcnet.com; mthobby@yahoo.com; John McDougall
Subject: Re: Hobby vs. Hobby

Unfortunately, Ms Hobby had the opportunity to bid on the house and failed out bid Ray until well after the deadline I gave you.

Please advise immediacy as to how this might violate the Trust Agreement as this has never been raised.

Sent from my iPhone

On Apr 12, 2012, at 3:16 PM, "Sharon Barkley" <sbarkley@mcdougallandself.com> wrote:

Mr. Knowlton, here is the letter from Mr. McDougall:

Dear Frank:

I am forwarding you the General Warranty Deed that has been signed by Ms. Hobby regarding the transfer of the Crowder Road property to the Trust.

I am also forwarding you another copy of my correspondence to you of March 21, 2012. I reiterate that which is set forth in paragraphs 5 and 6 of that letter as follows:

5. Ms. Hobby was clearly provided the right to purchase property from the Trust, she has made a very fair offer to purchase the property and she insists upon having the right to do so. I would recommend that this property not be sold without an Order of the Family Court in that Ms. Hobby believes that if it is sold to Mr. Hobby as proposed, that the Trust has violated the prior Order of the Family Court.

6. Ms. Hobby puts the Trust on notice that she does intend to enforce her right to purchase this property through the Family Court if her offer continues to be rejected.

I also reiterate that Ms. Hobby is prepared to immediately provide the Trust with \$186,875 for the transfer of this property to her.

Based upon the above and the Liquidating Trust documents and the prior Orders of the Court, I would request that you not transfer this property to Mr. Hobby without an Order of the Court permitting you to do so. If you are not agreeable to this request, please advise me immediately.

In follow up to my email to you of April 5, 2012, and your response to me of April 5, 2012, copies of which are enclosed, I have not received any further response from Mr. Hobby or his attorney regarding my inquiry.

With kind regards.

Sincerely,

JOHN O.

McDOUGALL

From: Frank Knowlton [mailto:frank.knowlton@nelsonmullins.com]
Sent: Thursday, April 12, 2012 3:07 PM
To: Sharon Barkley
Cc: jamesebryan@prtcnet.com; mthobby@yahoo.com
Subject: Re: Hobby vs. Hobby

Am out of the office. Can you email me the text of the letter?

Sent from my iPhone

On Apr 12, 2012, at 2:57 PM, "Sharon Barkley" <sbarkley@mcDougallandself.com> wrote:

Mr. Knowlton,

Please see attached letter from John McDougall, with enclosures, in regard to the above referenced matter.

Sharon

Sharon R. Barkley
Legal Assistant to John O. McDougall
McDougall & Self, L.L.P.
Post Office Box 90860
Columbia, SC 29290
Telephone: 803.776.3130
Facsimile: 803-776-7748

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<Frank Knowlton 4.12.12 - Crowder Road property.pdf>

=====
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STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Raymond D. Hobby,)
)
Plaintiff,)

C/A No.: 2013-CP-36-0193

v.)

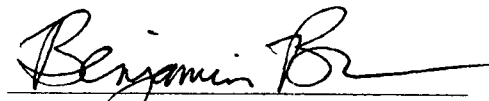
Mary T. Hobby,)
)
Defendant.)

CERTIFICATE OF SERVICE

I, Benjamin C. Bruner, an Associate with the law firm of Bruner, Powell, Wall and Mullins, LLC, attorneys for Plaintiff, do hereby certify that on this 4th day of September, 2013, I served **Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss and In Support of Motion for Partial Summary Judgment** upon the following parties by hand delivery:

Pope D. Johnson, III, Esquire
Johnson & Barnette, LLP
P.O. Drawer 11209
Columbia, South Carolina 29211-1209
Attorneys for the Defendant

R. Davis Howser, Esquire
Howser, Newman & Besley, LLC
P.O. Box 12009
Columbia, South Carolina 29211
Attorneys for Francis B.B. Knowlton


Benjamin C. Bruner

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby,)
Plaintiff,)

Civil Action No. 2013-CP-36-193

vs.)

Mary T. Hobby,)
Defendant/Third)
Party Plaintiff,)

**DEFENDANT'S NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT**

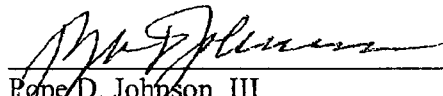
vs.)

Frances B. Knowlton, Individually)
and as Trustee,)
Third Party Defendant.)

FILED
NEWBERRY COUNTY
2013 SEP 20 AM 10 19
JACQUE S. ROBERTS
CLERK OF COURT

TO: THE PLAINTIFF and his attorney BENJAMIN C. BRUNER

YOU WILL PLEASE TAKE NOTICE that the Defendant Mary T. Hobby moves for summary judgment pursuant to Rule 12(b)(6), SCRCP, that, given the undisputed evidence, the trustee acted outside the scope of his powers and authority in quitclaiming the marital residence to the plaintiff and the quitclaim is therefore void and a nullity. The affidavits of John O. McDougall and Arthur E. White, III are submitted in support of the motion.


Pope D. Johnson, III
Johnson & Barnette, LLP
P.O. Drawer 11209
Columbia, SC 29211
803-799-9791
803-253-6084 (Fax)
pdjohnson@johnsonbarnette.com
Attorney for the Defendant

Columbia, South Carolina
September 19, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby)
Plaintiff,)

Civil Action No. 2013-CP-36-193

vs.)

CERTIFICATE OF SERVICE

Mary T. Hobby)
Defendant/Third Party)
Plaintiff,)

vs.)

Frances B. Knowlton, Individually)
and as Trustee,)
Third Party Defendant.)

FILED
NEWBERRY COUNTY
2013 SEP 20 AM 10 19
JACQUE S. POWERS
CLERK OF COURT

I, Sherry W. Wise, of Johnson & Barnette, LLP, hereby certify that I have served Benjamin C. Bruner, attorney for the Plaintiff, and R. Davis Howser, attorney for the Third Party Defendant, with the following pleadings by mailing a copy of same, postage prepaid and return address clearly indicated, to them at the following addresses on the 19th day of September, 2013.

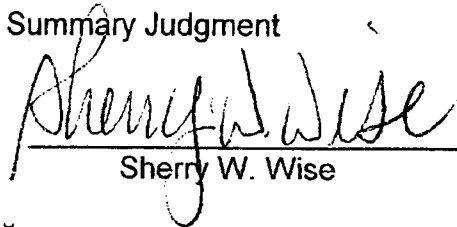
COUNSEL SERVED:

Benjamin C. Bruner
Bruner Powell Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260-1110

R. Davis Howser, Esquire
Howser Newman & Besley, LLC
P.O. Box 12009
Columbia, SC 29211

PLEADINGS:

Defendant's Notice of Motion and Motion For Summary Judgment


Sherry W. Wise

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
Raymond D. Hobby,	)	Civil Action No. 2013-CP-36-193
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Mary T. Hobby,	)	MOTION FOR SUMMARY JUDGMENT
	)	
Defendant/Third	)	
Party Plaintiff,	)	
	)	
vs.	)	
	)	
Frances B. Knowlton, Individually	)	
and as Trustee,	)	
	)	
Third Party Defendant.	)	
	)	

TO: POPE D. JOHNSON, ESQUIRE, AS ATTORNEY FOR DEFENDANT AND
THIRD PARTY PLAINTIFF MARY T. HOBBY:

YOU WILL PLEASE TAKE NOTICE THAT the undersigned as attorney for the Third Party Defendant Frances B. Knowlton (correctly known as Frances B.B. Knowlton) will move before the Judge of the Court of Common Pleas for Newberry County on the tenth (10th) day after service hereof at 10:00 a.m. at the Newberry County Courthouse, Newberry, South Carolina, or at such other time and place as may be set by the Court, for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. The grounds for this motion are that there are no genuine issues of material facts and that the Third Party Defendant is entitled to judgment as a matter of law since (1) Third Party Defendant Frances B.B. Knowlton acted as a prudent trustee exercising the required reasonable care, skill, and caution under the circumstances in this case; (2) Third Party

Defendant Frances B.B. Knowlton breached no duty owed to Third Party Plaintiff Mary T. Hobby; (3) Third Party Defendant Frances B.B. Knowlton breached no duty owed to Third Party Plaintiff Mary T. Hobby which has proximately resulted in any damage to the Third Party Plaintiff; (4) that the language of the Final Divorce Decree and Order which created the Hobby Family Liquidating Trust and the Hobby Family Liquidating Trust, copies of which documents are incorporated by reference herein gave the Third Party Defendant Frances B.B. Knowlton the authority to sell the residence referred to in the Third Party Complaint to Raymond D. Hobby for his offer that was reasonable, fair and reflected market value in that the language of the Final Divorce Decree and Order provides:

Either party may purchase any asset from the trust, provided the sale terms are reasonable, fair and reflect fair market value or other terms mutually agreeable to the parties. (Order dated October 10, 2010 at paragraph 3 f.)

and the Trust Agreement provides:

Trustee may sell any Trust Asset to a Transferor [as defined in the Order and Trust Agreement] provided the sale and terms of sale are reasonable, fair and reflect fair market value and any other terms mutually agreeable by the parties.

(5) the language quoted above means that in addition to any terms that are reasonable, fair and reflect fair market value, the Trustee could in the *alternative* sell the property based on any other specific terms mutually agreed upon in writing by the parties where those terms are delivered to the Trustee by the parties even if those terms were not reasonable, fair or failed to reflect market value; (6) the Order of the Honorable Deborah Neese, filed on April 26, 2013, which on information and belief is law of the case, holds that

There is no challenge presented by Plaintiff [Mary T. Hobby] that the Trust is in fact the product of the Family Court Order or that the Trust contains terms or provisions different from those required by the Divorce Decree.

and the Divorce Decree provides:

Either party may purchase any asset from the trust, provided the sale terms are reasonable, fair and reflect fair market value or other terms mutually agreeable to the parties

by reason of which Third Party Plaintiff is barred by estoppel and law of the case from maintaining this action since Trustee had authority and was within his rights as Trustee to sell the property referred to in the Third Party Complaint to Raymond D. Hobby under the attendant circumstances; (7) Third Party Plaintiff made an initial offer to purchase the former marital home to which a higher and better offer was made by Raymond D. Hobby and accepted by the Third Party Defendant as Trustee as a reasonable and fair offer that reflected fair market value and since Third Party Plaintiff is not free from fault and does not have clean hands she is not entitled to recover in this action for equitable indemnity or otherwise; and (8) Third Party Defendant, in acting as Trustee of a liquidating trust created pursuant to a Divorce Decree and Order, acted solely in his capacity as Trustee and is not liable to the Third Party Plaintiff in his individually capacity .

This motion will be based on the pleadings, rules of court, discovery in this case including depositions, any affidavits served and filed with this motion, applicable decisions and such other matter as may be acceptable to the court.

(SIGNATURE APPEARS ON FOLLOWING PAGE)



R. Davis Howser

of HOWSER, NEWMAN & BESLEY, LLC
1508 Washington Street
Post Office Box 12009
Columbia, South Carolina 29211
(803) 758-6000

Attorneys for Third Party Defendant Frances B.
Knowlton (correctly known as Frances B.B.
Knowlton)

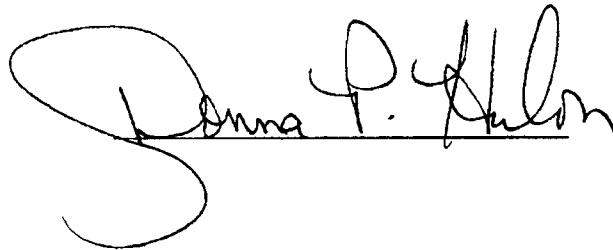
December 23, 2013

CERTIFICATE OF SERVICE

I, the undersigned employee of Howser, Newman & Besley, LLC, attorneys for Third Party Defendant Frances B. Knowlton (correctly known as Frances B.B. Knowlton), hereby certify that I have served copies of his Motion for Summary Judgment depositing a copy of same in a United States Postal Service Mail Box directed to counsel listed below, postage prepaid, this 23rd day of December 2013:

Pope D. Johnson, III, Esquire
Johnson & Barnette, LLP
P. O. Drawer 11209
Columbia, South Carolina 29211-1209
ATTORNEY FOR DEFENDANT MARY T. HOBBY

James L. Bruner, Esquire
Benjamin C. Bruner, Esquire
Bruner, Powell, Wall & Mullins, LLC
P. O. Box 61110
Columbia, South Carolina 29260
ATTORNEYS FOR PLAINTIFF RAYMOND D. HOBBY

A handwritten signature in black ink, appearing to read "Donna P. Nelson". The signature is written in a cursive style with a large, looping initial "D" and a horizontal line underlining the name.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	Civil Action No. 2013-CP-36-193
Raymond D. Hobby,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Mary T. Hobby,	)	MEMORANDUM IN SUPPORT OF
	)	THIRD-PARTY DEFENDANT
	)	FRANCES B. KNOWLTON'S (CORRECTLY
Defendant/Third	)	KNOWN AS FRANCIS B. B. KNOWLTON)
Party Plaintiff,	)	MOTION FOR SUMMARY JUDGMENT
	)	
vs.	)	
	)	
Frances B. Knowlton, Individually	)	
and as Trustee,	)	
	)	
Third Party Defendant.	)	

This memorandum is submitted by Third Party Defendant Francis B. B. Knowlton in support of his motion for summary judgment, filed on December 27, 2013. Third Party Defendant has moved for summary judgment on the following grounds:

(1) Third Party Defendant Frances B.B. Knowlton acted as a prudent trustee exercising the required reasonable care, skill, and caution under the circumstances in this case;

(2) Third Party Defendant Frances B.B. Knowlton breached no duty owed to Third Party Plaintiff Mary T. Hobby;

(3) Third Party Defendant Frances B.B. Knowlton breached no duty owed to Third Party Plaintiff Mary T. Hobby which has proximately resulted in any damage to the Third Party Plaintiff;

(4) that the language of the Final Divorce Decree and Order which created the Hobby Family Liquidating Trust and the Hobby Family Liquidating Trust, copies of which documents

are incorporated by reference herein gave the Third Party Defendant Frances B.B. Knowlton the authority to sell the residence referred to in the Third Party Complaint to Raymond D. Hobby for his offer that was reasonable, fair and reflected market value in that the language of the Final Divorce Decree and Order provides:

Either party may purchase any asset from the trust, provided the sale terms are reasonable, fair and reflect fair market value or other terms mutually agreeable to the parties. (Order dated October 10, 2010 at paragraph 3 f.)

and the Trust Agreement provides:

Trustee may sell any Trust Asset to a Transferor [as defined in the Order and Trust Agreement] provided the sale and terms of sale are reasonable, fair and reflect fair market value and any other terms mutually agreeable by the parties.

(5) the language quoted above means that in addition to any terms that are reasonable, fair and reflect fair market value, the Trustee could in the *alternative* sell the property based on any other specific terms mutually agreed upon in writing by the parties where those terms are delivered to the Trustee by the parties even if those terms were not reasonable, fair or failed to reflect market value;

(6) the Order of the Honorable Deborah Neese, filed on April 26, 2013, which on information and belief is law of the case, holds that

There is no challenge presented by Plaintiff [Mary T. Hobby] that the Trust is in fact the product of the Family Court Order or that the Trust contains terms or provisions different from those required by the Divorce Decree.

and the Divorce Decree provides:

Either party may purchase any asset from the trust, provided the sale terms are reasonable, fair and reflect fair market value or other terms mutually agreeable to the parties

by reason of which Third Party Plaintiff is barred by estoppel and law of the case from maintaining this action since Trustee had authority and was within his rights as Trustee to sell the

property referred to in the Third Party Complaint to Raymond D. Hobby under the attendant circumstances;

(7) Third Party Plaintiff made an initial offer to purchase the former marital home to which a higher and better offer was made by Raymond D. Hobby and accepted by the Third Party Defendant as Trustee as a reasonable and fair offer that reflected fair market value and since Third Party Plaintiff is not free from fault and does not have clean hands she is not entitled to recover in this action for equitable indemnity or otherwise; and

(8) Third Party Defendant, in acting as Trustee of a liquidating trust created pursuant to a Divorce Decree and Order, acted solely in his capacity as Trustee and is not liable to the Third Party Plaintiff in his individually capacity.

Facts

The facts underlying this action were discussed extensively in Third Party Defendant Francis B. B. Knowlton's ("Knowlton's") Memorandum in Opposition to Third Party Plaintiff Mary T. Hobby's ("Ms. Hobby's") Motion for Summary Judgment (hereinafter referred to as Knowlton's "Memo in Opposition."). Rather than recite these facts here, Knowlton refers the court to his Memo in Opposition for the facts relevant to his motion for summary judgment.

Legal Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." S.C. R. Civ. P. 56(c). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). When determining whether summary judgment should be granted, the trial court must consider the evidence and all reasonable inferences in a

light most favorable to the non-moving party. *Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 84, 644 S.E.2d 58, 60 (2007). The party seeking summary judgment has the initial burden to demonstrate that no genuine issue of material fact exists. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). The non-moving party need only establish a mere scintilla of evidence to survive a motion for summary judgment. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 331, 673 S.E.2d 801, 803 (2009). "Summary judgment should not be granted even when there is no dispute as to the evidentiary facts, if there is a dispute as to the conclusions to be drawn therefrom. *MacFarlane v. Manly*, 274 S.C. 392, 264 S.E.2d 838 (1980)." *Laurens Emergency Med. Specialists, PA v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 108-09, 584 S.E.2d 375, 377 (2003)

Discussion

Ms. Hobby's cross-claim alleges Knowlton breached his fiduciary duty to her in the course of selling the Marital Home to Mr. Hobby. However, the undisputed evidence establishes as a matter of law that Knowlton did not breach any fiduciary duty owed to Mary when he sold the Marital Home. Rather, Knowlton at all relevant times administered the Trust as a prudent trustee exercising the required reasonable care, skill, and caution under the circumstances. (See Affidavit of Julian Walker, Jr., Memo in Opposition, Ex. 29).

Because the arguments submitted to the Court in Knowlton's Memo in Opposition also provide support for the grant of summary judgment to Knowlton on all of Ms. Hobby's claims in this action, Knowlton hereby incorporates said arguments herein in addition to the arguments that follow.

- I. Defendant Knowlton cannot be held liable for any breach of fiduciary duty because he at all times exercised his authority and discretion as trustee in reasonable reliance on the provisions of the Trust Agreement**

As discussed at length in his Memo in Opposition, the undisputed evidence establishes that Knowlton did not exceed the scope of his authority under the Trust Agreement, nor breach any fiduciary duty, by selling the Marital Home to Mr. Hobby. However, even if the Court determines that Knowlton breached his fiduciary duty to Mary, which he adamantly denies, Knowlton cannot be held liable for this breach. Under the South Carolina Trust Code, "A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust¹ to the extent the breach resulted from the reliance." S.C. Code § 62-7-1006. At all times relevant to this action, Knowlton acted in reasonable reliance on the terms of the Trust Agreement.

Ms. Hobby's primary contention that Knowlton breached his fiduciary duty to her is that he did not obtain her consent to the sale of the Marital Home to Mr. Hobby. However, as discussed in his Memo in Opposition, the Trust Agreement provision Knowlton relied upon in selling the home without her consent—Article IX (a) (xxxii)—can be reasonably interpreted as not requiring such consent. Therefore, Knowlton's reliance on this provision was reasonable.

II. Ms. Hobby is not entitled to indemnity from Knowlton because any and all damages she alleges were proximately caused by her own actions

Ms. Hobby's cross-claim alleges that Knowlton's alleged breach of his fiduciary duty exposed her to the Plaintiff's claims in this action. (Answer to Am. Compl., Countercl. And Third Party Compl. ¶ 26, Memo in Opposition, Ex. 4). Ms. Hobby therefore alleges that Knowlton must indemnify her for any amount she owes the Plaintiff. However, Ms. Hobby is not entitled to indemnity because Knowlton did not breach any fiduciary duty he owed to her.

¹ A breach of trust is any violation by a trustee of a duty owed to a beneficiary of a trust. S.C. Code § 62-7-1001.

Moreover, even if Knowlton did breach a fiduciary duty, which is adamantly denied, Ms. Hobby's actions, rather than any such breach, are the proximate cause of any damages.

"[I]ndemnity may be defined as a form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party." *Rock Hill Tel. Co., Inc. v. Globe Commc'ns, Inc.*, 363 S.C. 385, 389, 611 S.E.2d 235, 237 (2005) (internal citation and quotation marks omitted). There are two types of indemnity: contractual indemnity and equitable indemnity. *Id.* A right to equitable indemnity arises "whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join." *Id.* "The most important requirement for the finding of equitable indemnity is that the party seeking to be indemnified is adjudged without fault and the indemnifying party is the one at fault." *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999). "If the second party is also at fault, he comes to court without equity and has no right to indemnity." *Id.* "Under South Carolina law, there can be no indemnity among mere joint tortfeasors." *Id.* at 64, 518 S.E.2d at 307.

The underlying lawsuit that Plaintiff Raymond Hobby brought against Ms. Hobby concerns Ms. Hobby's failure to vacate the Marital Home after the home was sold to Mr. Hobby. According to the Trust Agreement and the Divorce Order, Ms. Hobby was only entitled to remain in the Marital Home "until such property is sold, or until vacated by her." (Divorce Order ¶ 3(s), Memo in Opposition, Ex. 2, Trust Agreement, Article XII (f), Memo in Opposition, Ex. 3). Even if Ms. Hobby thought that the sale of the Marital Home was an improper exercise of Knowlton's trustee powers, which is adamantly denied, she was still obligated under the terms of the Trust Agreement (and Divorce Order) to vacate the premises. It is her sole failure to

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS

Raymond D. Hobby,)
Plaintiff,)

C/A No.: 2013-CP-36-193

v.)

Mary T. Hobby,)
Defendant/Third-Party Plaintiff,)

**PLAINTIFF'S AMENDED MEMORANDUM
IN SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT AND IN
OPPOSITION TO DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

v.)

Frances B. Knowlton, individually)
and as Trustee,)
Third-Party Defendant.)

Plaintiff Raymond D. Hobby ("Plaintiff") submits this amended memorandum in support of his Motion for Partial Summary Judgment, filed July 9, 2013, and in opposition to the Defendant's Motion for Summary Judgment, filed on or about September 19, 2013.

INTRODUCTION

This case is about a divorce settlement, bidder's remorse and a party trying to change the terms of a trust because she is unhappy with the agreement she signed. After a protracted divorce, the Plaintiff and Defendant reached a settlement agreement in 2010 to form a liquidating trust ("Liquidating Trust"), which would facilitate equitable distribution of the various tracts of land, business, and other property the parties had that were deemed marital assets. They hired a third-party, Mr. Knowlton ("Trustee"), to serve as the trustee, and he is still serving today. The terms of the Liquidating Trust empower the Trustee to sell or dispose of any property, real or personal, constituting a part of the trust estate. In addition, the Trustee has authority to sell any

trust asset to Plaintiff or Defendant, provided the terms of the sale are reasonable, fair, and reflect fair market value.

When selling the former marital home ("the House"), where the Defendant was and still is living, the Trustee gave each party an opportunity to submit a bid. The Defendant bid first and bid low (although she claims the bid reflected the fair market value of the house). The Plaintiff counteroffered based on a substantially higher valuation of the House. Although the Trustee gave the Defendant a reasonable opportunity to outbid the Plaintiff, she failed to do so. Therefore, consistent with the terms of the Liquidating Trust, the Trustee sold the House to the Plaintiff.

This lawsuit is about the Defendant's refusal to accept that the Plaintiff bought the House. She has engaged in a variety of tactics to avoid paying rent or moving out of the house. She has contested subject-matter jurisdiction to nearly every court that has heard this matter; she continues to file appeal after appeal; and she argues the Plaintiff offered to buy the House and allow her to continue living there rent-free in perpetuity. More recently, she has included claims that the Trustee had no authority to sell the House at all (although it was a trust asset), that the House never should have been part of the divorce settlement; and she even claims the trust agreement is unenforceable. Further complicating matters, the Defendant impleaded the trustee in this case when he clearly has no liability for any of the Plaintiff's claims. And she recently filed yet another action in the Richland County Probate Court raising the same issues.

In truth, the Defendant's complaint is not that the Trustee sold the house but that he did not sell it to her. The only thing she finds unfair about the sale is that it required her to move. In reality, however, the Defendant had an opportunity to bid on the house, she bid too low and she must now move on.

UNCONTESTED FACTS

The Plaintiff and Defendant are the only beneficiaries to the Liquidating Trust. Both the Plaintiff and Defendant were well represented by counsel during the divorce, and they each engaged attorneys to draft the trust agreement, which they signed, pursuant to the divorce settlement, on December 6th and 9th, 2010 ("Trust Agreement"), a copy of which is attached as **Exhibit A.**

The Trust Agreement required the parties to fund the Liquidating Trust with certain property, including the House. (Mary Hobby Depo. 7:15-18; 203:1-5, excerpts attached as **Exhibit B.**) The Trust Agreement states the purpose of the Liquidating Trust as follows:

Purpose. The Liquidating Trust is established for the sole purpose of liquidating various marital assets belonging to the Transferors in the most fair, objective, and impartial manner available and in a manner that maximizes the value of such marital assets and satisfies the debts associated with those assets to the extent reasonably possible. In effecting the purpose of this Liquidating Trust, the Trustee shall be mindful of the desire of the parties to divest the Trust Assets for amounts approximately equal to the fair market value of such properties and Trustee shall liquidate the Trust Assets in an orderly fashion while being mindful of prevailing market conditions and the term of the Trust. For the avoidance of doubt, although the Trustee shall have the right to exercise and all rights, powers and privileges set forth herein, such powers shall be exercised in the furtherance of the purposes of the Trust, specifically selling Trust Assets in a timely, prudent and efficient manner and distributing proceeds as provided herein. The Trustee shall make timely distributions to the Beneficiaries and required payments with respect to the Liabilities (defined below) and will not unreasonably prolong the duration of the Liquidating Trust. The Liquidating Trust will not hold itself out as an investment company or as an entity engaged in the active conduct of a trade or business.

(Trust Agreement, Art. I, Paragraph (c).) With respect to the Trustee's authority to sell trust assets, the Trust Agreement provides,

Consistent with the purposes of the Trust as a liquidating Trust and the purposes as further described in Article I (c), the Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) **with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition: to any other rights, powers, authority, and**

privileges granted by any other provision of this Trust Agreement or by statute or general rules of law. . .

- (vi) **to sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate or any Trust share created hereunder, for cash or credit, at public or private sale, or to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.**

* * *

- (xxx) In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

* * *

- (xxxii) To sell, convey or otherwise deal with or dispose of any and all Trust Assets forming a part of the Liquidating Trust estate, at such time or times and in such manner and upon such terms as, in the absolute and uncontrolled discretion of the Trustee may deem expedient and proper, provided, however, that i) Trustee shall have an obligation to exercise appropriate and reasonable due diligence with respect to the sale of any Trust Asset such that Trustee is reasonably satisfied that any sale has occurred on an arms-length basis and has maximized the value of the Trust Asset being divested; and ii) **Trustee may sell any Trust Asset to a Transferor provided the sale and terms of sale are reasonable, fair, and reflect fair market value and any other terms mutually agreeable by the parties.**

(Trust Agreement, Article IX, Paragraph (a) (emphasis added).)

In late 2011, the Trustee began soliciting bids from the parties to sell the House to generate operating capital for the Liquidating Trust. On December 8, 2011, the Defendant offered to buy the House based on a discounted valuation of \$225,000. (Am. Compl., Exhibit

A.)¹ She offered to pay the Liquidating Trust \$127,231 for the House, which amount represented the Plaintiff's 57.5% share of \$225,000.² (*Id.*; Mary Hobby Depo. 147:8-18.) She believed the House was worth substantially less than \$300,000 (Mary Hobby Depo. 146:19-25), and she considered her offer to be a fair price for the House. (Mary Hobby Depo. 55:1-4.)

On January 3, 2012, the Plaintiff made a counteroffer to purchase the House based on a valuation of \$325,000, one hundred thousand dollars more than the valuation the Defendant gave the House. (Am. Compl., Exhibit B; Mary Hobby Depo. 148:11-20.) The Plaintiff offered to buy out the Defendant's interest in the House for \$138,125.00, representing her 42.5% of \$325,000. In addition, the Plaintiff offered "to leave this asset in the Liquidating Trust to maximize the properties value for any future sale opportunities." *Id.* However, the offer did not include any term allowing the Defendant to continue living in the House rent-free. (Am. Compl., Exhibit B; *see also* Mary Hobby Depo. 153:23-154:8 (stipulating that the offer does not contain any such words).)

After receiving the Plaintiff's offer, the Trustee relayed it to the Defendant and gave her time to respond. (Aff. of Francis B.B. Knowlton, ¶¶ 6-9, **Exhibit C**; Mary Hobby Depo. 155:17-156:7.) The Defendant discussed the Plaintiff's counteroffer with an appraiser and her attorney on January 23, 2012. (Mary Hobby Depo. 157:3-19; 160:24-161:9.) On January 27, 2012, the Trustee advised the Defendant and her attorney that he intended to accept the Plaintiff's offer and close on January 31st unless she made a better offer. (E-Mail from Trustee to Def. and McDougall dated January 27, 2012, **Exhibit D**; Mary Hobby Depo. 162:23-163:25.) The Defendant's attorney tried to elicit a counteroffer from her; however, she failed to respond. (E-

¹ At the time, the Defendant had not yet conveyed the House to the Liquidating Trust. (Mary Hobby Depo. 35:18-23.) She eventually did so in April of 2012.

² For purposes of equitable distribution, the Family Court held the Defendant entitled to 42.5% of marital property; the Plaintiff's share is 57.5%.

mail from McDougall to Def. and Trustee dated January 30, 2012, **Exhibit E**; Mary Hobby Depo. 164:1-17.) On January 31, 2012, the Trustee advised the Defendant and her attorney that the Liquidating Trust's mortgage payments (on various trust assets) were becoming due and he could not wait more than a day or two. (E-mail from Trustee to Def. and McDougall dated January 31, 2012, **Exhibit F**; Mary Hobby Depo. 164:18-166:20.)

Two days later, on February 2nd, the Trustee advised the Defendant's attorney that the Liquidating Trust could not meet its obligations and needed \$56,000 to service its debt. (Mary Hobby Depo. 168:4-169:3.) Still, the Defendant failed to respond to the Trustee. Instead, she felt the e-mails from the Trustee and from her attorney amounted to harassment. (Mary Hobby Depo. 172:16-173:9.) On February 7, 2012, the Trustee advised the Defendant and her attorney that he had a check for \$56,000 in hand from the Plaintiff as an advance on the purchase of the House. The Trustee told the Defendant he would have to accept the Plaintiff's offer unless he received a materially better offer from the Defendant by close of business. (E-mail from Trustee to Def. and McDougall dated February 7, 2012, **Exhibit G**; Mary Hobby Depo. 173:16-174:23.) On February 9, 2012, the Trustee advised the Defendant and her attorney that he had accepted the Plaintiff's offer and was using the cash advance to service the Liquidating Trust's debts. (E-mail from Trustee to Def. and McDougall dated February 9, 2012, **Exhibit H**; Mary Hobby Depo. 175:24-176:22; Aff. of Knowlton, ¶ 11.)

Plaintiff then delivered a check to the Trustee for \$56,000 as a down payment on his purchase of the House. (March 10, 2014 Aff. of John McDougall ¶ 9.) The Trustee accepted the check, deposited the funds, and used them to allow the Liquidating Trust to continue operating. On March 14, 2012, the Plaintiff paid another \$56,000 to the Liquidating Trust toward the House. (March 11, 2014 Aff. of Pl.)

On April 11, 2012, the Defendant conveyed the House to the Trustee, as was originally required under the Trust Agreement. (See General Warranty Deed from Def. to Trustee, **Exhibit I**.) Eight days later, on April 19, 2012, the Trustee and Plaintiff closed the sale of the House, and the Trustee delivered a Quitclaim Deed to the Plaintiff. (Am. Compl., Exhibit C; Aff. of Knowlton ¶¶ 11-14; Def's Resp. to Pl.'s First Request for Admissions, Exhibit A to Mot. for Partial Summary Judgment.) In all, Plaintiff paid the Trustee cash in the amount of \$138,125.00 and gave note payable on demand for the remainder of the \$325,000 purchase price.

After the Trustee sold the House to the Plaintiff, the Plaintiff demanded that the Defendant move out, but she refused. The Plaintiff commenced an ejectment action in the Magistrate Court ("Magistrate's Court Case"), (Notice to Quit, attached as **Exhibit J**), seeking possession of the House. This dispute has meandered through the judicial system, ultimately resulting in the Plaintiff prosecuting his claim for possession in the Magistrate's Court and his claim for damages in the case at bar.

During a hearing in this matter on September 4, 2013, in response to the Defendant's objection to subject-matter jurisdiction, the Plaintiff filed an identical complaint in the Newberry County Probate Court and removed that action to this Court. The two cases were then consolidated under the caption appearing above. In addition, the Defendant recently filed yet another lawsuit in the Richland County Probate Court against the Trustee and the Plaintiff raising the same issues she raises in this case.

In the Magistrate's Court Case, the Plaintiff prevailed at trial and on appeal to this Court. (Order Affirming In its Order affirming the Magistrate, this Court held the record supported the Magistrate's finding that the Plaintiff owns the House and that the Defendant is living there unlawfully. (Order Affirming Magistrate's Court dated September 26, 2013, **Exhibit K**.) The

Defendant then appealed the Circuit Court's Order to the Court of Appeals, and that appeal is pending.

Three motions are currently before the Court: Plaintiff's Motion for Partial Summary Judgment, the Defendant's Motion for Summary Judgment, and the Third-Party Defendant's Motion for Summary Judgment. The Plaintiff contends summary judgment as to liability is proper because there is no genuine issue of material fact that he owns the House or that the Defendant has been living there unlawfully since April 19, 2012. The Defendant, on the other hand, argues she is entitled to summary judgment because there is no triable issue that the quitclaim deed is null and void as a result of the Trustee's lack of authority. Finally, the Trustee argues summary judgment is proper because the Defendant has failed to produce even a scintilla of evidence that he acted beyond his authority or breached any duty he owed the Defendant.

For the reasons set forth below, the Plaintiff is entitled to partial summary judgment against the Defendant as to liability because it is undisputed that the Trustee sold the House to the Plaintiff and that the Defendant has continued living there unlawfully. The only factual issue to be determined relates to damages. Accordingly, the Plaintiff's motion should be granted; the Defendant's, denied; and the Court should proceed with a damages hearing.

STANDARD

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC; *see also Pittman v. Grand Strand Entm't, Inc.*, 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005); *Eagle Container Co., LLC v. County of Newberry*, 366 S.C. 611, 622 S.E.2d

733 (Ct. App. 2005); *B & B Liquors, Inc. v. O'Neil*, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004).

When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 595 S.E.2d 817 (Ct. App. 2004). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Rife*, 363 S.C. at 214, 609 S.E.2d at 568.

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)); *Rumpf v. Massachusetts Mut. Life Ins. Co.*, 357 S.C. 386, 593 S.E.2d 183 (Ct.App.2004).

DISCUSSION

- I. The Plaintiff's Motion for Partial Summary Judgment should be granted because there is no genuine issue of material fact that Plaintiff has owned the House since April 19, 2102 and that Defendant continues to live there unlawfully.**

The Plaintiff moves this Court for partial summary judgment as to liability on four of its causes of action. There is no genuine issue of material fact that the Plaintiff has owned the House since April 19, 2012 or that the Defendant has continued living there for nearly two years unlawfully. As a result, there is no triable issue that the Defendant is liable as a trespasser, as a

holdover tenant, for breach of contract and for quantum meruit. The only issue left to be decided is how much the Plaintiff is entitled to recover.

a. There is no genuine issue of fact related to the Defendant's liability for trespass.

The Plaintiff's second cause of action seeks damages from the Defendant for trespass. "Trespass is any intentional invasion of the plaintiff's interest in the exclusive possession of his property." *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 357, 559 S.E.2d 327, 337 (Ct. App. 2001). "To prove a trespass, a party must establish: (1) that he was in legal possession of the property; (2) that the defendant [or his agent] voluntarily entered upon the plaintiff's property; and (3) that such entry was made without the plaintiff's permission." Ralph King Anderson, Jr., *South Carolina Requests to Charge – Civil*, 2002 § 4-43; see also Michael G. Sullivan, *Elements of Civil Causes of Action* 245-48 (2000). "For a trespass action to lie, 'the act must be affirmative, the invasion of the land must be intentional, and the harm caused by the invasion of the land must be the direct result of that invasion.' " *Hawkins v. City of Greenville*, 358 S.C. 280, 297, 594 S.E.2d 557, 566 (Ct. App. 2004) (quoting *Mack v. Edens*, 320 S.C. 236, 240, 464 S.E.2d 124, 127 (1995)). See also *Coll. of Charleston Found. v. Ham*, 585 F. Supp. 2d 737, 750 (D.S.C. 2008) and *West v. Newberry Elec. Co-op.*, 357 S.C. 537, 544, 593 S.E.2d 500, 503 (Ct. App. 2004). "The unwarrantable entry on land in the peaceable possession of another is a trespass, without regard to the degree of force used, the means of entry, or the extent of damage. The entry itself is the wrong." Anderson, *S.C. Requests to Charge – Civil* § 4-43.

There is no question that the case at bar satisfies all three elements of the Plaintiff's trespass claim. The Magistrate's Court already found the Plaintiff is the legal owner of the House after the trial in the Magistrate's Court Case. The Magistrate's Court also found the Defendant is living in the House unlawfully. Thus, the Defendant is collaterally estopped from

re-litigating those issues in this case. Moreover, the Defendant admits the Trustee sold the House to the Plaintiff, (Def.'s Responses to Pl.'s First Requests for Admissions), and she cannot contest that she has continued living there without the Plaintiff's consent. Consequently, the only reasonable inference from the evidence is that the Defendant has voluntarily entered upon the Plaintiff's property without his consent.

i. The doctrine of collateral estoppel bars the Defendant from re-litigating whether the Plaintiff is the legal owner of the House and whether she has a right to continue living there.

"Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. South Carolina Dept. of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (2009) (citing *Judy v. Judy*, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009)). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.*

At the trial in the Magistrate's Court Case, the Defendant appeared, was represented by counsel, and argued her defense against Mr. Hobby's claim for summary ejectment of a trespasser under S.C. Code Ann. § 15-67-610. The summary ejectment claim required the Magistrate's Court to determine (i) whether the Plaintiff owned the House, and (ii) whether the Defendant was on the property unlawfully. S.C. Code Ann. § 15-67-610, *et seq.* The Defendant argued that the summary ejectment claim required the Magistrate to determine whether she was a trespasser. (Magistrate's Return and Trial Transcript, **Exhibit L**, at 2 ("In order for you to consider ejecting her pursuant to the statute requires a finding that she is a trespasser and is not on the property with warrant of law."); *see also* Tr. from Magistrate's Court at 41 ("Wait a

minute, Your Honor, I'm not sure I do want her to testify. This is civil, you'll be making some finding possibly that she is a trespasser.") Ultimately, the Magistrate ruled against the Defendant, found that she was, in fact, a trespasser and held that Mr. Hobby is entitled to a writ of ejectment. That decision means the Magistrate necessarily ruled that the Plaintiff owns the House and the Defendant is living there unlawfully. On appeal, the Circuit Court affirmed, finding "that the magistrate did not err when he concluded that [Mr. Hobby] proved entitlement to relief under 15-67-610. The record fully supports the ruling of the magistrate's court." (Order Affirming Magistrate's Court at 4.) Thus, the Defendant is barred from re-litigating those issues in this case, and the Plaintiff is entitled to judgment as a matter of law.

The Defendant may argue collateral estoppel does not apply based on certain language included in the Circuit Court's Order Affirming the Magistrate. In that order, the Circuit Court stated, in dicta, "To the extent Defendant asserts that Plaintiff lacks good title, that issue may also be raised in case 13-CP-36-193[.]" *Id.* Nothing in the Court's Order left the door open for the Defendant to re-litigate whether Plaintiff is the legal owner of the House. Rather, the Court left the door open for the parties to conduct discovery in this case on two issues: (i) whether the Trustee had authority to sell the House, and (ii) whether the terms of the sale allow for the Defendant to remain in the House rent-free. *Id.* To that effect, the Court held Plaintiff's Motion for Partial Summary Judgment in abeyance pending a hearing on the Trustee's Motion for Summary Judgment. *Id.* at 3.

Contrary to the purpose of collateral estoppel, the Defendant's arguments in this case are nothing more than an attempt to re-litigate whether the Plaintiff is the legal owner of the House and whether the Defendant has a right to continue living there. The Defendant had a full and fair opportunity to litigate these issues in the Magistrate's Court; she did, in fact, litigate the issues;

and she lost. Necessarily, the Magistrate's Court found that (i) Mr. Hobby owns the House and (ii) the Defendant is living there unlawfully. Therefore, collateral estoppel bars the Defendant from re-litigating those issues in this case. Accordingly, there is no genuine issue of material fact related to the Defendant's liability for trespass, the only issue remaining is damages.

ii. Even if collateral estoppel does not apply, there is no factual issue that the Plaintiff alone owns the House.

In the event the Court allows the Defendant to re-litigate these issues, summary judgment is still proper because the record contains no evidence that creates a genuine issue of fact that the Plaintiff is the legal owner of the House. In an action for trespass, the possession a party is required to prove may be actual or constructive. *Hawkins v. City of Greenville*, 358 S.C. 280, 296, 594 S.E.2d 557, 566 (Ct. App. 2004). Possession, therefore, may be proven by a properly executed and recorded deed. In this case, the Defendant does not dispute that the Trustee sold the House to the Plaintiff prior to April 20, 2012. (Def's Resp. to Pl.'s First Requests for Admissions ¶¶ 6, 7, 8.) In fact, the Defendant concedes the Trustee sold it and delivered a quitclaim deed to the Plaintiff. (Def's Resp. to Pl.'s First Requests for Admissions ¶¶ 1, 10.) In addition to this evidence, it is well-established in South Carolina that a deed valid on its face is presumed to be valid. *See Cummings v. Varn*, 307 S.C. 37, 45, 413 S.E.2d 829, 834 (1992). The quitclaim deed the Trustee delivered to the Plaintiff satisfies all the statutory recording requirements and was properly recorded in the Newberry County Clerk of Court's Office. (Am. Compl., Exhibit C.) While the Defendant argues the deed resulted from the Trustee breaching a fiduciary duty, she has neither alleged nor presented any evidence of undue influence, incapacity, fraud or any other basis to set aside a deed. Therefore, the Defendant has failed to present any genuine issue that the Plaintiff is not the owner or that he has peaceable possession of the House.

Nevertheless, the Defendant argues through an Affidavit of Arthur E. White, III that an

issue of fact exists as to good title. In his affidavit, Mr. White opines that ownership of the House is in question because no title opinion has been rendered. (Aff. of Arthur E. White, III ¶ 6.) That opinion, however, fails to create a genuine issue of material fact. First, Mr. White does not identify any existing defect in title; it is mere speculation. An expert's speculation alone is insufficient to survive summary judgment. *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 290, 701 S.E.2d 742, 750 (2010). Second, Mr. White's opinion that title can only be confirmed after a title opinion is issued falls woefully short of concluding that title is defective. Third, Mr. White's opinion overlooks the fact the Defendant delivered a general warranty deed to the Trustee only eight days before the Plaintiff's closing. If title is in question due to events that occurred before April 11, 2012, then the Defendant must answer to the Trustee. Other than this speculative opinion, the only other conclusion Mr. White offered last year was his opinion that the parties needed time to conduct discovery. That time has passed, the Defendant has had ample time, and yet she has produced no evidence to prevent summary judgment on this issue.

The Plaintiff has proven he owns the House, and the Defendant has presented no evidence or inference therefrom to the contrary. Accordingly, there is no triable issue about Plaintiff's ownership of the property.

iii. There is no evidence that the Defendant has permission to continue living in the House.

Similar to the ownership issue, the Defendant has presented no evidence that she has the consent or permission of the Plaintiff to continue living in the House.

As discussed above, the Defendant has admitted that she was allowed to live in the House until it was sold. (Def's Responses to Pl.'s First Requests for Admissions ¶ 2.) She also admitted the Trustee sold the House to the Plaintiff last year. (*Id.* at ¶¶ 6, 7, 8.) Therefore, by

virtue of her own admissions, the Defendant concedes that any right she has expired. Still, the Defendant argues the terms of the Trust Agreement and of the Plaintiff's written offer to purchase the House allow her to continue living in the House rent-free. However, she can point to nothing in the Plaintiff's offer to purchase the House that contains language to that effect. (Mary Hobby Depo. 153:23-154:8 (stipulating that the offer does not contain any such words).)

What the Defendant ignores is the language that does appear in the Plaintiff's offer. He offered to leave the House in the Liquidating Trust "to maximize the properties [sic] value for any future sale opportunities," (Am. Compl., Exhibit B), not to provide his ex-wife a free place to live as long as she wishes. The offer to leave the property in the Liquidating Trust, which was not incorporated into any of the closing documents, related to the marketability of another trust asset: an adjoining large tract of land that surrounds the House. Simply put, if the Trustee could increase the marketability of the surrounding land (which remained in the Liquidating Trust) by including the House (which did not), then the Plaintiff would agree to sell the House.

The Defendant's interpretation of this language is simply illogical and unreasonable. In essence, she contends the Plaintiff paid the Liquidating Trust \$325,000 to receive nothing at all. She ignores the fact that the House was still sold. If the Defendant is correct, then the Plaintiff simply made a gift to the Liquidating Trust. The only reasonable conclusion based upon the evidence in the record is the Plaintiff intended to receive something for his money.

Therefore, there is no triable issue that the Plaintiff owns the House and that the Defendant has been and is trespassing on it. Accordingly, the Plaintiff is entitled to summary judgment as to liability on his trespass claim, and the only issue that remains to be decided in damages.

- b. The Plaintiff is entitled to summary judgment as to the Defendant's liability as a holdover tenant because there is no genuine issue of fact that she has refused to vacate the House after her right to live there terminated.**

In addition to trespass, the Plaintiff is entitled to summary judgment as to liability on its claim for damages pursuant to the South Carolina Residential Landlord and Tenant Act ("RLTA" or "Act"). The RLTA "applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this State." S.C. Code Ann. § 27-40-110. A "rental agreement," as defined by the Act, is an agreement embodying the terms and conditions concerning the use and occupancy of dwelling unit and premises. S.C. Code Ann. § 27-40-210(12). A "dwelling unit" includes a structure used as a home, residence, or sleeping place by a person, such as the House at issue in this case. S.C. Code Ann. § 27-40-210(3). "Tenant" means "a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others," such as the Defendant. S.C. Code Ann. § 27-40-210(15). "Landlord" means "the owner, lessor, or sublessor of the premises[.]" S.C. Code Ann. § 27-40-210(6).

The Trust Agreement in this case includes, among other things, terms and conditions concerning the Defendant's use and occupancy of the House while it was legally owned by the Trustee. All parties to this action signed that agreement. Therefore, the Trust Agreement is a "rental agreement" to which the Act applies; the Defendant was a "tenant;" and the Trustee was the "landlord."

Upon the sale of the House, the Plaintiff succeeded the Trustee as landlord because he owned the House. S.C. Code Ann. § 27-35-50 (purchaser of real estate subject to lease becomes the landlord ipso facto and is entitled to all rights as original landlord). Accordingly, although the Trust Agreement initially did not create a landlord-tenant relationship between the Plaintiff

and the Defendant, that relationship arose by operation of law when the Plaintiff purchased the House and the Defendant continued to live there, or held over her tenancy.

The Act gives landlords a remedy for holdover tenants. "If the rental agreement is terminated, the landlord has a right to possession and for rent and a separate claim for actual damages for breach of the rental agreement and reasonable attorney's fees." S.C. Code Ann. § 27-4-750. In addition, "If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession." S.C. Code Ann. § 27-4-770(c). The landlord may recover attorney's fees if the holdover is not in good faith and additional damages if the holdover is a willful violation of the Act. *Id.*

The Defendant's own admissions in this case prove the Plaintiff is entitled as matter of law to an order finding the Defendant liable to the Plaintiff as a holdover tenant. There is no genuine issue of fact that the Plaintiff bought the House, nor is there any factual issue that the Defendant's right to live there expired when the House was sold. Yet, the Defendant has refused to move out for over one year. Although the Defendant claims the terms of the sale allow her to continue living in the House rent-free, the Trust Agreement and the Plaintiff's offer demonstrate otherwise, as discussed *supra*.

Therefore, pursuant to the RLTA, the Plaintiff is entitled to recover from the Defendant based on holding over her tenancy. It will be for the jury to determine the reasonable rental rate and whether the holding over was in good faith or a willful violation of the RLTA. Accordingly, the Court should grant the Plaintiff's motion, enter an order against the Defendant as to liability pursuant to the RLTA and schedule a damages hearing.

- c. **The Plaintiff is entitled to summary judgment as to liability on his breach of contract claim because there is no genuine issue of fact that the Defendant agreed to move out when the House was sold, that the House was sold, or that the Defendant refused to move out and is still living there today.**

In order to recover for breach of contract, a party must prove “the existence of a contract, its breach, and the damages caused by such breach.” *S. Glass & Plastics Co., Inc. v. Kemper*, 399 S.C. 483, 492, 732 S.E.2d 205, 209 (Ct. App. 2012), *reh'g denied* (Sept. 20, 2012) (citing *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)).

The grounds for the Plaintiff's breach of contract claim are simple. The terms of the Trust Agreement are clear and unambiguous. *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 591, 658 S.E.2d 539, 542 (Ct. App. 2008) (whether a contract is unambiguous is a question of law for the court to determine). When a “contract is clear, explicit, unambiguous, and capable of only one reasonable interpretation, the court does not look beyond the four corners to discern the parties intentions.” 376 S.C. at 592, 658 S.E.2d at 543. A party may not reinterpret written contract terms midstream simply because she is unhappy with the contract she executed. 376 S.C. at 593, 658 S.E.2d at 543.

The four corners of the Trust Agreement clearly gave the Defendant the right to continue living in the House rent-free “until such property [was] sold, or until vacated by her.” (Trust Agreement, Article XII, Paragraph (f).) The Trustee closed the sale on April 19, 2012, eight days after the Defendant delivered a general warranty deed and over two months after the Trustee told the Defendant he had accepted the Plaintiff's offer. Nevertheless, just as she refused to honor the Trust Agreement by conveying the House to the Liquidating Trust in 2010, the Defendant refuses to honor the Trust Agreement and move out. She continues to live in the House today.

In an effort to avoid moving out, the Defendant has engaged in various tactics to prolong this dispute, including contesting jurisdiction to nearly every court who heard this matter. She claims Mr. Hobby's offer to purchase was unfair even though it was substantially higher than hers; she claims the Trustee did not have the authority to sell the House even though she submitted a bid to him to buy it from the Liquidating Trust; she admits the House was sold but refuses to move out; she even claimed in her deposition that the entire Trust Agreement is unenforceable.³ And she believes the Plaintiff bought the House so the Liquidating Trust would pay his personal debts. (Mary Hobby Depo. 148:21-150:1.) The true reason she has not moved out may have been revealed during another portion of her deposition:

Q: And you mentioned that the house -- you didn't think the house was livable because the bathrooms needed to be gutted and the kitchen needed to be gutted?

A: Oh, one bathroom, seriously the -- and I had all of the -- I had a plumber come out, Lide Plumbing, and shut off all the valves to the bathrooms. You know, you pull the -- anyway, to the tubs and all that because the floor was beginning to lean and I was afraid there was a leak under the house. And I knew, well, there's no sense spending money having all this done if it's got to be gutted and

³ During Mrs. Hobby's deposition, she claimed the Trust Agreement is unenforceable because she was under duress:

Q: Okay. And you mentioned the trust terms. Did you agree to the trust terms, the—which were part of the settlement in the divorce action, did you agree to that settlement under duress?

A: Yes, I was.

(Mary Hobby Depo 8:15-19.)

Q: I'm trying to understand why you feel you were under duress. Did Frank Knowlton tell you you had to agree to these terms?

A: I didn't speak to Frank Knowlton.

Q: Okay. Did Mr. Hobby tell you that you had to agree to these terms?

A: I've never spoken to him.

Q: Okay. All right. So it was your belief based on discussions with your attorney?

A: Yes, I guess you could say that.

Q: Okay. So do you believe that the trust agreement is enforceable?

A: No.

Q: You do not?

A: No.

(Mary Hobby Depo 9:23-10:12.)

a new bathroom put in, so I just got him to cut off all the valves and see if there was any major leaks, and I paid him to do that, but --

Q: Ms. Hobby, my question is if the house isn't livable, why do you continue to live there?

A: Because I'm only making—I only get a thousand dollars alimony, and I don't clear enough substitute teaching to move somewhere else.

(Mary Hobby Depo. 113:25-114:20.) The Defendant did not refer to the Trustee's lack of authority, an invalid deed or the terms of the Plaintiff's offer to purchase. When asked why she continues to live in a house she claims is uninhabitable, the Defendant simply said she does not have enough money to move. While that answer may be truthful and accurate, it is no defense to any of the Plaintiff's claims. There is no question that the Defendant breached her contractual obligation to move out when the House was sold. Accordingly, the Court should grant the Plaintiff's motion as to liability on his breach of contract claim, enter an order holding the Defendant liable for those damages, and schedule a damages hearing.

d. Alternatively, the Plaintiff is entitled to summary judgment as to liability on his quantum meruit claim.

“The elements of a *quantum meruit* claim are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value.” *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616-17, 703 S.E.2d 221, 225 (2010).

As discussed above, the Defendant does not dispute that she has lived in the House since April 19, 2012, when the Trustee closed the sale to the Plaintiff. Nor does the Plaintiff claim she has paid the Plaintiff for living in the House. Rather, she argues that she is entitled to live in the House rent-free. Her arguments, however, fail to demonstrate any circumstances under which she should be allowed to receive the benefit of living in the House without paying for it. The

only reasonable conclusion based upon the record in this case is that the Defendant has lived on the Plaintiff's property for nearly two years unlawfully without paying any rent. As a result, there is no genuine issue of fact that the Defendant is liable to the Plaintiff under a theory of quantum meruit.

Therefore, the Court should grant the Plaintiff's motion as to liability on his quantum meruit claim, enter an order finding the Defendant liable, and schedule this matter for a damages hearing.

II. The Defendant's Motion for Summary Judgment should be denied because there is no genuine issue of fact that the Trustee had authority to sell the House.

The Defendant moves this Court for summary judgment on the basis that the Trustee had no authority to sell the House and, as a result, the Plaintiff's quitclaim deed is null and void. Her argument fails as a matter of law because the clear and unambiguous terms of the Trust Agreement gave the Trustee the authority to sell the House to the Plaintiff or the Defendant. Moreover, the Defendant's true complaint is that the Trustee *should* not have sold the House, not that he *could* not have sold it. Therefore, the Defendant's arguments have no merit.

A. The Trust Agreement clearly and unambiguously gave the Trustee authority to sell the House to the Plaintiff.

Whether a contract such as the Trust Agreement is unambiguous is a question of law for this Court to determine. *Abstract Pools & Spas, Inc.*, 376 S.C. at 591, 658 S.E.2d at 542. When a "contract is clear, explicit, unambiguous, and capable of only one reasonable interpretation, the court does not look beyond the four corners to discern the parties intentions." 376 S.C. at 592, 658 S.E.2d at 543. A party may not reinterpret written contract terms midstream simply because she is unhappy with the contract she executed. 376 S.C. at 593, 658 S.E.2d at 543.

The Trust Agreement provides,

(c) Purpose. The Liquidating Trust is established for the sole purpose of liquidating various marital assets belonging to the Transferors in the most fair, objective, and impartial manner available and in a manner that maximizes the value of such marital assets and satisfies the debts associated with those assets to the extent reasonably possible.

(Trust Agreement, Art. I, Paragraph (c).) Article II clearly states that the former marital home, including the surrounding 2.75 acres, is one of the assets that the Plaintiff and Defendant agreed would fund the Liquidating Trust. (Trust Agreement, Article II, Paragraph (a) and Schedule A-1; *see also* Mary Hobby Depo. 7:15-18 (conceding that the House was to be included in the Liquidating Trust).)

Article IX addresses the powers of the Trustee to sell assets from the liquidating trust. In particular, that article provides,

Consistent with the purposes of the Trust as a liquidating Trust and the purposes as further described in Article I (c), the Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) **with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition: to any other rights, powers, authority, and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law. . .**

- (vi) **to sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate or any Trust share created hereunder, for cash or credit, at public or private sale, or to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.**

* * *

- (xxx) In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

* * *

(xxxii) To sell, convey or otherwise deal with or dispose of any and all Trust Assets forming a part of the Liquidating Trust estate, at such time or times and in such manner and upon such terms as, in the absolute and uncontrolled discretion of the Trustee may deem expedient and proper, provided, however, that i) Trustee shall have an obligation to exercise appropriate and reasonable due diligence with respect to the sale of any Trust Asset such that Trustee is reasonably satisfied that any sale has occurred on an arms-length basis and has maximized the value of the Trust Asset being divested; and ii) **Trustee may sell any Trust Asset to a Transferor provided the sale and terms of sale are reasonable, fair, and reflect fair market value and any other terms mutually agreeable by the parties.**

(Trust Agreement, Article IX, Paragraph (a) (emphasis added).)

Contrary to the terms written, the Defendant argues Paragraph (a)(xxxii) gives her the power to object to (or veto) the sale. Under her interpretation, "and any other terms mutually agreeable by the parties," means "as long as the parties both agree to the sale." That interpretation is not only unreasonable, it is impracticable. The Liquidating Trust was conceived because the parties could not agree on how to divide the marital assets; the only things they could agree on were the Trust Agreement terms and hiring the Trustee to sell the assets. The Defendant's interpretation also overlooks the operative effect of the words "and" and "other."

The only reasonable interpretation of the last clause in Paragraph (a)(xxxii) is that the Trustee has discretion to sell a trust asset to either party as long as the sale is fair, reasonable and reflects the fair market value of the asset. *In addition*, the Trustee may agree to *other* terms provided those additional terms are mutually agreeable by the parties. For example, the Trustee had the authority to sell the House to the Defendant for \$225,000, well below fair market value, if the Plaintiff agreed. Because the terms of the Trust Agreement are clear and unambiguous, the Court need not consider any affidavit or other evidence beyond the four corners of the document

to determine the parties' intent. What the Defendant and her divorce attorney now claim they believe the terms mean is irrelevant. There is no question that the Trust Agreement gives the Trustee the authority to sell the House to either party provided the sale and terms of sale are reasonable, fair, and reflect fair market value.

B. The terms of the sale were reasonable, fair, and reflected the fair market value of the House.

For the Defendant to contend the sale was unfair defies logic. In truth, she claims the sale is unfair simply because it requires her to move out. From the perspective of the Trustee, however, the Plaintiff's offer was more than reasonable and fair.

Before the Plaintiff offered to buy the House from the Liquidating Trust, the Defendant made an offer based on a depressed value of \$225,000, one hundred thousand dollars less than the Plaintiff's valuation. She offered to buy the House for \$127,239, representing her percentage of equitable distribution minus reimbursement for several costs and expenses. During her deposition, the Defendant confirmed that although she received an appraisal valuing the House at \$300,000, she believed it was worth substantially less. (Mary Hobby Depo. 66:3-18; 112:3-113:24; 146:20-25.) More to the point, she believed that her offer was a fair and reasonable price. (Mary Hobby Depo. 55:2-4.) The Plaintiff then submitted a counterproposal that mirrored the terms of the Defendant's bid, only it valued the House at \$325,000 rather than \$225,000. The Defendant has not identified one single term of the sale that she now contends was unreasonable or unfair. She had a full and fair opportunity to bid on the House, and she was outbid. Although she struggles to accept that fact, she signed the Trust Agreement and she must live by its terms. She cannot change them midstream as much as she tries.

The Defendant has also argued that the terms of the sale are unreasonable because she made a superior offer to buy the House on March 20, 2014. Her argument, however, overlooks

the fact that the Liquidating Trust would have already defaulted on its obligations had the Trustee waited for that offer (after having already given her a reasonable time to respond). Next, she claims that there was no contract because the closing documents were signed on April 19, 2012. Contrary to that argument, both of the parties to the sale believe the contract was enforceable when the Trustee deposited the Plaintiff's check on February 13, 2014. Moreover, an enforceable contract for the sale of land can be established by separate writings that contain the essential terms of the sale. *Cash v. Muddox*, 265 S.C. 480, 484, 220 S.E.2d 121, 122 (1975). The Plaintiff's offer, the Trustee's e-mails and the Plaintiff's down payment check establish those essential terms. The check is designated as a "down payment for 544 Crowder" and is signed by both the Plaintiff and the Trustee. Therefore, the Defendant's argument that there was no contract until April 19, 2012 has no merit.

For these reasons, the Trust Agreement gives neither party veto power over the sale of a trust asset to the other. Rather, the Trustee has wide discretion to sell any trust asset to any person, including the Plaintiff, as long as the terms of the sale are reasonable, fair, and reflect fair market value. The affidavits the Defendant proffers contain nothing more than testimony twisting the terms of the Trust Agreement. Since the trust terms are clear and unambiguous, that testimony is unnecessary and irrelevant. Rather, the only thing for the Court to do is apply the terms of the Trust Agreement. In light of the Defendant's offer to purchase the House based on a depressed valuation, there is no genuine issue of fact that the Trustee's sale of the House to the Plaintiff for \$325,000 was fair, reasonable and reflected fair market value. The offer the Defendant eventually made in March, after the Plaintiff had a contract to purchase the House, was no better because it matched the Plaintiff's offer. Accordingly, the Defendant's Motion for

Summary Judgment should be denied, and the Plaintiff's Motion for Partial Summary Judgment should be granted.

CONCLUSION

Contrary to the various arguments the Defendant has asserted throughout the tortured history of this matter, the issues before the Court are simple. The Plaintiff has asserted several claims seeking damages from the Defendant based upon her refusal to vacate the House after he purchased it. The Defendant has admitted her right to live in the House expired when the House was sold, and she has further admitted the Trustee sold the House to the Plaintiff and gave a quitclaim deed on April 19, 2012. Based upon these admissions, together with the affidavits and pleadings, there is no genuine issue of material fact precluding this Court from entering judgment against the Defendant as to liability only. Accordingly, the Court should grant the Plaintiff's motion and schedule this matter for a damages hearing.



James C. Bruner
Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
803-252-7693
Attorneys for the Plaintiff

March 11, 2014

Exhibit A

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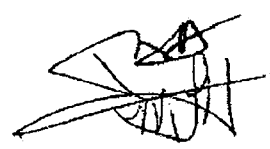
20130823 PM 12:04
PROBATE JUDGE
JAMES M. HULLLOCH
JAMES M. HULLLOCH & CO., P.C.

THE HOBBY FAMILY
LIQUIDATING TRUST AGREEMENT

11-13-13
EXHIBIT NO. 3
Hobby
G. Smith

- #4822-3916-3359 v.11 -

Frank



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**THE HOBBY FAMILY
LIQUIDATING TRUST AGREEMENT**

THIS LIQUIDATING TRUST AGREEMENT (this "Agreement") is effective as of this _____ day of _____, 2010 (the "Effective Date"). Frank B. B. Knowlton is the initial trustee (the "Trustee"). All references to the Trustee shall be deemed to refer to the initial trustee and any successor trustee appointed pursuant to Article X.

BACKGROUND

WHEREAS, an action (Docket No. 2005-DR-36-56) has been initiated by Mary T. Hobby in the Newberry County Family Court for the Eighth Judicial Circuit seeking, among other relief, a divorce from Raymond Deneke Hobby pursuant to S.C. Code Ann. § 20-3-10 (2010), and in conjunction with such relief, the equitable apportionment of the marital assets;

WHEREAS, in connection with the equitable apportionment of the marital assets, Raymond Deneke Hobby ("RDH") and Mary T. Hobby ("MTH") (individually, RDH and MTH are sometimes each referred to as "Transferor"; collectively, RDH and MTH are referred to as "Transferors"), each of whom are citizens and residents of Newberry County, South Carolina, have agreed and are required to transfer the various items of real and personal property, as encumbered, and as set forth on Schedule A hereto (collectively, the "Trust Assets") to The Hobby Family Liquidating Trust (the "Liquidating Trust" or the "Trust") created pursuant to the Final Order and Divorce Decree described below;

WHEREAS, this Liquidating Trust provides for the orderly liquidation and distribution of the Trust Assets to the Beneficiaries (as defined herein) of the Liquidating Trust as more fully set forth herein; and

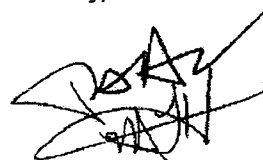
WHEREAS, the Trustee has agreed to oversee and supervise the liquidation process as the Trustee of the Liquidating Trust and has agreed to act in a manner consistent with the terms set forth in this Agreement.

NOW THEREFORE, based on the above, the Liquidating Trust is subject to the following terms and conditions:

**ARTICLE I
PARTIES/TERM/PURPOSE/IRS QUALIFICATION**

(a) Name, Creation, Parties. The Liquidating Trust, which shall be formally known as the "The Hobby Family Liquidating Trust", was created pursuant to the Final Order and Divorce Decree, dated October 8, 2010, of the Honorable Joseph W. McGowan, III, Judge of the Family Court for the Eighth Judicial Circuit. The Liquidating Trust is created pursuant to South Carolina law which empowers the Family Court to use any means or methods reasonably necessary to effectuate an equitable apportionment of marital property. Each Transferor recognizes and stipulates the other Transferor contributed, directly and indirectly, to the

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acquisition, preservation, maintenance, and other obligations associated with the marital estate which is becoming the property of the Liquidating Trust, and each Transferor holds an equitable interest in each of the Trust Assets placed into the Liquidating Trust in the same Distribution Percentage as he or she is a beneficiary of the Liquidating Trust. The Transferors recognize this equitable ownership irrespective of the current title ownership of any asset.

(b) Term. The term of this Liquidating Trust shall terminate on the earlier of (i) the date on which all of the Trust Assets of the Liquidating Trust have been liquidated and the proceeds distributed to the Beneficiaries as set forth in this Agreement; (ii) five years after the Transfer Date (defined below), unless extended by written consent of the Transferors and the Trustee or by order of the Family Court; or (iii) the date the Liquidating Trust is terminated by the agreement of the Beneficiaries as provided in Article XIII(g).

(c) Purpose. The Liquidating Trust is established for the sole purpose of liquidating various marital assets belonging to the Transferors in the most fair, objective, and impartial manner available and in a manner that maximizes the value of such marital assets and satisfies the debts associated with those assets to the extent reasonably possible. In effecting the purpose of this Liquidating Trust, the Trustee shall be mindful of the desire of the parties to divest the Trust Assets for amounts approximately equal to the fair market value of such properties and Trustee shall liquidate the Trust Assets in an orderly fashion while being mindful of prevailing market conditions and the term of the Trust. For the avoidance of doubt, although the Trustee shall have the right to exercise and all rights, powers and privileges set forth herein, such powers shall be exercised in the furtherance of the purposes of the Trust, specifically selling Trust Assets in a timely, prudent and efficient manner and distributing proceeds as provided herein. The Trustee shall make timely distributions to the Beneficiaries and required payments with respect to the Liabilities (defined below) and will not unreasonably prolong the duration of the Liquidating Trust. The Liquidating Trust will not hold itself out as an investment company or as an entity engaged in the active conduct of a trade or business.

(d) Qualification. The Liquidating Trust is intended to qualify as a liquidating trust for federal income tax purposes within the meaning of Treasury Regulation Section 301.7701-4(d). In the event that the Liquidating Trust shall fail or cease to qualify as a liquidating trust in accordance with Treasury Regulation Section 301.7701-4(d), the Trustee shall, in its sole discretion, make other arrangements for the Trust Assets in the best interests of the collective Beneficiaries. For all federal income tax purposes, the transfer of the Trust Assets to the Liquidating Trust shall be treated as a transfer by the respective Transferor to the Liquidating Trust in exchange for a beneficial interest in the Liquidating Trust. The Transferors shall be treated as grantors and Beneficiaries of the Liquidating Trust. It is also the intent of the Transferors and the Trustee that the Liquidating Trust be a "grantor trust" under subpart E of Part I of subchapter J of subtitle A of the Code such that the Trust Assets will be deemed owned, for federal income tax purposes, by the Transferor who transferred such Trust Assets to the Liquidating Trust.

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ARTICLE II
TRUST CORPUS

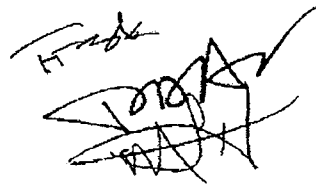
(a) **Initial Property.** The Liquidating Trust shall be funded with the assets described below at such time as directed by the Trustee after consultation with the Transferors and their respective legal and tax advisors (the "Transfer Date"). On the Transfer Date, the Transferors shall transfer to the Liquidating Trust the Trust Assets set forth on Schedule A attached hereto and made a part hereof (the "Trust Assets") including any assets transferred pursuant to paragraph (b) below. RDH, as of the Transfer Date, does hereby grant, assign, transfer and deliver the property described on Schedule A-1 unto the Trustee, together with all of his right, title, and interest in and to such Trust Assets. MTH, as of the Transfer Date, does hereby grant, assign, transfer and deliver the property described on Schedule A-2 unto the Trustee, together with all of her right, title, and interest in and to such Trust Assets. In the event that the Trustee shall determine that the transfer of the Trust Assets to the Liquidating Trust shall require the execution of certain documents or require action on the part of one or more of the Transferors, the Transferors agree to take all actions necessary to effectuate the transfer of the Trust Assets and effectuate the objectives of the Liquidating Trust as set forth in this Agreement. The term "Liability" means all debts, liabilities, and obligations (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to be come due) and including all costs and expenses. All Liabilities relating to the Trust Assets, including Liabilities relating to an entity that is owned, in whole or in part, by the Trust that arise or accrue following the Transfer Date (collectively, the "Trust Liabilities") are to be paid by the Trust. To the Knowledge (defined below) of the Transferors, the Liabilities relating to the Trust as of the Transfer Date are listed or described on Schedule A-3 attached hereto. Copies of any loan documents, indemnity documents, or similar documents relating to the Trust Assets or the Liabilities shall be provided to each of the Beneficiaries and the Trustee.

(b) **Additional Property.** If additional marital property belonging to the Transferors that the Transferors desire to be liquidated is subsequently identified and is not detailed in the Final Order dated October 8, 2010, then such property shall also be transferred to the Liquidating Trust to be held by the Trustee under the terms set forth in this Agreement.

(c) **Acceptance of Property.** The Trustee hereby accepts, as of the Transfer Date, delivery of the Trust Assets set forth on Schedule A. The Trustee shall hold the Trust Assets, as part of the Liquidating Trust estate, to be held, invested, reinvested, administered and distributed according to the provisions set forth in this Agreement. The Trustee further agrees to accept such other property as may hereafter be transferred to this Liquidating Trust by the Transferors.

ARTICLE III
BENEFICIARIES

This Liquidating Trust is established for the benefit of Raymond Deneke Hobby and Mary T. Hobby (individually, a "Beneficiary" and collectively, the "Beneficiaries"), under the terms and conditions contained herein, in the percentage distribution interest for each Beneficiary set forth on Schedule B attached hereto (the "Distribution Percentage"), which sets forth each Beneficiary's



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share of a distribution of income, principal or other distribution from the Trust. Such Distribution Percentage may only be modified or changed with the express written consent of said Beneficiary.

ARTICLE IV **REPRESENTATIONS**

Each of the Transferors represents to the Trustee that, to his or her Knowledge, (1) the Trust Assets to be transferred to the Liquidating Trust by the respective Transferors as of the Transfer Date are as set forth in Schedule A attached hereto and made a part hereof, and (2) except as set forth thereon or on Schedule A-3, there are no liabilities of the Transferor or their affiliates relating to the Trust Assets which have not been paid or discharged, and no unsatisfied claims which have been made against the Transferor for alleged Liabilities relating to the Trust Assets. For purposes of this Agreement, "Knowledge" shall mean the actual or direct knowledge of the Transferor after due inquiry.

ARTICLE V **PAYMENT OF LIABILITIES**

(a) The Trustee shall have the power, in his absolute discretion, to satisfy out of the Trust Assets and, to the extent necessary, any income derived thereon or the proceeds of any liquidation or sale of Trust Assets, any and all of the Liabilities at such time as they become due, or at any other such time as Trustee may deem advisable considering the respective interest of the Beneficiaries and the goals and purposes of this Trust. The Trustee's power to satisfy the Liabilities shall include the right to adjust, arbitrate, compromise, sue, defend, settle, abandon and otherwise deal with any and all of the Liabilities upon such terms as it deems advisable under the circumstances.

(b) The Personal Liabilities of the Transferors shall not be paid from the Trust Assets. The Personal Liabilities of RDH are listed on Schedule A-5, and the Personal Liabilities of MTH are listed on Schedule A-6. The Trustee shall determine in its reasonable discretion if any Liability is a Trust Liability and/or Personal Liability. Any Transferor may dispute such a determination by the Trustee and such determination may be appealed to the Family Court in Newberry County.

ARTICLE VI **DISTRIBUTION OF TRUST ASSETS**

Subject only to the applicable restrictions in the loan documents, indemnity documents, or similar documents relating to the Trust Assets or the Liabilities, the Trustee shall make payment or distributions of available cash relating to the Trust Assets in the following order of priority or as otherwise specifically provided herein:

(a) Trust Agreement Preparation Expenses. The Trustee shall pay the reasonable attorney's fees, accountant's fees, and costs incurred to prepare this Agreement, any and all transfer documents related to it, and similar expenses. Payment of such fees and costs under this paragraph are not charged against a Transferor's Distribution Percentage.

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(b) Litigation Expenses. The Trustee shall distribute \$225,000 to MTH and \$200,000 to RDH as a special interest in the Trust, which is not part of his or her Distribution Percentage, for each party's attorney's fees and litigation expenses related to the above-referenced Family Court civil action. Payment of such fees and expenses under this paragraph are not charged against a Transferor's Distribution Percentage of income or principal.

(c) Tax Distributions.

(A) Within thirty (30) days after the end of each calendar quarter, and as permitted by applicable law and consistent with the cash flow needs and purposes of the Trust, the Trustee shall use his best efforts to distribute to whomever is determined to be the owner of the Trust Assets for tax purposes cash in an amount sufficient to enable such person to discharge any Federal, state and local tax liability for such taxable year (excluding penalties) arising as a result of such person's deemed ownership, for tax purposes, of the Trust Assets. Such amount shall be equal to such person's actual Federal, state and local income tax liability to be reported on any tax returns with respect to income derived from the Trust Assets. Tax distributions made under this paragraph shall not be charged against a Transferor's Distribution Percentage of income or principal.

(B) To the extent that there are adjustments in the tax liability of a Transferor arising from an audit, review, adjustment or an amendment of a tax return, the Trustee is further authorized to make such additional distributions or to withhold from future distributions of a Transferor so that each Transferor shall bear his or her own tax liability arising from the operations of the Trust and disposition of Trust Assets.

(d) Periodic Distributions. Following the above distributions, the Trustee shall make the following periodic distributions in the order of priority set forth:

(i) The Trustee shall make a determination of all of the existing and contingent Liabilities and the minimum amount of Trust Assets necessary to satisfy the Liabilities as such Liabilities may become due and shall be entitled to make such payments in accordance with Article V of this Agreement;

(ii) Until the earlier of i) the one year anniversary of the Effective Date, or ii) the death of MTH, the Trustee shall make minimum monthly distributions to MTH in the amount of \$7,500. These distributions represent a special interest in the Trust held by Plaintiff and are not taxable to her or charged against her Distribution Percentage of amounts to be distributed from the Trust; and

(iii) To the extent that the Trust Assets exceed those needed to satisfy the Liabilities and the minimum monthly distributions to MTH as previously set forth in Article VI(d)(ii) above and as permitted by applicable law and consistent with the cash flow needs and purposes of the Trust the Trustee may distribute to the Beneficiaries in accordance with the Distribution Percentages, all liquidation proceeds, investment income, and all trust corpus in excess of the Trust Assets needed to satisfy the Liabilities

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and minimum monthly distributions.

(e) Final Distribution. At end of the Term of the Trust, the Trustee shall distribute to the Beneficiaries in accordance with their respective Distribution Percentages all of the Trust Assets then remaining in the Liquidating Trust.

ARTICLE VII

GENERAL POWER OF APPOINTMENT IN SURVIVING BENEFICIARY

Upon the death of either Beneficiary, the deceased Beneficiary's share of the Trust Estate, together with any accrued and undistributed income therefrom, shall be paid over, conveyed, and distributed to or in trust for such appointee or appointees (including the estate of the Beneficiary), in such manner and in such proportions as the deceased Beneficiary may appoint in and by the Last Will of the deceased Beneficiary, making specific reference to the power of appointment herein conferred upon him or her, as applicable. In default of the exercise of such power of appointment by the Beneficiary, or insofar as any part of such share of the Trust Estate shall not be effectively appointed, upon the death of the Beneficiary, the entire remaining share of the Trust Estate, or the part of such Trust Estate not effectively appointed, shall be distributed to the deceased Beneficiary's issue in equal shares, per stirpes. In disposing of such share, the Trustee shall be protected in relying upon an instrument admitted to probate in any jurisdiction as the Last Will of the Beneficiary or in acting upon the assumption that the Beneficiary died intestate in case the Trustee has no notice of the existence of a Will of the deceased Beneficiary within six (6) months after the death of the deceased Beneficiary.

ARTICLE VIII

ACCOUNTING

(a) Books and Records. The Trustee shall have the entire care and custody of all of the Trust Assets comprising the Liquidating Trust estate and shall maintain full and accurate books of account and records of receipts and disbursements and other financial transactions relative to the Liquidating Trust estate, all of which shall be available for inspection at any reasonable time by any Beneficiary, or their legal representative.

(b) Trustee Accountings and Settlement. The Trustee shall report on Trust activities and account to the beneficiaries, as follows:

(i) Trustee Accountings. If there are more than nominal assets in the Trust, the Trustee shall render an accounting of the Trust's receipts and disbursements and a statement of the assets and liability of the Trust at least quarterly to each Beneficiary. The Trustee may, but shall not be required to, file such accountings with the court having jurisdiction of the Trust. The Beneficiaries specifically waive any requirement for formal or court approved accounting. If the Trustee provides an accounting to each Beneficiary and those Beneficiaries do not notify the Trustee in writing of an objection to such accounting within ninety (90) days of the receipt of such accounting, then the accounting shall be deemed accepted and approved by such beneficiary.

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(ii) Settlement of Trustee Accounting by Beneficiaries. The Trustee may at any time settle its account with respect to the Trust Estate, or any separate share of the Trust Estate, by a written agreement. The written agreement shall be between the Trustee and all appropriate living income beneficiaries and remainder beneficiaries for the Trust Estate, or separate Trust share as appropriate. If a beneficiary is either a minor or incompetent, then the guardian for such person may represent such individual. Such agreement shall bind all persons then or thereafter entitled to such share of the Trust Estate for which the Trustee and beneficiaries reached written agreement. Such agreement shall constitute a complete release and discharge of the Trustee for the acts of the Trustee covered in the accounting and the period covered by the agreement.

(iii) Settlement of Trustee Accounting Upon Termination of Trust. Prior to either delivering the Trust Estate to a successor Trustee or making a complete distribution of all or a separate share of the Trust Estate, the Trustee shall prepare and deliver its accounting of the Trust or the applicable Trust share, as appropriate, to the appropriate beneficiaries. The Beneficiaries and/or applicable beneficiaries may waive such requirements for such accounting.

ARTICLE IX

POWERS AND DUTIES OF TRUSTEES

(a) Powers for Trustee. Consistent with the purposes of the Trust as a liquidating Trust and the purposes as further described in Article I (c), the Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust Agreement and without authorization by any court and in addition to any other rights, powers, authority, and privileges granted by any other provision of this Trust Agreement or by statute or general rules of law:

(i) To collect Trust property and accept additions to the Trust Estate from a Beneficiary or any other person.

(ii) To retain in the form received any property or undivided interests in property donated to, or otherwise acquired as a part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk, or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a material percentage of the total property of the Trust Estate or even the entirety thereof.

(iii) To deposit assets of the Trust in accounts of all types, including margin accounts, in all types of regulated financial service institutions.

(iv) To invest and reinvest all or any part of the Trust Estate or any Trust share created hereunder in any property and undivided interests in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, limited liability companies or similar entities, real estate

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or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective, or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary, or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries. References to powers herein related to shares of stock shall include such powers over other types of securities, including interests in partnerships, limited liability companies, and other similar entities.

(v) To abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration.

(vi) To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate or any Trust share created hereunder, for cash or on credit, at public or private sale, or to exchange any property of the Trust Estate for other property, at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

(vii) To hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship), or in bearer form.

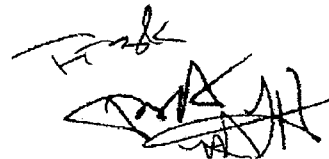
(viii) To keep, at any time and from time to time, all or any portion of the Trust Estate in cash and uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

(ix) To sell or exercise stock option, subscription, or conversion rights.

(x) To refrain from voting or to vote shares of stock which are a part of the Trust Estate or any Trust share created hereunder at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers, and privileges of an owner in respect to any securities constituting a part of the Trust Estate or Trust share.

(xi) To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting, and other rights of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

(xii) To borrow money with or without security and to encumber, mortgage, or pledge any asset of the Trust Estate provided however such borrowings may not extend beyond the term of the Trust, in connection with the exercise of any power vested in the Trustee. If money is borrowed from the Trustee, the Trustee may charge interest thereon at a prevailing rate.

Handwritten signature and initials, possibly "H. S. K." and "A. J. H.", in dark ink.

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In no event shall any mortgagee be under any obligation to verify the proper application of the loaned proceeds.

(xiii) To pledge the Trust Estate and to cause this Trust to guarantee loans made by others to a beneficiary or any business owned by the Trust.

(xiv) To enter for any purpose into a lease as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without option to purchase or renew for a term within or extending beyond the term of the Trust.

(xv) To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate public or private easements to private or public use without consideration, including by way of example qualified conservation and façade easements.

(xvi) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, and to raze existing or erect new party walls or buildings.

(xvii) To continue and operate any business or other enterprise owned by the Beneficiaries or either of them, whether an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable by shareholders, members, or property owners, without liability for loss resulting from the continuance or operation of the business except for its own bad faith, gross negligence, and/or willful misconduct; and to merge or otherwise change the form of business organization or contribute additional capital, close out, liquidate, or sell the business at such time and upon such terms as it shall deem best.

(xviii) To collect, receive, and issue receipt for rents, issues, profits, and income of the Trust Estate.

(xix) To insure the assets of the Trust Estate against damage or loss and to insure the Trustee, the Trustee's agents, and beneficiaries against liability arising from the administration of the Trust.

(xx) To select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the Trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(xxi) In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

Handwritten signature and initials, possibly reading 'Hick' and 'D.A.H.' with a large 'X' mark.

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(xxii) To compromise, extend, assign, adjust or give partial release from, arbitrate, sue on, discharge, foreclose, or otherwise defend, abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration, or otherwise deal with and settle claims in favor of or against the Trust Estate or to prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect the Trust Estate and the Trustee in the performance of the Trustee's duties, as the Trustee shall deem best.

(xxiii) To exercise elections with respect to federal, state, and local taxes.

(xxiv) To employ and compensate agents, accountants, investment advisors, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, appraisers, and other assistants and advisors deemed by the Trustee needful for the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care. A Trustee may employ any firm with which the Trustee is affiliated to provide services for and on behalf of the Trust for the proper administration of the Trust.

(xxv) To appoint a Trustee to act in another jurisdiction with respect to the Trust Estate located in the other jurisdiction, confer upon the appointed Trustee all of the powers and duties of the appointing Trustee, require that the appointed Trustee furnish security, and remove any Trustee so appointed.

(xxvi) To determine what shall be fairly and equitably charged or credited to income and what to principal, including the power and authority in the exercise of its fiduciary responsibilities and in accordance with state law to credit realized capital gains to income and to charge income expenses to principal.

(xxvii) To resolve a dispute concerning the interpretation of the Trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

(xxviii) To consolidate, hold, and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

(xxix) To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interests in other property to another beneficiary or beneficiaries.

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(xxx) In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own right, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

(xxxii) To operate and continue any and all businesses, including proprietorships and partnerships which may become a part of the principal of this Liquidating Trust and to acquire additional interests in any such businesses; to liquidate or join in the liquidation of any such businesses; to sell or otherwise dispose of the same as going concerns; to incorporate, organize or form or cause to be incorporated, organized or formed as it shall see fit and to retain stock or equity interests in any such businesses so incorporated, organized or formed without liability for depreciation in value; to become or remain a shareholder, member, manager, owner, general or limited partner in any new or continuing corporations, limited liability companies, limited partnerships, or other entities and to take such other action as it may deem necessary or proper for the purpose of beginning or continuing the operation or liquidation of such businesses; and to act as directors, officers, agents or employees of any such businesses.

(xxxiii) To sell, convey or otherwise deal with or dispose of any and all Trust Assets forming a part of the Liquidating Trust estate, at such time or times and in such manner and upon such terms as, in the absolute and uncontrolled discretion of the Trustee may deem expedient and proper, provided, however, that i) Trustee shall have an obligation to exercise appropriate and reasonable due diligence with respect to the sale of any Trust Asset such that Trustee is reasonably satisfied that any sale has occurred on an arms-length basis and has maximized the value of the Trust Asset being divested, and ii) Trustee may sell any Trust Asset to a Transferor provided the sale and terms of sale are reasonable, fair, and reflect fair market value and any other terms mutually agreeable by the parties.

(xxxiii) To pay any applicable expenses of administration, as well as federal, state and local taxes and fees attributable to the operation of the Liquidating Trust, and to make any distributions to creditors, Beneficiaries or otherwise as may be required under this Agreement.

(xxxiv) To open and to close checking or savings accounts, in banks or similar financial institutions, in the name of the Liquidating Trust to deposit cash in and withdraw cash from such accounts.

(xxxv) To give general or special proxies or powers of attorney which may be discretionary and with power of substitution.

(xxxiv) To keep any or all of the Liquidating Trust estate at any place or places in South Carolina or elsewhere within the United States or abroad or with a depository or custodian at such place or places.

(xxxv) To pay over to the Beneficiaries the entire principal of the Liquidating Trust, thereby terminating the Liquidating Trust, when in the discretion of the Trustee it might become expedient or advisable to do so for the following reasons or any other reason whatsoever

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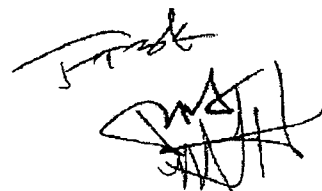
which the Trustee may deem sufficient: (i) changes in the political, economic, or social order in the United States; (ii) legislation, regulation, or court decisions detrimental to the Liquidating Trust or any Beneficiary thereof; (iii) insufficient principal to justify the expense of continuing the Liquidating Trust's existence; or (iv) other events which do or may tend to greatly impair the intent and purpose of this Agreement.

(b) Fiduciary Power. All powers given to the Trustee by this are exercisable by the Trustee only in a fiduciary capacity. Notwithstanding any other provisions of this Agreement, the powers vested in the Trustee under this Article IX or under any other Article in this Agreement shall be effective only so long as their existence will not cause the Liquidating Trust estate or any part thereof to be included in the estate of the person holding such power.

(c) Power to Delegate. The Trustee may delegate to other persons at any time, and/or for any time period(s), any or all of such Trustee's rights, powers, duties and authority, whether or not discretionary, by an instrument in writing signed by the delegating Trustee and delivered to the delegatee. Any such delegating instrument shall be revocable at any time by a similarly delivered instrument and shall be revoked at the resignation, total disability or death of the Trustee or delegatee. The Trustee's authority to delegate under this Agreement shall include, but in no event shall be limited to, the Trustee's authority to vest in a Beneficiary the authority to divest of or manage certain of the Liquidating Trust estate under the supervision and direction of the Trustee, provided, however, that such Beneficiary shall in no event be entitled to compensation for such services that exceeds the fair market value of the services provided. In the event that Trustee delegates any rights powers and duties for a period longer than 30 days over assets comprising more than 5% of the Trust, the Trustee shall notify the Beneficiaries in writing of such delegation.

(d) Provision for Trustee to Continue Farming Operation. In addition to any other powers granted to the Trustee, the Trustee may in its discretion continue any farming operation received by the Trustee as a part of the Trust Estate for a period of time as the Trustee shall determine and to do any and all things deemed advisable by the Trustee in the management and maintenance of such farm and the production and marketing of crops and dairy, poultry, livestock, orchard, and forest products including, but not limited to, the following powers:

- (i) To operate the farm with hired labor, tenants, or sharecroppers;
- (ii) To lease or rent the farm for cash, for a share of the crops, or for a combination thereof;
- (iii) To purchase or otherwise acquire farm machinery and equipment and livestock;
- (iv) To construct, repair, and improve farm buildings of all kinds needed in the Trustee's judgment for the operation of the farm;



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(v) To make and obtain loans or advances at the prevailing rate of interest for farm purposes such as for the construction, repair, or improvement of farm buildings or for the purchase of farm machinery or equipment or livestock;

(vi) To employ approved soil conservation practices to conserve, improve, and maintain the fertility and productivity of the soil;

(vii) To protect, manage, and improve the timber and forest on the farm and to sell the timber and forest products when it is in the best interest of the Trust;

(viii) to ditch, dam, and drain damp or wet fields and areas of the farm when needed;

(ix) To engage in the production of livestock, poultry, or dairy products and to construct such fences and buildings and to plant such pastures and crops as may be necessary to carry on such operations;

(x) To market the products of the farm;

(xi) To employ, in general, good husbandry in the management of the farm.

(e) Trustee Authority to Deal with Oil, Gas, and Mineral Interests. In addition to any other powers granted to the Trustee, the Trustee may acquire, maintain, develop, improve, sell, or otherwise deal with oil, gas, coal, mineral, or other natural resource interests whether alone or in conjunction with others. The Trustee is empowered to drill, test, explore, extract, mine, develop, manage, store, sell, or exchange any such mineral rights or interests in such rights on such terms and conditions as the Trustee deems prudent. The Trustee may enter into leases, pooling, and other types of agreements for such oil, gas, coal, mineral, or other types of natural resources. The Trustee may execute transfers, assignment, division orders, and other instruments that the Trustee deems proper. The Trustee may employ the services of engineers, consultants, or specialists to advise the Trustee in the management, development, and disposition of such mineral or natural resource interests.

(f) Trustee's Discretion to Allow Beneficiary or Beneficiaries to Occupy Residential Real Estate. The Trustee in its sole discretion may permit any beneficiary or beneficiaries to occupy rent free any residence constituting a part of the Trust assets for such beneficiary or beneficiaries and to pay the real estate taxes thereon, expenses of maintaining the residence in suitable repair and condition, and hazard insurance premiums on the residence.

(g) Provisions Regarding Retirement Account Payable to the Trust. If one or more qualified pension, profit sharing, and 401K, plans, individual retirement accounts ("IRAs"), Roth IRAs, annuity or mutual fund custodial accounts under section 403(b), or other types of qualified plans (referred to as a "retirement account") are, or may be, distributed to any share of this Trust, then the following provisions shall apply:

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(i) **Distributions During Beneficiaries' Lifetimes.** If any distributions shall be made to this Trust during either of the Beneficiaries' lifetimes, the Trustee shall hold such distributions solely for the benefit of the respective Beneficiary. The Trustee shall transfer and distribute to the respective Beneficiary such portion of the retirement account distributions as the Beneficiary may from time to time request. In the event that the Beneficiary is incapacitated, then the Beneficiary's agent under a durable power of attorney or guardian under any guardianship may make such direction on behalf of the Beneficiary. During the respective Beneficiary's lifetime all of the provisions dealing with the retirement accounts of this Trust shall be fully revocable. Notwithstanding anything else contained in this Trust Agreement, at the respective Beneficiary's death, all of the provisions dealing with the retirement accounts of the deceased Beneficiary and the dispositive provisions relating thereto shall become irrevocable.

(ii) **Retirement Plan Beneficiary Elections.** Upon either of the Beneficiaries' deaths, the Trustee shall have the right, in the Trustee's discretion, to elect to receive any retirement plan death proceeds, whether under any retirement account, in any manner permitted by the plan. The Trustee shall not be liable to any beneficiary for such decision.

(iii) **Provisions Applicable to Distributions to a Marital Trust.** If one or more retirement accounts are distributed to a trust, which qualifies for the marital deduction, then the distributions applicable to that trust share shall be made in accordance with these provisions. The Trustee shall direct the trustee or custodian, as appropriate, of the retirement account to make distributions to the marital trust at least annually of an amount equal to the greater of: (a) all the net income earned by the share of the retirement account allocated to the marital trust, or (b) the amount required to be distributed from such retirement account as the required Minimum Required Distribution, as required by the Internal Revenue Code. The Trustee shall take all necessary action to cause the retirement account to distribute to this Trust the amount required to be distributed to the Surviving Beneficiary under this paragraph. The Surviving Beneficiary shall have the right, in the Surviving Beneficiary's discretion, to compel the Trustee to demand such distributions and to compel the retirement plan trustee to convert any nonproductive property to productive property. The Trustee shall take all necessary action to assure that the interest of the Surviving Beneficiary in this Trust and in the retirement account qualifies as a qualifying income interest for life pursuant to Internal Revenue Code section 2056.

(iv) **Trust Designated Beneficiary.** The Trust shall run for the benefit of the Surviving Beneficiary, who shall be the "Designated Beneficiary" for each such retirement account.

(v) **Restriction on Non-Individuals and Creditor's Claims.** Commencing on the September 30th after the year of the Beneficiary's death (herein referred to as the "Designation Date"), no portion of any retirement plan account may be distributed to any charity or other non-individual beneficiary. It is the Beneficiary's intent that after the Designation Date any such distribution shall be paid only to the individual beneficiaries of this Trust. After the Designation Date no portion of any retirement plan distribution may be used to pay any creditor claim or debt of the Beneficiary, nor any administration expense of the estate or this Trust, nor any estate, inheritance, or similar taxes.

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(vi) Accounting Provisions. Any retirement account made payable to this Trust shall be deemed to be an asset of the Trust and allocated to principal of the applicable Trust share. In cases where the Trustee receives reporting information from the retirement plan to enable the Trustee to determine the annual income earned by that retirement account on an annual basis, then the Trustee shall use normal accounting principles to allocate income and principal for the retirement account allocated to the applicable Trust share. In cases where the Trustee does not receive reporting information from the retirement account, the Trustee has the discretion to allocate changes in the retirement account value from the original account value on a reasonable basis between income and principal. When distributions are made from the retirement account, accrued income shall be deemed to be distributed first. The Trustee shall allocate to the net income of this Trust all the net income earned by the retirement account and paid to this Trust regardless of whether the retirement account is allocated to principal for Trust accounting purposes. The Trustee shall allocate to principal of this Trust all other distributions from the retirement account. In calculating the income earned by the retirement account, the Trustee shall allocate all retirement account expenses, including income tax and retirement plan trustee fees, that are attributable to principal distributions so that all income distributions from the retirement plan are not reduced. If a retirement account becomes an asset of this Trust (or one or more of the Trust shares) the fair market value of the retirement account at the date of the Beneficiary's death shall be deemed to be the "inventory value" for fiduciary accounting purposes.

ARTICLE X
TRUSTEES

(a) Resignation. The Trustee may resign at any time by delivering thirty (30) days prior written notice to that effect to the Beneficiaries. A successor shall be appointed in writing by a unanimous vote of the Beneficiaries, and each of the Beneficiaries agrees to negotiate in good faith with one another to select a Successor Trustee. In the event that the Beneficiaries cannot agree upon a Successor Trustee during the time period between the Trustee's notice of resignation and the actual date on which the Trustee will resign, then each Beneficiary shall name a Successor Co-Trustee and the two Successor Co-Trustees named shall select a third Successor Co-Trustee, and the three Successor Co-Trustees shall administer the Liquidating Trust.

(b) Successor Trustee. References herein to a Trustee include any Successor Trustee. A Successor Trustee shall succeed to all of the title, powers, rights, discretion, obligations and immunities of the original Trustee; provided, however, that the Successor Trustee shall not be obligated to accept, ratify or approve of any of the acts, omissions, or defaults of the Trustee, nor shall the Successor Trustee be required to audit or verify the records of the Trustee. Moreover, the fact that the Successor Trustee has assumed and carried out its duties without protest or exception shall not be deemed such an acceptance, ratification or approval. The Successor Trustee shall be entitled to rely upon any statements and records (which may come into the Successor Trustee's possession after a reasonable search) of the Trustee as to the Trust Assets of the Liquidating Trust and shall have no responsibility or liability hereunder to any person for the Trust Assets of this Liquidating Trust until reduced to the possession of the Successor Trustee.

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- (c) Trustee Power. No one dealing with a Trustee need inquire concerning the validity of anything such Trustee purports to do, or need see to the application of any money paid or any property transferred to or upon the order of a Trustee.
- (d) Acts and Omissions. The Trustee shall be responsible only for its acts or omissions. The Successor Trustee shall not be liable for any action taken by the Trustee prior to the time such Successor Trustee becomes a Trustee.
- (e) Reasonable Expenses; Compensation. The Liquidating Trust estate and the income therefrom shall be chargeable with the reasonable expenses of the Trustee in the administration of the Liquidating Trust. In addition to the payment of all expenses incurred by the Trustee in connection with the liquidation of the Liquidating Trust estate, Trustee shall be entitled to compensation in the amount and under such terms as set forth on Schedule C.
- (f) Bond Requirement. No bond shall be required of any Trustee hereunder irrespective of any bond that may be otherwise required under the South Carolina Uniform Trust Code or any other relevant provision of law.
- (g) Appointment of Independent Special Trustee. If a Trustee is unable or unwilling for any reason to act with regard to any property comprising the Trust Estate, the Trustee may appoint an Independent Special Trustee to act with regard to such property. Such Independent Special Trustee may be either an individual or a corporate Trustee. If the Independent Special Trustee is an individual, such individual shall not be related to or subordinate to any beneficiary of this Trust as defined by section 672(c) of the Internal Revenue Code. If appointed, the Independent Special Trustee shall act with respect to such property of the Trust Estate in accordance with the provisions of this Trust. The Trustee may revoke the appointment of any such Independent Special Trustee at any time. Any Independent Special Trustee shall exercise all of the fiduciary powers granted to the Trustee, unless specifically limited by the Trustee. The Independent Special Trustee may resign at any time.
- (h) Limitations on Trustees. No person who at any time is acting as Trustee hereunder shall have any power or obligation to participate in any discretionary authority which the Beneficiaries have given to the Trustee to pay principal or income to such person, or for his or her benefit or in relief of his or her legal obligations.
- (i) Determination of Incapacity of Individual Trustee. If any serving individual Trustee either is adjudicated to be incompetent or in the event that the individual Trustee is not adjudicated incompetent, but by reason of illness or mental or physical disability is, in the opinion of two licensed physicians, unable to properly handle the fiduciary responsibilities of the trusteeship, then and in that event the Trustee next designated herein shall serve as the successor Trustee. The disqualified Trustee may regain the position as Trustee, if and when such incompetency is removed, as determined by two licensed physicians in the same manner as was followed to initially establish the Trustee's incapacity. Third parties may rely on an affidavit by the Trustee stating that the successor Trustee is now acting as Trustee hereunder.

Handwritten signature and initials, possibly "F. J. H." and "J. H. H.", in dark ink.

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(j) Limitation of Liability and Duties of Successor Trustee for Acts of Prior Trustee.

No successor Trustee shall have any liability or responsibility for any acts or omissions of any prior Trustee. The Trust shall indemnify and hold harmless any currently serving Trustee for the acts or omissions of any such prior Trustee. A current Trustee may, but shall not have the obligation to, audit or investigate the accounts or administration of any prior Trustee. In the event that any present or future beneficiary shall request in writing that the Trustee investigate or take any action against a prior Trustee, the current Trustee may, but not be required to, either: i) determine if such action is either inappropriate or unlikely to result in a favorable conclusion for the Trust and therefore decline to take such action, or ii) require that the beneficiary requesting such action indemnify the Trust and Trustee and fund all the expenses of such action to the extent that the Trustee deems appropriate. The Trustee shall have the sole discretion to act with regard to these decisions.

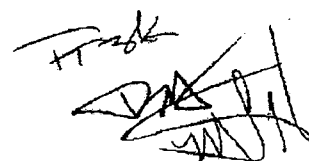
ARTICLE XIRESTRICTIONS ON ALIENATION

No interest of any Beneficiary in the principal or income of the Liquidating Trust shall be subject to assignment, alienation, pledge, attachment or claims of creditors of such Beneficiary and may not otherwise be voluntarily or involuntarily alienated or encumbered by such Beneficiary. If the Trustee believes that the interest of a Beneficiary is threatened to be diverted in any manner, the Trustee has the discretion to withhold any distributions and shall apply payment in any manner which will contribute to the health, education, maintenance and support of the Beneficiary. Whenever the Trustee is satisfied that a diversion is no longer threatened, resumption of distribution is authorized. This spendthrift provision is intended for the personal protection and welfare of a Beneficiary and shall not be construed to automatically extend the term of the Liquidating Trust.

ARTICLE XIISPECIAL PROVISIONS RELATED TO CERTAIN TRUST ASSETS

(a) Noncompetition. For so long as the Liquidating Trust owns an interest in Hobby Construction Company, Inc. ("HCC"), Long Utility Corporation ("LUC"), Seaside Utilities, Inc. ("SU"), Seaside Environmental Constructors, Inc. ("SEC"), West/Hobby LLC ("WH"), Utility Supply, Inc. ("US"), or South Atlantic Construction, Inc. ("SAC") (collectively, the "Business Entities"), RDH shall not compete in business with the Business Entities, except and unless permitted to do so by the Trustee. It is the intent of the parties that RDH shall continue to work and participate in each of the Business Entities throughout the period that the Liquidating Trust owns these entities in the manner in which he was working and participating in these entities at the date of filing of the Family Court civil action (February 17, 2005) and as of the Effective Date.

(b) Reasonable Compensation. RDH shall be reasonably compensated for his services in connection with the Business Entities. His compensation and benefits of employment shall be reasonable in scope and amount. The Trustee shall determine reasonable compensation, benefits of employment and the scope and terms of employment of RDH.



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(c) Consultant. The Trustee shall have the discretion to cause or allow one or more of the Business Entities to employ MTH in a consulting capacity or otherwise so that she may be eligible for health insurance coverage.

(d) Bonding Contracts. HCC, LUC, SEC, SU, and SAC (collectively, the "Bonded Entities") currently have a bonding relationship with Travelers Bond and Financial Company ("Travelers"). The Bonded Entities are currently being monitored by Travelers and monthly combined P&L statements are being generated for Travelers. When the entities bid a project and request a bond from Travelers, they also provide a work in progress report. The Trustee will cooperate with each Transferor, the Bonded Entities, and Travelers in order to facilitate the Bonded Entities receiving maximum bonding capacity from Travelers. The Trustee will be granted absolute authority to have direct contact with Travelers and CPA Steve Sealey if necessary regarding the combined P&L statements, bids, work in progress reports, compensation of officers, and for any other purpose relating to bonding. The Bonded Entities and RDH will provide the Trustee with copies of all communications exchanged between the Bonded Entities and Travelers to include bids, requests for bonds, work in progress reports, and other written communications (including emails).

(e) Timber Property. The Trust Assets include approximately 737 acres of land in Newberry County, South Carolina. The Transferor(s) have previously received proposed contracts on certain portions of the 737 acres for the cutting of timber. The Transferors specifically agree and acknowledge that the Trustee may accept appropriate bids to have the timber for these previously identified sections cut on this property within the next twelve (12) months and for the net proceeds derived from the sale of this timber from these cuts to be equally divided and distributed to the Transferors, notwithstanding any other provision of this Trust. The Trustee shall determine if any other timber should be cut and if so the proceeds generated therefrom shall be the property of the Trust.

(f) Residences. MTH shall have sole and exclusive, rent-free use of the property known as the marital home of MTH and RDH together with the surrounding three (3) acres of land until such property is sold, or until vacated by her. RDH shall have sole and exclusive, rent-free use of the property known as the Smith House and the immediate surrounding acreage until such property is sold or until vacated by him. RDH shall have access to and use of the farm acreage and amenities until sold or restricted by the Trustee. During the period of time that each party occupies the respective residence, the Trust shall pay the taxes, insurance, and general maintenance of these properties, general maintenance to be defined as any repair or maintenance to the residence on each of these properties which exceeds a cost of \$500. Neither party shall incur an expense for which he or she expects reimbursement or payment by the Trust which exceeds \$500, except in case of emergency, without the first written authorization of the Trustee to incur such expense. Each party shall be responsible for his/her own utility bills, i.e., electricity, cable, telephone, etc.

(g) No Personal Expenses Paid by Business Entities. The Trustee shall cause the Business Entities to not pay the personal expenses of RDH. RDH shall only be reimbursed by the Business Entities for verifiable business expenses as determined or directed by the Trustee.

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(h) 3709 and 3711 Village Court. Pursuant to a Temporary Order of the Family Court for the Eighth Judicial Circuit, RDH and MTH have use of one of the Edisto properties (3709 Village Court). For so long as such property and 3711 Village Court is owned, directly or indirectly, by the Liquidating Trust, MTH shall have the reasonable right to use 3709 Village Court and RDH shall have the reasonable right to use 3711 Village Court, both of which uses shall be under such terms and conditions as directed by the Trustee. If one of such properties is sold and one remains, the Trustee shall provide RDH and MTH with the equal right to use the remaining property.

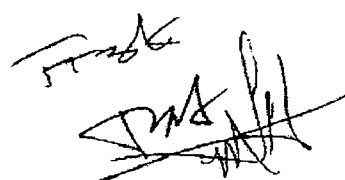
(g) Special Provisions for "S Corporation" Stock. If, for any reason, the Trust is not a "grantor trust" as described in Article I (d), this Article XII (g) shall apply. Any "S Corporation shares" held in this Trust, or any share of this Trust, shall be held in accordance with the following terms. Although this Trust Agreement may create a single trust share for one (1) or more beneficiaries, the Trustee shall instead hold all shares of S Corporation stock in a separate sub-share for the appropriate beneficiary. The Trustee shall apportion expenses of the several shares in a manner that is not inconsistent with the Internal Revenue Code and regulations. No person shall be a beneficiary of an S Corporation Trust share unless that person is either a citizen of the United States or a resident of the United States for federal income tax purposes. Notwithstanding any other provision in this Trust Agreement to the contrary, the Trustee shall annually distribute all of the trust share's "net income" (as defined in Internal Revenue Code section 643(b)) from the S Corporation shares to the beneficiary, together with as much of that trust's principal as is appropriate under the standard contained in the trust in which such S Corporation shares would otherwise have been held. The Trustee shall not distribute S Corporation income or principal to anyone other than the beneficiary. The Trustee shall assist the beneficiary in electing under section 1361 of the Internal Revenue Code to cause the trust to be treated as a Qualified Subchapter S Trust for federal income tax purposes. The Trustee shall administer the trust to be a Qualified Subchapter S Trust, as defined in section 1361 of the Internal Revenue Code.

ARTICLE XIII
MISCELLANEOUS PROVISIONS

(a) Governing Law. This Agreement along with all matters pertaining to the Liquidating Trust shall be interpreted and adjudicated under the laws of the State of South Carolina, without respect to any conflict of law principles.

(b) Forum. The parties to this Agreement hereby acknowledge and agree that the exclusive jurisdiction for matters involving this Trust or any matters related thereto is the Family Court for the Eighth Judicial Circuit Newberry County, South Carolina and waive any right to object or otherwise take issue with the convenience of such forum.

(c) Severability. If any provisions of this Agreement or any other document relating to the Liquidating Trust should be deemed invalid or unenforceable, the remaining provisions of the Agreement or other document shall continue in full force and effect.



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(d) Registration. This Agreement need not and shall not be registered with any Court unless the Trustee, in its sole discretion, deems it advisable to do so, or the laws of the State of South Carolina or any other state having jurisdiction do not permit the Liquidating Trust to be exempted from registration.

(e) Certified Copy. Anyone may rely upon a copy certified by a notary public to be a true copy of this Agreement (and of the writings, if any, endorsed thereon or attached thereto) to the same effect as if it were the original. Any one may rely upon any statement of fact certified by a Trustee or one who appears from the original document, or a certified copy thereof, to be a Trustee.

(f) Beneficiaries. This Liquidating Trust shall inure to the benefit of and be binding on the Beneficiaries and their respective heirs, personal representatives, successors and assigns. No provisions of this Liquidating Trust shall inure to the benefit of or may be enforced by any creditor of the Beneficiaries or any other third party not a party hereto.

(g) Revocation. This Liquidating Trust shall only be revocable by the express agreement of all of the Beneficiaries and the Trustee.

(h) Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become a binding agreement when one or more counterparts have been executed by all parties and delivered by the parties, including by delivery of signature pages by facsimile transmission.

(i) Definition of Trustee. Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall include both the singular and the plural, the masculine, feminine, and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall have all the rights, powers and duties, authority, and responsibility conferred upon the Trustee originally named herein.

IN WITNESS WHEREOF, the parties to this Agreement have executed the Agreement effective as of the Effective Date.

[Execution Pages to Follow]

Final Execution Version

WITNESSES:

TRUSTEE:

Jane L. Boland

Frank B. B. Knowlton
Frank B. B. Knowlton

Jada D. Barden

STATE OF SOUTH CAROLINA)

COUNTY OF Richland)

ACKNOWLEDGMENT

Subscribed, sworn to and acknowledged before me by Frank B. B. Knowlton and
subscribed and sworn to before me by Jada D. BARDEN, witness, this
6th day of December, 2010.

Jane L. Boland (L.S.)
Notary Public of South Carolina
My Commission Expires: Oct 18, 2020

Frank
B. B. Knowlton

Final Execution Version

WITNESSES:

TRANSFEROR:

Charles Verdin, Jr.
April S. Kersh

[Signature]
 Raymond Deneke Hobby

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

ACKNOWLEDGMENT

Subscribed, sworn to and acknowledged before me by Raymond Deneke Hobby, and
 subscribed and sworn to before me by Charles S. Verdin, Jr., witness, this
6th day of December, 2010.

[Signature] (L.S.)
 Notary Public of South Carolina
 My Commission Expires: 08-08-2013

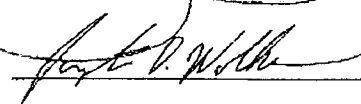
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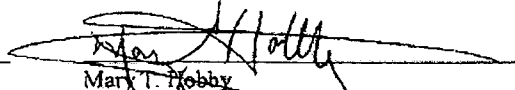
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WITNESSES:

TRANSFEROR:







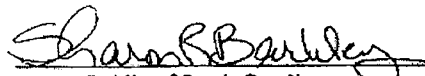
Mary T. Hobby

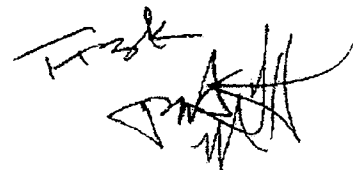
STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF Richland)

Subscribed, sworn to and acknowledged before me by Mary T. Hobby, and subscribed
and sworn to before me by Joseph D. Walker, witness, this 9th day of
November, 2010.

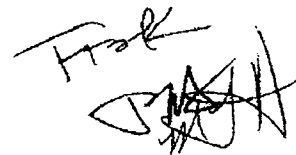
 (L.S.)
Notary Public of South Carolina
My Commission Expires: 1/16/17



Final Execution Version

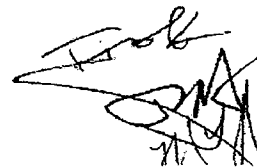
SCHEDULE A
TRUST ASSETS

1. All stock in Hobby Construction Company, Inc.
2. All stock in Long Utility Corporation
3. All stock in Seaside Utilities Incorporation
4. All stock in Seaside Environmental Constructors Inc.
5. All interest in West/Hobby LLC
6. Any interest in Utility Supply Incorporated
7. Any interest in South Atlantic Construction Inc.
8. Any interest in Edisto Pipe Dreams LLC
9. Any interest in RDH LLC
10. Any interest in Shuho LLC
11. Any interest in Good Golfer LLC
12. Any interest in the residence and 740 acres located at 544 Crowder Road, Kinards, South Carolina and/or any adjacent acreage.
13. Any interest in the building and land located on Highway 34 in Newberry County (the Hobby Construction Office).
14. Any interest in the building and land for Long Utility Office in Simpsonville, South Carolina.
15. Any interest in the building and land for the Seaside Utilities Office in Moncks Corner and/or Murrells Inlet, South Carolina.
16. The real property located on Highway 76 in Kinards, South Carolina.
17. The real property known as lots 54 and 55 in Laurens County, South Carolina.



Final Execution Version

18. 3711 Village Court, Edisto, South Carolina. This is consistent with order but are there two properties?
19. 231 Highlands Loop, Maggie Valley, North Carolina.
20. Mountain Chase Condos (units 4040 and 4046), Maggie Valley, North Carolina.
21. Almond Station Property, Swain County, North Carolina.
22. Highway 34 land
23. 317 Hwy 221 South, Greenwood, South Carolina real property with improvements
24. Highway 34/Garmany Road land
25. The real property in downtown Newberry, South Carolina located on Main Street (1008, 1010-1012, 1014, 1016, and 1018).
26. 3114 Myrtle Street, Edisto Beach.
27. 3116 Myrtle Street, Edisto Beach.
28. Crowder Road (108 acres)
29. 4 acres across the street from Smith house
30. Any real estate remaining (if any) from 213 acres in Kinards sold 10/19/2005
31. 11795 Bush River Road ("Smith House")
32. The furnishings and personal property located in any Edisto property or Mountain Chase Condos.
33. Any loans receivable from Hobby Construction Company, Inc. or related entities and/or loans payable to this company and these entities.
34. The Edisto Yacht Club membership.
35. Any interest in the building located at 1326 College Street, Newberry (Helig Myers).

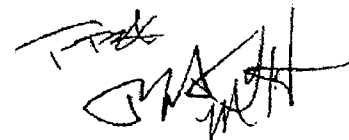


Final Execution Version

SCHEDULE A-1

TRUST ASSETS
TRANSFERRED BY RDH

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Final Execution Version

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Handwritten signature and initials, possibly 'RAC' and 'G'.

Final Execution Version

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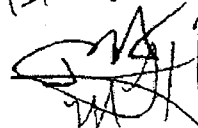
~ #4822-3916-3389 v.11 ~

Frank
JMS
WJ

Final Execution Version

SCHEDULE A-2
TRUST ASSETS
TRANSFERRED BY MTH

~#4822-3916-3390 v.11~

Track


STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

RAYMOND D. HOBBY,

Plaintiff,

vs

C/A Nos.: 2013-CP-36-193
2013-GC-36-00016

MARY T. HOBBY,

Defendant/Third-Party Plaintiff,

vs

FRANCIS B. KNOWLTON, INDIVIDUALLY
AND AS TRUSTEE,

Third-Party Defendant.

D E P O S I T I O N

WITNESS: MARY T. HOBBY

DATE: Wednesday, November 13, 2013

TIME: 10:05 a.m.

LOCATION: Law Offices of
Johnson & Barnette, LLP
1230 Richland Street
Columbia, South Carolina

TAKEN BY: Attorneys for the Plaintiff

REPORTED BY: GINA M. SMITH
Certified Shorthand Reporter
Registered Professional Reporter

Gina M. Smith, CSR, RPR
117 Harmon Creek Court
Lexington, SC 29072
803-359-5705

1 piece of property out and it will be divided, the
2 money from it that's received will be divided,
3 unless there is debt that's part your debt. In
4 other words, if I had debt on something, then I
5 couldn't do that. You can't have personal debt to
6 be used by trust money.

7 Q. Okay. So the purpose of the trust was to
8 put all the marital assets in there and to sell
9 them, right?

10 A. It was supposed to be -- it was supposed
11 to be for equitable division.

12 Q. Right. And the house --

13 A. For a divorce. It wasn't a normal trust
14 that you would sell off assets.

15 Q. Okay. And the Crowder Road house was part
16 of the trust property that was supposed to be in
17 there, right?

18 A. Yes, to my knowledge, yes.

19 Q. Okay. Well, I'm asking what you believe
20 because you eventually conveyed the house into the
21 trust?

22 A. I was forced to put it in the trust.

23 Q. Okay. Do you believe that the Crowder
24 Road house was part of the trust property and part
25 of the initial property that went into the trust

1 when it was created or do you believe that the
2 house was never part of that agreement?

3 A. Well, technically, by the documents, it
4 never showed that the house had ever been owned by
5 me or ever in my name. You know when you have
6 document A, B, and C or exhibit whatever, schedule
7 whatever, it was never listed in there either.

8 Q. Okay. So did --

9 A. But as far as I do -- I do believe that it
10 was supposed to have been put in the trust.

11 Q. Okay. You believe the divorce decree
12 required you to transfer that property into the
13 trust, right?

14 A. Yes.

15 Q. Okay. And you mentioned the trust terms.
16 Did you agree to the trust terms, the -- which were
17 part of the settlement in the divorce action, did
18 you agree to that settlement under duress?

19 A. Yes, I was.

20 Q. Okay. So it's your position that that
21 agreement is unenforceable because you were under
22 duress. Is that what you're saying?

23 A. Well, to me to force someone in order to
24 get divorced to give up their home -- I was told to
25 give up my home, I would not -- I would not be a

1 part of the litigation with Colonial in Maggie
2 Valley that could exceed five million, and I didn't
3 want to be liable.

4 Q. Who told you that?

5 A. Pete Currence.

6 Q. Could you spell his last name for me,
7 please?

8 A. I don't know --

9 MR. JOHNSON: Wait a minute.

10 MR. BRUNER: I don't know who he is.

11 MR. JOHNSON: He's with John's office.

12 MR. BRUNER: Okay.

13 MR. JOHNSON: Don't answer or tell him
14 anything you discussed confidentially with a
15 lawyer.

16 THE WITNESS: Oh.

17 MR. JOHNSON: That's protected.

18 BY MR. BRUNER:

19 Q. I'm not asking you for the substance of
20 any conversations you had with your attorneys, but
21 I'm trying to --

22 A. I don't understand.

23 Q. I'm trying to understand why you feel you
24 were under duress. Did Frank Knowlton tell you you
25 had to agree to these terms?

1 A. I didn't speak to Frank Knowlton.

2 Q. Okay. Did Mr. Hobby tell you that you had
3 to agree to these terms?

4 A. I've never spoken to him.

5 Q. Okay. All right. So it was your belief
6 based on discussions with your attorney?

7 A. Yes, I guess you could say that.

8 Q. Okay. So do you believe that the trust
9 agreement is enforceable?

10 A. No.

11 Q. You do not?

12 A. No.

13 Q. So if the Family Court issued an order and
14 included in its findings that it saw no signs of
15 duress, the Court would be wrong?

16 A. I'm sorry, I don't understand what you're
17 asking me.

18 Q. The divorce decree?

19 A. Yeah, I know the divorce decree.

20 Q. From October of 2010?

21 A. Uh-huh.

22 Q. In the Court's order, the judge made a
23 finding that it saw that the parties had negotiated
24 the terms and saw no signs of duress. Are you
25 telling me under oath today that you believe the

1 A. Yeah, because he told me I had to.

2 Q. Okay. Did you offer what you believed to
3 be a fair price for the house?

4 A. Yes.

5 Q. Do you believe that the cost for you to
6 have a house similar to this is roughly \$1,787 per
7 month?

8 A. No. That was kind of like to pick a house
9 that was close in value, and that's an approximate
10 amount that I used that I got from -- I'm trying to
11 think what you call it. Where you can do the
12 percentage of what your -- what your monthly
13 payments would be if you bought a brand-new house
14 that was similar to that.

15 Q. Well, that's the number you put on your
16 financial declaration to the Family Court, right?

17 A. No; that was just a -- they told me to do
18 a comparison if I had to go buy a new house of
19 about the same size.

20 Q. And that's what you did, right?

21 A. Yeah. I mean, I just tried to get
22 something -- I took the original amount, not the --
23 not the amount that it's really valued at now or
24 that it was valued at then, but just the original
25 approximate house and what your payments would have

1 would have, right?

2 A. I don't know. I mean, I really don't.

3 Q. Okay. When you made your offer to buy the
4 house, what did you believe the house was worth?

5 A. I don't know exactly what it was worth,
6 but I offered my percentage because I was told
7 that's what you do. I mean, I've never -- I hadn't
8 done that before, so I didn't really -- I did
9 what -- that's why I consulted Mr. McDougall
10 because I didn't know what I was supposed to do as
11 far as to make an offer.

12 Q. Okay.

13 A. And I gave him all the documentation of
14 what I'd spent that the trustee wasn't taking care
15 of.

16 Q. Okay. Wasn't that based on a fair market
17 value of \$300,000?

18 A. I think so, yes.

19 Q. Okay. And that was after you got a low
20 appraisal from Hugh Bedenbaugh, right?

21 A. Hugh Bedenbaugh, yeah, I had it because
22 the trustee asked me to get an appraisal. I've got
23 the -- I have the e-mail where he asked me to get
24 an appraisal.

25 Q. Okay. And you --

1 McGowan?

2 A. Oh, yes, uh-huh.

3 Q. Okay. I want to get back to --

4 A. Okay.

5 Q. -- this part of the divorce decree. It
6 said, provided the sale and terms are reasonable,
7 fair, and reflect fair market value. If I
8 understand your testimony correctly, the trustee --
9 you're saying the trustee shouldn't have sold the
10 Crowder Road home in 2011 or 2012 at all and should
11 have held it in the trust to wait for the real
12 estate market to rebound. Is that what you're
13 saying?

14 A. No.

15 Q. Because you mentioned something earlier
16 about depressed market prices and the real estate
17 market was low and homes --

18 A. Well, I was basing that on what I bid.

19 Q. Didn't you base your bid on the low
20 appraisal that Hugh Bedenbaugh gave you?

21 A. Yeah, I based it on that because that was
22 the market value then. That's what I was -- you
23 know, the appraisal the guy gave me. I mean, I
24 didn't personally know him.

25 Q. Okay. Is it fair to say that 300,000 --

1 that you believe \$300,000 was the fair market value
2 of the house in December 2011?

3 A. No. I think that's what he bid it as, but
4 he didn't go in the house or he didn't realize
5 too -- and I told him that he needed to see the
6 repairs in the house, and he said all he needed was
7 a visual of the outside of the house, so he
8 wouldn't come in.

9 And the well is not actually on the piece
10 of property, so therefore, in order for you to get
11 a loan or anything, there has to be a well on the
12 property, which there is a second well, but it's
13 not operable. To my knowledge, it doesn't work.

14 I tried to have it repaired so I'd have
15 backup water, but I couldn't get it fixed for it to
16 work, so I don't know what's wrong with it, but the
17 well that actually goes to the house is not on any
18 acreage, and I paid to have it repaired. I paid
19 like close to a thousand to have a whole new pump
20 and everything put in.

21 Q. Okay. So you think Mr. Bedenbaugh's
22 appraisal was high and it would have been lower --

23 A. I think it was high, yeah, I do because of
24 the extensive repairs that need to be done.

25 Q. And you mentioned that the house -- you

1 didn't think the house was livable because the
2 bathrooms needed to be gutted and the kitchen
3 needed to be gutted?

4 A. Oh, one bathroom, seriously the -- and I
5 had all of the -- I had a plumber come out, Lide
6 Plumbing, and shut off all the valves to the
7 bathrooms. You know, you pull the -- anyway, to
8 the tubs and all that because the floor was
9 beginning to lean and I was afraid there was a leak
10 under the house.

11 And I knew, well, there's no sense
12 spending money having all this done if it's got to
13 be gutted and a new bathroom put in, so I just got
14 him to cut off all the valves and see if there was
15 any major leaks, and I paid him to do that, but --

16 Q. Ms. Hobby, my question is if the house
17 isn't livable, why do you continue to live there?

18 A. Because I'm only making -- I only get a
19 thousand dollars alimony, and I don't clear enough
20 substitute teaching to move somewhere else.

21 Q. Okay. It's just because you can't afford
22 to move somewhere else?

23 A. I cannot afford it. Also the trustee
24 won't let me use the creek house, so I can't go
25 there either.

1 A. Well, I did say it was high -- to me it
2 was high.

3 Q. Okay.

4 A. Now that we're -- well, you know what I
5 said. That's fine.

6 (DEPO. EXH. 19, 12/8/11 Letter, was marked
7 for identification.)

8 BY MR. BRUNER:

9 Q. All right. Ms. Hobby, I've handed you
10 what's been marked as Exhibit 19. This is your
11 offer to buy the Crowder Road house, right?

12 A. Uh-huh.

13 Q. That Mr. McDougall made on your behalf?

14 A. Yes, because I told him I didn't know how
15 to do it.

16 Q. Okay. If you go to page -- go to page 2,
17 please.

18 A. Okay.

19 Q. Well, I'm sorry. If you go back to
20 page 1, the last paragraph on page 1, although Mary
21 Hobby believes that the home is worth substantially
22 less than \$300,000 -- that's true, isn't it, that
23 you believed at that time the home was worth
24 substantially less than \$300,000?

25 A. Yeah, I did.

1 Q. And page 2 --

2 A. Okay.

3 Q. -- the third full paragraph after you've
4 calculated in amounts you believe you were owed for
5 reimbursement and what your percentage was in the
6 purchase price?

7 A. Yes, Mr. McDougall did that.

8 Q. Fair enough. He says that you were
9 willing to pay \$127,231 for the house, right?

10 A. Uh-huh, at that time, yes.

11 Q. At that time, okay. And that's true, that
12 was your offer, right?

13 A. Yes, that was my offer excluding the -- if
14 he would have added on the bills that -- the taxes
15 and insurance and everything. This was with those
16 not in it. In other words, the trustee had told me
17 he would -- he was supposed to reimburse me by the
18 document.

19 Q. Well, ma'am, isn't it true that this takes
20 into account those taxes and insurance and --

21 A. That's what I'm saying, it does -- I mean,
22 that's why I did that offer. That's with it
23 subtracted from the --

24 Q. Okay.

25 A. The 42 1/2 percent offer.

1 Q. Okay. I understand.

2 A. All right.

3 Q. Do you know whether this offer would have
4 triggered a distribution from the trust?

5 A. Yeah, because it -- I get -- I don't know.
6 I don't know because I didn't know he had emptied
7 out the trust.

8 (DEPO. EXH. 20, 1/3/12 Letter, was marked
9 for identification.)

10 BY MR. BRUNER:

11 Q. Okay. Ms. Hobby, I've handed you
12 Exhibit 20. You've seen this document before,
13 haven't you?

14 A. Yes.

15 Q. And this is Mr. Hobby's counteroffer,
16 right?

17 A. Yes.

18 Q. To buy the house based on a value of
19 \$325,000, right?

20 A. Yes.

21 Q. Okay. And this is -- this is the document
22 you say that contains a term where Mr. Hobby agreed
23 to let you continue living in the house rent free?

24 A. I didn't say that. I said what it says
25 is -- yes, because what it says is that he'll put

1 it back in the trust, and the trustee never deeded
2 it back in the trust.

3 Q. Okay. And the trust says you have
4 exclusive --

5 A. I mean, technically, if he put it back in
6 the trust, then I could buy it back out of the
7 trust.

8 Q. So --

9 A. You can put something in and out.

10 Q. So it's your belief that Mr. -- let me ask
11 you this. Strike that.

12 What was he buying? If you're right and
13 he should have left the house in the trust and you
14 would have then had a right to buy it out of the
15 trust, what was he paying for?

16 A. He was -- he was paying his debts in my
17 opinion. All these debts were his. They weren't
18 mine.

19 Q. He was paying the trust money to pay his
20 debts?

21 A. Yeah, they were all loans he had done,
22 mortgages he had done. I had nothing to do with
23 any of them.

24 Q. He wouldn't have paid those directly?

25 A. No, not if he could get the trust to pay

1 for them. Why should he?

2 Q. Okay. And this is -- this is the
3 agreement, this sets out the terms of the sale,
4 right?

5 A. Yeah, but you don't understand, I never
6 saw this agreement during the time when I was
7 injured and he took his bid. I never saw this till
8 months later, never saw this agreement, never knew
9 he made an offer.

10 Q. You never knew he made this offer until
11 months later?

12 A. Uh-uh, never had seen this document.
13 Really.

14 Q. That would have been when you -- when your
15 neck injury subsided and you were off all the pain
16 meds?

17 A. Oh, I was on the pain meds when they took
18 me to court for contempt.

19 Q. Okay.

20 A. I was still taking them. It was horrible.

21 Q. That was in --

22 A. And I was still hurting.

23 Q. Was that in May or April?

24 A. Monthwise I don't know.

25 Q. Okay. But you didn't see -- you didn't

00, 1/13/14

2/3/14

1 A. It would have been on my record and I
2 wouldn't be able to work.

3 Q. And Mr. Hobby filed that petition?

4 A. Yes, but the trustee testified against me
5 too.

6 MR. JOHNSON: Let him ask the question.

7 THE WITNESS: Okay. Sorry.

8 MR. JOHNSON: Ben, has this got something
9 do with the case?

10 MR. BRUNER: I think it does, Pope. I
11 believe it does.

12 THE WITNESS: I think it's stretched
13 but --

14 BY MR. BRUNER:

15 Q. So you'll agree with me --

16 MR. HOWSER: You don't think this has
17 anything to do with mine?

18 MR. JOHNSON: I don't think what happened
19 in the Family Court has got a thing to do with it.

20 MR. BRUNER: The testimony she's given
21 certainly has to go straight to her credibility.

22 BY MR. BRUNER:

23 Q. So you'll agree with me, Ms. Hobby, that
24 there's nothing -- there's no language in
25 Exhibit 20 that says Mr. Hobby is offering to allow

1 you to continue living on the property rent free,
2 right?

3 MR. JOHNSON: Ben, we'll stipulate it's
4 not in there.

5 THE WITNESS: There was nothing in here
6 that says anything rent free.

7 MR. JOHNSON: I mean, those words do not
8 appear.

9 (DEPO. EXH. 21, E-Mail Chain, was marked
10 for identification.)

11 (DEPO. EXH. 22, E-Mail Chain, was marked
12 for identification.)

13 (DEPO. EXH. 23, E-Mail Chain, was marked
14 for identification.)

15 (DEPO. EXH. 24, 1/23/12 E-Mail, was marked
16 for identification.)

17 (DEPO. EXH. 25, E-Mail Chain, was marked
18 for identification.)

19 (DEPO. EXH. 26, E-Mail Chain, was marked
20 for identification.)

21 (DEPO. EXH. 27, E-Mail Chain, was marked
22 for identification.)

23 (DEPO. EXH. 28, 1/30/12 E-Mail Chain, was
24 marked for identification.)

25 (DEPO. EXH. 29, 1/31/12 E-Mail Chain, was

1 marked for identification.)

2 (DEPO. EXH. 30, E-Mail Chain, was marked
3 for identification.)

4 (DEPO. EXH. 31, 2/3/12 E-Mail, was marked
5 for identification.)

6 (DEPO. EXH. 32, 2/6/12 E-Mail, was marked
7 for identification.)

8 (DEPO. EXH. 33, 2/7/12 E-Mail, was marked
9 for identification.)

10 (DEPO. EXH. 34, E-Mail Chain, was marked
11 for identification.)

12 (DEPO. EXH. 35, E-Mail Chain, was marked
13 for identification.)

14 (DEPO. EXH. 36, E-Mail Chain, was marked
15 for identification.)

16 BY MR. BRUNER:

17 Q. I'm going to hand you what's been marked
18 as Exhibit 21.

19 A. Okay.

20 Q. This is an e-mail from your attorney to
21 you dated January 23, 2012, correct?

22 A. Yep, looks like it.

23 Q. And the substance of it looks like it's
24 been crossed out, but below it we see that
25 Mr. McDougall is forwarding you an e-mail from the

1 trustee that says, John, Ray has provided a
2 counteroffer for the 544 Crowder Road house. I'm
3 sorry, it says, 544 Crowder house. Please review
4 and let's discuss. Do you see that?

5 A. Uh-huh.

6 Q. And you received this e-mail, right?

7 A. Yeah, looks like I did.

8 Q. And the reason I ask is you testified
9 earlier that you didn't receive Mr. Hobby's offer
10 until months later?

11 A. I didn't receive that letter. It was the
12 offer, and I was in a lot of pain and under pain
13 medication when I got this e-mail too, so I
14 couldn't tell you what it said.

15 Q. Well, you see there's an attachment on
16 Exhibit 21. You see at the top where under subject
17 it says, attachments: Image001.gif; offer to
18 purchase 544.doc. Wouldn't you agree that looks
19 like a document --

20 A. But I was -- I was taking hydrocodeine
21 then. I don't remember even offer -- opening up
22 any documents.

23 Q. Okay. So you may have received it, but
24 you didn't know what it meant?

25 A. No, I probably didn't. I know I didn't

1 open up anything that had that letter. I never saw
2 that letter then.

3 Q. All right. I'm going to hand you what's
4 been marked as Exhibit 22.

5 A. Okay.

6 Q. And this is another e-mail from you to
7 Mr. Watson and Mr. McDougall. It looks like it's
8 got a whole slew of attachments including the offer
9 to purchase 544.doc attachment that we just talked
10 about on Exhibit 21. Do you see that?

11 A. Yeah, I just don't remember it.

12 Q. And this is an e-mail that you sent on
13 January 23, 2012, right?

14 A. Yes, but I was -- I was under medication
15 then, so I couldn't tell you what I did back then.

16 Q. Okay. Well, you said it's been three
17 months since I made the offer on my house, 127?

18 A. Yeah, which is totally out of order. It
19 hadn't been any three months.

20 Q. Right. But you weren't -- you knew
21 enough --

22 A. I was taking three different painkillers,
23 and I was also taking prednisone and I was having
24 shots in my neck. I mean, I don't remember half of
25 what I did then.

0,8/15/13
0/09000,8/15/13
8,35680/09000,8/15/13
0890/09000,8/15/13

1 heavily medicated then. I mean, I was trying to do
2 my part.

3 Q. Okay. Exhibit 24 is later in the day,
4 more communications from your attorney about the
5 offer -- Ray's counteroffer to purchase the house,
6 right?

7 MR. JOHNSON: My 24 is an e-mail from her
8 to him.

9 MR. BRUNER: I'm sorry, you're right.
10 Your right.

11 BY MR. BRUNER:

12 Q. Exhibit 24 is an e-mail from you to
13 Mr. McDougall dated January 23rd and sent
14 approximately 4:34 p.m. about Ray's counteroffer to
15 purchase the house, right?

16 A. No. I told him about the taxes. I don't
17 understand.

18 Q. Okay. So you're communicating with your
19 attorney about the taxes paid on the Crowder Road
20 house?

21 A. Yeah. I guess he had called me and asked
22 me if I paid taxes, if I had paid the taxes. I
23 don't know. I don't remember way back then.

24 Q. All right. Exhibit 25. The follow day,
25 this is an e-mail from you to Mr. Watson and to

1 Tori Stewart on January 24, 2012, asking for
2 Mr. Watson's help in connection with Ray's
3 counteroffer, correct?

4 A. No, it's with an offer on the house.

5 Q. And you see the attachment is offer to
6 purchase 544.doc, right?

7 A. Yeah.

8 Q. And that's the same attachment that was in
9 Ray's counteroffer, right?

10 A. Okay. I'm going to tell you one more
11 time. I'm being very nice about this. I was
12 taking a lot of medication. I was trying to read
13 e-mails and respond the best I could. I couldn't
14 tell you right now when I did this and what I said.

15 Q. Isn't it true, though, that you had the --
16 you had the sense of mind to contact --

17 A. Well, my mind wasn't gone. I just
18 wouldn't remember. It affects your short-term
19 memory when you take painkillers and you don't
20 remember.

21 Q. Isn't it true that you had the presence of
22 mind on January 24, 2012, to contact Mr. Watson and
23 seek his counsel about the offer?

24 A. Have you ever had a pinched nerve?

25 MR. JOHNSON: Mary, let him finish. Let's

1 take a break.

2 (A recess transpired.)

3 BY MR. BRUNER:

4 Q. We were on --

5 MR. JOHNSON: 25.

6 MR. BRUNER: I was getting ready to go to
7 26.

8 BY MR. BRUNER:

9 Q. Ms. Hobby, I'm handing you what's been
10 marked as Exhibit 26. Did you receive this e-mail?

11 A. I don't remember.

12 Q. This was January 27, 2012?

13 A. I really don't remember.

14 Q. And Ms. Barkley says, please respond to
15 John's recommendation below as soon as practical so
16 this issue can be resolved. This needs to be
17 addressed ASAP. Isn't that what it says?

18 A. It looks like what it says to me.

19 Q. And under the attachments up top, it says
20 one of -- the attachment is offer to purchase
21 544.doc, correct?

22 A. Yes.

23 Q. Okay. I'm going to hand you what's been
24 marked as Exhibit 27. In the middle of Exhibit 27,
25 it appears there was an e-mail from Mr. McDougall

1 sent to the trustee and to you on January 23, 2012,
2 that says, Frank, I have forwarded this e-mail to
3 Mary for her response. As soon as I hear from her,
4 I will advise, JOM. Do you see that?

5 A. Yeah. Yes, sir.

6 Q. Why didn't you respond when Mr. McDougall
7 asked you for -- asked you to?

8 A. I don't know. I was under medication. I
9 just -- I honestly don't know.

10 Q. Okay. And up top is an e-mail from the
11 trustee to Mr. McDougall and to you dated Friday,
12 January 27th where he says -- where the trustee
13 says that the trust does not have sufficient funds
14 to pay the expenses of the trust in February and
15 beyond. Unless a better offer is received, I have
16 no other choice than to accept this offer to
17 purchase 544 Crowder Road.

18 Did you receive this e-mail from the
19 trustee on January 27th?

20 A. I don't remember.

21 Q. Okay. And he says, due to the timing of
22 the obligations to pay the mortgage payments in
23 February, I intend to close on this offer by
24 January 31, 2012, right?

25 A. That's what it says.

1 Q. Okay. I'm going to hand you what's been
2 marked as Exhibit 28. Exhibit 28 is an e-mail from
3 Mr. McDougall to the trustee and to you dated
4 January 30th, correct?

5 A. Yes.

6 Q. And it's listed as high importance, right?

7 A. Yes, I flag every legal e-mail as high
8 importance.

9 Q. Did you receive this e-mail on
10 January 30th?

11 A. I don't remember it.

12 Q. And your attorney says, I will try to get
13 Mary to -- I will try to get Ms. Hobby to respond
14 ASAP, right?

15 A. Yes, that's what it says.

16 Q. Did you respond ASAP?

17 A. I don't know.

18 Q. I'm going to hand you what's been marked
19 as Exhibit 29.

20 A. Okay.

21 Q. This is an e-mail from the trustee to you
22 and your attorney, correct?

23 A. No, it's from Frank Knowlton.

24 Q. From the trustee?

25 A. Oh, yes.

1 Q. To you and your attorney, correct?

2 A. Oh, yes.

3 Q. And it's dated January 31st, right?

4 A. Yes.

5 Q. And it's Mr. -- Mr. Knowlton's reply after
6 you have told him earlier that day that you were
7 sitting in extreme pain from a pinched nerve in
8 your right arm?

9 A. They thought it was in my arm, but it was
10 in my neck after they did the MRIs and the other
11 x-rays.

12 Q. Okay.

13 A. Because I had broken my shoulder cuff in
14 2006.

15 Q. Okay. And this is January 31st, the date
16 that the trustee had given for the closing or the
17 deadline for you to respond with a counteroffer,
18 correct?

19 A. I guess.

20 Q. Well, didn't we just see an e-mail where
21 he said I would have to accept --

22 A. Yes.

23 Q. I intend to close on January 31st?

24 A. Yes.

25 Q. Okay.

1 A. I think he did.

2 Q. I believe that's Exhibit 27. He says, I
3 intend to close on this offer by January 31st,
4 right?

5 A. Yeah.

6 Q. And so in Exhibit 29, we see an e-mail
7 from you on January 31st asking him -- the last
8 sentence of your e-mail says, please bear with me
9 until I can get some help with my pain, right?

10 A. Yes.

11 Q. And then he responds, and in his e-mail,
12 he says, on the 544 Crowder Road issue, I'm okay
13 waiting a day or two, but the trust's mortgage
14 payments are becoming due as of tomorrow, and if I
15 don't get cash in very soon, we will default on the
16 mortgages. Did you receive that e-mail from him?

17 A. I don't -- I mean, this has been a long
18 time ago. I don't know if I did or not.

19 Q. Okay. But you didn't bring your --

20 A. I mean, I must have.

21 Q. You didn't bring your pinched nerve issue
22 to the trustee's attention until January 31st,
23 right?

24 A. No, he knew about it because I called my
25 lawyer when I was in pain at the first of January,

1 took out more than 200,000 for himself, and I
2 didn't know about it. So of course the trust was
3 empty.

4 Q. I'm going to hand you what's been marked
5 as Exhibit 30.

6 A. Okay. I'm sorry, don't take this
7 personally.

8 Q. I don't take it personally.

9 A. Okay.

10 Q. Exhibit 30 is an e-mail from Mr. McDougall
11 to you on February 3rd, correct?

12 A. Yes.

13 Q. And the substance of that e-mail has been
14 blacked out, but we see below it that he is
15 forwarding to you an e-mail from February 2nd that
16 Mr. McDougall received from the trustee, right?

17 A. Yes.

18 Q. So in this e-mail of February 3rd, it --
19 I'm sorry, in the February 2nd e-mail from the
20 trustee, the trustee tells Mr. McDougall that the
21 trust is go going to be short by \$56,000 this
22 month, right?

23 A. That's what he says, yes.

24 Q. Okay. And this would be -- this would be
25 a day or two after his January 31st e-mail to you

1 that says he needs an answer from you in a day or
2 two, right?

3 A. I guess.

4 Q. And he has the breakdown below that. The
5 trustee gives you the breakdown over on page 1 and
6 following over to page 2 of this exhibit showing
7 the balance in the trust account and what
8 obligations it needs to pay, right?

9 A. Yes. I want you to notice on page 2 it
10 says 3711 Village Court and it says Maggie Valley,
11 and it's in Edisto. I mean, a lot of the stuff was
12 just never correct.

13 Q. Okay. Do you dispute that the dollar
14 amounts in the far right-hand column were paying
15 trust obligations?

16 A. Yes.

17 Q. You do?

18 A. Yeah, because a lot of times he paid -- he
19 paid AgSouth double amounts sometimes.

20 Q. Was that a trust obligation?

21 A. Not to do it double in one month, no.

22 Q. Edisto Pipe Dreams, those were trust
23 obligations, right?

24 A. I mean, you'd have to go through the
25 financials, but I went through them with a

1 MR. BRUNER: February 3rd e-mail is 31.

2 BY MR. BRUNER:

3 Q. And, ma'am, did you receive this e-mail
4 from your attorney?

5 A. I don't know.

6 Q. But you'll agree with me that he did send
7 this to you?

8 A. I don't know. I can't even see what the
9 e-mail says. Its blacked out.

10 Q. The substance of the e-mail has been
11 blacked out.

12 A. So I don't know.

13 Q. But that is your e-mail address in the to
14 line, correct?

15 A. Yes.

16 Q. Okay. I'm going to hand you what's been
17 marked as Exhibit 32. This is a similar e-mail
18 sent three days later on February 6th from your
19 attorney to you, right?

20 A. Yes.

21 Q. And the substance has been blacked out,
22 but we can see based on the subject line that this
23 is an e-mail that pertains to the purchase of 544
24 Crowder, right?

25 A. Yes.

1 Q. And you received this e-mail, didn't you?

2 A. I don't know. I mean, it seems harassing
3 to me that every other day they send me an e-mail.

4 Q. Well, ma'am, this is from your attorney,
5 right?

6 A. I know. I'm well aware of that.

7 Q. So you're saying your attorney was
8 harassing you by sending you these e-mails?

9 A. I think they both were.

10 Q. Okay.

11 MR. HOWSER: Excuse me, they being who?

12 THE WITNESS: Mr. Knowlton and
13 Mr. McDougall were both continually sending me
14 e-mails knowing I was in a lot of pain.

15 BY MR. BRUNER:

16 Q. Okay. Exhibit 33, this is a February 7th
17 e-mail from the trustee to Mr. McDougall with a
18 copy to you, correct?

19 A. Yeah, this was the next day.

20 Q. And this is about a week after the
21 January 31st deadline, correct?

22 A. I don't know.

23 Q. Well, would you agree with me that
24 February 7th is about a week after January 31st?

25 A. Yeah, I agree with that.

1 Q. Okay.

2 A. But --

3 Q. So this e-mail to -- Mr. Knowlton sent
4 this e-mail to your attorney and to you about a
5 week after the January 31st deadline he gave,
6 right?

7 A. What are you trying to point out?

8 MR. JOHNSON: Mary, answer -- just answer
9 the question.

10 THE WITNESS: Yes.

11 BY MR. BRUNER:

12 Q. And he says that he has in hand a check
13 from Mr. Hobby in the amount of \$56,000 as an
14 advance on his purchase of the house, right?

15 A. Yes.

16 Q. And he again stresses that unless he
17 receives a materially better offer by the close of
18 business that day, he will accept Mr. Hobby's
19 proposal and the advance, right?

20 A. Yes.

21 Q. Did you make a materially better offer by
22 the close of business that day?

23 A. I don't remember. I really do not.

24 Q. You don't remember whether you made a
25 better offer by the close of business that day?

1 A. I don't remember seeing this e-mail
2 either.

3 Q. Did you ever make a materially better
4 offer?

5 A. I don't -- tell you the truth, I'm not
6 sure what happened after that. I think I sent an
7 e-mail of 5,000 more than what I had -- or 3,000
8 more than what I'd originally sent.

9 Q. Okay.

10 A. And I don't know whether that got to
11 Mr. Knowlton or not, but I don't remember a lot of
12 this because what I was taking.

13 Q. But the trustee did end up accepting
14 Mr. Hobby's offer, right?

15 A. I don't know. I never got documentation
16 that he had done anything. And he never called me,
17 never sent me hard copy of anything.

18 Q. He never told you he'd accepted
19 Mr. Hobby's offer?

20 A. No. He never picked up the phone and
21 called me. He never verbally -- I mean, this is a
22 house I was living in. He never verbally told me
23 anything.

24 Q. Okay. I'm going to hand you what's been
25 marked as Exhibit 34. This is two days later, an

1 e-mail from the trustee to Mr. McDougall, his
2 assistant and to you, right?

3 A. Yes.

4 Q. And he says -- the trustee says in the
5 second sentence, unfortunately time is not on our
6 side and in my opinion Mary has had plenty of time
7 to come up with a counteroffer. She has apparently
8 had Ray's counteroffer since January 23rd, 18 days.
9 The trust is now past due in most or all of the
10 loan payments which it is required to service.
11 Therefore, I have no choice but to accept what is
12 clearly the superior offer and use the cash advance
13 to service the loans for February. Isn't that what
14 this e-mail says?

15 A. It does.

16 Q. And you received this on February 9th,
17 didn't you?

18 A. I really don't remember this.

19 Q. Do you deny that the trustee sent this
20 e-mail to you and to your attorney?

21 A. I don't deny anything. I just don't
22 remember it.

23 Q. I'm going to show you --

24 A. The trustee was well aware that I was
25 under medication and so was Mr. McDougall.

1 Q. And on page 4, the middle of paragraph 3,
2 you see the sentence that says the order did
3 require plaintiff to transfer this property into
4 the trust, right?

5 A. Yes.

6 Q. Okay.

7 MR. JOHNSON: Can we in the -- under the
8 rule of completeness ask you to read the balance of
9 the paragraph?

10 MR. BRUNER: No, sir. The whole exhibit's
11 in.

12 MR. JOHNSON: Well, if you're going to --

13 MR. BRUNER: We're not talking about
14 admissibility.

15 MR. JOHNSON: -- publish her testimony at
16 some point, I want this read at the same time.

17 MR. BRUNER: When I publish her testimony,
18 Mr. Johnson, then we -- you can assert the rule of
19 completeness to get the whole paragraph read in at
20 that time, but I think at this time it's a little
21 premature, respectfully.

22 BY MR. BRUNER:

23 Q. Okay. And you didn't appeal -- you didn't
24 appeal anything in this order, did you?

25 A. Appeal?

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Raymond D. Hobby,)
)
Plaintiff,)

C/A No.: 2013-CP-36-0193

v.)

**AFFIDAVIT OF
FRANCIS B.B. KNOWLTON**

Mary T. Hobby,)
)
Defendant.)

PERSONALLY APPEARED BEFORE ME, Francis B.B. Knowlton, who, being first
duly sworn, deposes and says:

1. I am over 18 years of age.
2. I have personal knowledge of the information contained in this Affidavit.
3. I am the Trustee for the Hobby Family Liquidating Trust ("the Trust") that was created pursuant to the Divorce Decree finalizing the parties' divorce.
4. One of my duties under the Trust is to liquidate the Trust assets, including the property located at 544 Crowder Road in Kinards, South Carolina ("the Property").
5. In late 2011 and early 2012, the Trust needed operating income, and I believed selling the Property was a proper way to provide that necessary capital.
6. Within that time frame, the Defendant contacted me and offered to purchase Mr. Hobby's interest in the Property for \$127,231, based on a purchase price of \$225,000.
7. I notified Mr. Hobby about the Defendant's offer, and he offered to purchase the Home for \$325,000. Mr. Hobby's offer included a cash payment to the Trust of \$138,125.00, which amount represented the Defendant's 42.5% interest the Home. The Plaintiff gave a note for the remainder of the purchase price that was secured by a purchase-money mortgage.

EXHIBIT C

8. I notified the Defendant about the counteroffer Mr. Hobby made to purchase the Home, and she requested over one month to respond.

9. I could not allow the Defendant that amount of time without the Trust defaulting on its loans, but I did allow the Defendant a reasonable time to respond and gave her a deadline. However, the Defendant failed to make a counteroffer by the deadline.

10. I believe the counteroffer Mr. Hobby made was more beneficial to the Trust than the Defendant's original offer. In addition, I believe Mr. Hobby's offer brought much needed cash to keep the Trust from going broke.

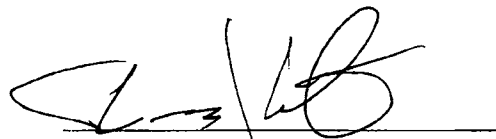
11. Therefore, I accepted Mr. Hobby's offer in early February and sold the Property.

12. Weeks later, I received an offer from the Defendant to purchase the Property. By that time, I had already entered into an agreement to sell the Property to Mr. Hobby.

13. On April 19, 2012, I, as Trustee, executed the Quitclaim Deed attached as **Exhibit A**.

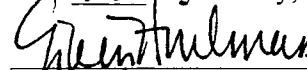
14. My intention was to sell the Property to generate cash for the Trust, as it is a liquidating trust.

FURTHER AFFIANT SAYETH NOT.


Francis B.B. Knowlton

SWORN TO and subscribed before me

This 20 day of May, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 4/26/2014

1022b

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY

NEWBERRY CC	Y
ASSESSOR	
TAX MAP #	96-12
PART OF MAP #	
TAX YEAR	2013
<i>Mary C. Amos</i>	

201200011322
Filed for Record in
NEWBERRY COUNTY, SC
JACKIE S. BOWERS, CLERK OF COURT
04-19-2012 at 11:01 am.
DEED 10.00
STATE 845.00
COUNTY 357.50
Book 1619 Page 118 - 119

QUIT-CLAIM DEED

COPY

TO ALL WHOM THESE PRESENTS MAY COME:

WHEREAS, an action (Docket No. 2005-DR-36-56) was initiated by Mary T. Hobby in the Newberry County Family Court for the Eighth Judicial Circuit seeking, among other relief, a divorce from Raymond D. Hobby, and in conjunction with such relief, the equitable apportionment of the marital assets;

WHEREAS, in connection with the equitable apportionment of the marital assets, Raymond D. Hobby and Mary T. Hobby, each of whom are citizens and residents of Newberry County, South Carolina, have agreed and are required to transfer various items of real and personal property, as encumbered, to The Hobby Family Liquidating Trust (the "Liquidating Trust") created pursuant to that certain Final Order and Divorce Decree dated October 8, 2010 by the Honorable Joseph W. McGowan, III, Judge of the Newberry County Family Court, Eighth Judicial Circuit (the "Divorce Decree");

WHEREAS, the Property (as defined below) was among the items of real property to be transferred to the Liquidating Trust pursuant to the Divorce Decree;

WHEREAS, the Liquidating Trust desires to convey any interest in the Property which the Liquidating Trust may have or have had to Raymond D. Hobby; and

WHEREAS, the Liquidating Trust has agreed to issue this Quit-Claim Deed in order to convey its interest in the Property, if any, and Raymond D. Hobby has agreed to accept this Quit-Claim Deed.

NOW, THEREFORE, for and in consideration of the foregoing recitals, and also in consideration of the sum of Three Hundred Twenty-Five Thousand and 00/100 Dollars (\$325,000.00), the receipt and sufficiency of such consideration being hereby acknowledged, to the extent the Liquidating Trust is vested or may hereinafter become vested, by virtue of a conveyance from Mary T. Hobby or otherwise, in any interest in the Property, the Liquidating Trust, as Grantor, has remised and forever quit-claimed unto Raymond D. Hobby, as Grantee, and by these presents, Grantor does hereby remise, release and forever quit-claim unto the Grantee, his heirs, successors and assigns, all its right, title and interest in and to the following (the "Property"):

All that certain piece, parcel and lot of land with the improvements thereon, situate, lying and being located on Crowder Road, in the County of Newberry, State of South Carolina, being shown and designated as containing 2.75 acres, more or less, on plat of survey prepared for Raymond D. Hobby, by Adtech Surveying, Inc., PLS 11072, dated May 26, 2005, recorded in Plat Book C122

FILED
NEWBERRY COUNTY
JACKIE S. BOWERS
CLERK OF COURT
APR 26 PM 10 26
2012

EXHIBIT A

at Page 4 in the Office of the Clerk of Court for Newberry County. Said plat is incorporated herein for a more full and complete description as to the metes and bounds of said property.

Together with a forty (40') foot right-of-way easement for ingress and egress to said property as shown on said plat.

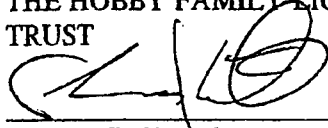
TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise appertaining.

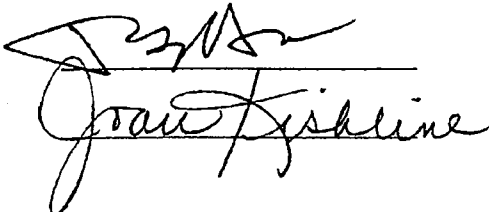
TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Grantee, his heirs and assigns, forever so that neither the said Grantor nor its successors or assigns, nor any other person or persons, claiming under it or them, shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

WITNESS THE HAND AND SEAL of the Grantor's duly authorized signatory authority this 19th day of April, 2012.

Signed, sealed and delivered
in the presence of:

THE HOBBY FAMILY LIQUIDATING
TRUST


Frank B.B. Knowlton, Trustee


Joan A. Kishline

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

ACKNOWLEDGMENT

I, Joan A. Kishline, Notary Public for the State aforesaid, do hereby certify that the above-named Frank B.B. Knowlton, as Trustee of The Hobby Family Liquidating Trust, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 19 day of April, 2012.


Signature of Notary
My commission expires: 9/18/2017

Print

Page 1 of 2

Subject: RE: Offer to Purchase 544
From: Frank Knowlton (frank.knowlton@nelsonmullins.com)
To: jom@mcdougallandself.com;
 mthobby@yahoo.com; sbarkley@mcdougallandself.com;
Date: Friday, January 27, 2012 5:20 PM

John, at this time, the Trust does not have sufficient funds to pay the expenses of the Trust in February and beyond. Unless a better offer is received, I have no other choice than to accept this offer to purchase 544 Crowder Road. Due to the timing of the obligations to pay the mortgage payments in February, I intend to close on this offer by January 31, 2012. Please let me know if you have any questions. Thanks, Frank

Nelson Mullins

Frank B. B. Knowlton

Partner
 frank.knowlton@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP

Idian, 17th Floor
 20 Main Street, Columbia, SC 29201
 Tel: 803.255.9588 Fax: 803.256.7500

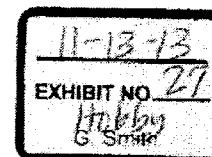
www.nelsonmullins.com
 (View Site)

From: John McDougall [mailto:jom@mcdougallandself.com]
Sent: Monday, January 23, 2012 3:59 PM
To: Frank Knowlton
Cc: 'mthobby'; 'Sharon Barkley'
Subject: RE: Offer to Purchase 544

Frank, I have forwarded this email to Mary for her response. As soon as I hear from her I will advise. JOM

From: Frank Knowlton [mailto:frank.knowlton@nelsonmullins.com]
Sent: Friday, January 20, 2012 5:12 PM
To: John McDougall
 mthobby
Subject: FW: Offer to Purchase 544

<https://us-mg6.mail.yahoo.com/neo/launch?.rand=775h57n9o4311>



5/13/2013

MH 00286

EXHIBIT D

Print

Page 2 of 2

John Ray has provided a counter offer for the 544 Crowder house. Please review and let's discuss. This offer appears substantially more beneficial to the Trust but I wanted you to have the opportunity to review and respond. Thanks, Frank

Nelson Mullins

Frank B. B. Knowlton

Partner
frank.knowlton@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP

Meridian, 17th Floor
1376 Main Street, Columbia, SC 29201
Tel: 803.255.9588 Fax: 803.256.7500

www.nelsonmullins.com
Google Site

Download Attachments

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To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related material. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part.

<https://us-mg6.mail.yahoo.com/neo/launch?rand=775h57n9o4311>

5/13/2013

MH 00287

Mary Hobby

From: John McDougall [jom@mcdougallandself.com]
Sent: Monday, January 30, 2012 12:51 PM
To: 'Frank Knowlton'
Cc: 'mthobby'; 'Sharon Barkley'
Subject: RE: Offer to Purchase 544

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Red Category LEGAL/ATTORNEY

Frank, I will try to get Ms Hobby to respond asap. John

From: Frank Knowlton [mailto:frank.knowlton@nelsonmullins.com]
Sent: Monday, January 30, 2012 10:36 AM
To: John McDougall
Cc: mthobby; Sharon Barkley
Subject: RE: Offer to Purchase 544

John, I am not opposed to giving her some time to respond but the mortgages will go into default if I cannot get funds in pretty quickly. Any delays in responding to her are purely my fault as a result of year end business so I apologize for the inconvenience. In any event, 43 days won't work as all of the loans will be defaulted by that time. Frank

Nelson Mullins

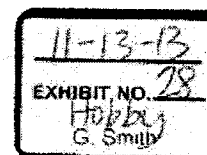
Frank B. B. Knowlton

Partner
 frank.knowlton@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP

Meridian, 17th Floor
 1320 Main Street, Columbia, SC 29201
 Tel: 803.255.9588 Fax: 803.256.7500
 www.nelsonmullins.com
[\(View Bio\)](#)

From: John McDougall [mailto:jom@mcdougallandself.com]
Sent: Monday, January 30, 2012 10:14 AM
To: Frank Knowlton
Cc: 'mthobby'; 'Sharon Barkley'
Subject: RE: Offer to Purchase 544



Frank, As you are aware our office closes @ 5:00pm each day, to include Fridays. Since your email was sent after our office was closed this past Friday, I have not had a chance to review your email of 1/27/12 @ 5:20pm until this time. I do not know whether Ms Hobby has had an opportunity to review it at all since your email was not sent to her when you sent it to me. As you are aware Ms Hobby made an offer to purchase this property on 12/8/11. Ms Hobby did not receive a response to her offer until 1/20/12 (which was sent at 5:12pm on Friday afternoon after our office was closed for the weekend) some 43 days after she made her proposal. I would think that you would extend to her the same courtesy that was extended in behalf of Mr Hobby and the trust and provide her with a 43 day period to respond to Mr Hobby's proposal. She may not need that long, however, certainly needs more than 1 week to do so. John

Mary Hobby

From: Frank Knowlton [frank.knowlton@nelsonmullins.com]
Sent: Tuesday, January 31, 2012 4:15 PM
To: mthobby@yahoo.com; John McDougall
Cc: Sharon Barkley
Subject: RE: Pinched Nerve

Mary, I am very sorry to hear that and please let me know if there is anything at all I can do for you. On the 544 Crowder Rd issue, I am ok waiting a day or two but the Trust's mortgage payments are becoming due as of tomorrow (2/1) and, if I don't get cash in very soon we will default on the mortgages.

Nelson Mullins

Frank B. B. Knowlton

Partner

frank.knowlton@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP

Meridian, 17th Floor

1320 Main Street, Columbia, SC 29201

Tel: 803.255.9588 Fax: 803.256.7500

www.nelsonmullins.com

(View Map)

From: Mary Hobby [mailto:mthobby@yahoo.com]

Sent: Tuesday, January 31, 2012 3:59 PM

To: Frank Knowlton; 'John McDougall'

Sharon Barkley

Subject: Pinched Nerve

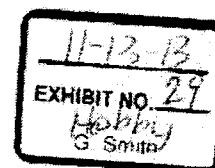
Frank, I am sitting here in extreme pain from a pinched nerve in my right arm. I broke my shoulder cuff a couple of years ago and during New Years Day I pulled the muscles cleaning for all my children and company that stayed at my house. I went to Emergency Care in Chapin. Dr. Ashley Whetsell, M.D. treated me and took x-rays of my arm. He gave me a shoot in my back, corticosteroids, painkillers, and muscle relaxers. I am trying to see Dr. Tony Owens at the pain center with S.C. Internal Medicine because they have a pain center. Please bear with me until I can get some help with my pain. Thanks, Mary

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To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice



MH 00311

464

EXHIBIT F

Mary Hobby

From: Frank Knowlton [frank.knowlton@nelsonmullins.com]
 Sent: Tuesday, February 07, 2012 11:18 AM
 To: John McDougall
 mthobby@yahoo.com
 Subject: 544 Crowder property

John, I have received a check from Ray Hobby in the amount of \$56,000 as an advance on his purchase of the above referenced property. Unless I receive a materially better offer by the close of business today, I will accept Mr. Hobby's proposal and the advance. All of the mortgages are now or soon will soon be in default without this infusion of cash. Thanks, Frank

Nelson Mullins

Frank B. B. Knowlton

Partner

frank.knowlton@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP

Meridian, 17th Floor

1320 Main Street, Columbia, SC 29201

Tel: 803.255.9588 Fax: 803.256.7500

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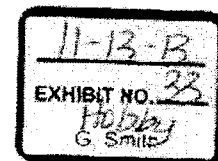
(View Bio)

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To ensure compliance with the requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including the attachments) is not intended or written to be used, for the purpose of (a) avoiding penalties under the Internal Revenue Code or (b) promoting, marketing or recommending to another party any transaction or tax-related matter[s]. To provide you with a communication that could be used to avoid penalties under the Internal Revenue Code will necessarily entail additional investigations, analysis and conclusions on our part.



MH 00321

Mary Hobby

From: Frank Knowlton [frank.knowlton@nelsonmullins.com]
 Sent: Thursday, February 09, 2012 9:53 AM
 To: Sharon Barkley; John McDougall
 Cc: mthobby
 Subject: RE: Hobby vs. Hobby

John, thanks for your letter yesterday. Unfortunately time is not on our side and, in my opinion, Mary has had plenty of time to come up with a counter-offer. She has apparently had Ray's counter since January 23 (18 days). The Trust is now past due in most or all of the loan payments which it is required to service. Therefore, I have no choice but to accept what is clearly the superior offer and use the cash advance to service the loans for February. Thanks, Frank

-----Original Message-----

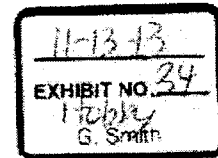
From: Sharon Barkley [mailto:sbarkley@mcDougallandSelf.com]
 Sent: Wednesday, February 08, 2012 4:22 PM
 To: Frank Knowlton
 Cc: mthobby
 Subject: Hobby vs. Hobby

Mr. Knowlton,

Please see attached correspondence from John McDougall, with enclosure, in regard to the above referenced matter.

Sharon

ron R. Barkley
 Legal Assistant to John O. McDougall
 McDougall & Self, L.L.P.
 Post Office Box 90860
 Columbia, SC 29290
 Telephone: 803.776.3130
 facsimile: 803.776.7748



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=====

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NO TITLE EXAMINATIONGENERAL WARRANTY DEED

STATE OF SOUTH CAROLINA	)	Grantee's Address:
	)	Meridian, 17 th Floor
COUNTY OF NEWBERRY	)	1320 Main Street
	)	Columbia, SC 29201

KNOW ALL MEN BY THESE PRESENTS that **Mary T. Hobby**, in consideration of One Dollar (\$1.00) and pursuant to that certain Final Order and Divorce Decree dated October 8, 2010 by the Honorable Joseph W. McGowan, III, Judge of the Newberry County Family Court, Eighth Judicial Circuit (Docket No. 2005-DR-36-56), has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto **Frank B. B. Knowlton, Trustee of The Hobby Family Liquidating Trust Agreement**, its successors and assigns forever:

All that certain piece, parcel and lot of land with the improvements thereon, situate, lying and being located on Crowder Road, in the County of Newberry, State of South Carolina, being shown and designated as containing 2.75 acres, more or less, on plat of survey prepared for Raymond D. Hobby, by Adtech Surveying, Inc., PLS 11072, dated May 26, 2005, recorded in Plat Book C122 at Page 4 in the Office of the Clerk of Court for Newberry County. Said plat is incorporated herein for a more full and complete description as to the metes and bounds of said property.

Said conveyance includes a forty (40') foot right-of-way easement for ingress and egress to said property as shown on said plat.

Derivation: This being the same property conveyed to Grantor by deed of Raymond D. Hobby, recorded on June 27, 2005, in the Register of Deeds Office for Newberry County, South Carolina, in Deed Book 1067 at page 39.

TMS# 96-12

This conveyance is subject to any and all existing reservations, easements, rights of way, zoning ordinances and restrictive covenants that may appear of record or on the premises.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining thereto; to have and to hold all and singular the premises before mentioned unto the Grantee, and the Grantee's successors and assigns, forever.

And, the Grantor does hereby bind himself and his heirs, successors and assigns to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's successors and assigns and against every person whomsoever lawfully claiming or to claim the same or any part

thereof.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal this 11th day of April, 2012

SIGNED, sealed and delivered
in the presence of:

W. Frank Partridge
Susan R. Seelmer

Mary T. Hobby (SEAL)
Mary T. Hobby

STATE OF SOUTH CAROLINA)

COUNTY OF Newberry)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 11th day of April, 2012 by
Mary T. Hobby.

Susan R. Seelmer
Notary Public for South Carolina

My commission expires: 7-4-2013

STATE OF SOUTH CAROLINA)
 COUNTY OF Newberry)

**AFFIDAVIT FOR TAXABLE OR
 EXEMPT TRANSFERS**

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred designated as a 2.75 acre tract located on Crowder Road, in Newberry County, bearing Newberry County Tax Map Number 96-12, and was transferred by Mary T. Hobby to Frank B. B. Knowlton, Trustee of The Hobby Family Liquidating Trust Agreement pursuant to that certain Final Order and Divorce Decree dated October 8, 2010 by the Honorable Joseph W. McGowan, III, Judge of the Newberry County Family Court, Eighth Judicial Circuit (Docket No. 2005-DR-36-56), on April 11, 2012.
3. Check one of the following: The deed is
 - (A) SUBJECT to the deed recording fees as a transfer for consideration paid or to be paid in money or money's worth.
 - (B) SUBJECT to the deed recording fees as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or a transfer to a trust or as a distribution to a trust beneficiary.
 - (C) X EXEMPT from the deed recording fee because of Exemption Number 8 . (See Information section of affidavit). (If exempt, please skip items 4-7 and go to item 8 of this affidavit)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?
 Check: Yes No
4. Check one of the following if either item 3(a) or item 3(b) above has been checked (see Information section of this affidavit):
 - (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$.
 - (b) The fee is computed on the fair market value of the realty which is \$.
 - (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is \$.
5. Check Yes or No to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remains on the land, tenement or realty after the transfer. If "Yes", the amount of the outstanding balance of this lien or encumbrance

is \$ _____.

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: _____

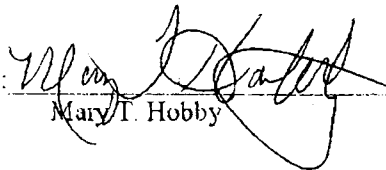
(b) Place the amount listed in item 5 above here: _____. (If no amount is listed, place zero here.)

(c) Subtract Line 6(b) from Line 6(a) and place result here.

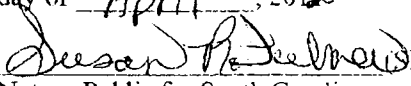
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is \$ _____.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as attorney for Grantor.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

By:  (SEAL)
Mary T. Hobby

SWORN to before me this 11th
day of April, 2012

 (SEAL)

Notary Public for South Carolina

My Commission Expires: 7-4-2013

STATE OF SOUTH CAROLINA

2012CV3610100450
CIVIL CASE NUMBER

COUNTY OF NEWBERRY

IN THE MAGISTRATE'S COURT
NOTICE TO QUIT PREMISES

Raymond Hobby
11795 Bush River Road
Kinards, SC 29355
(803) 924-0015

PLAINTIFF(S)

Vs

Mary T. Hobby
544 Crowder Road
Kinards, SC 29355

DEFENDANT(S)

Upon an affidavit filed by the plaintiff which states you:

Mary T. Hobby NEEDS TO VACATE THE PROPERTY

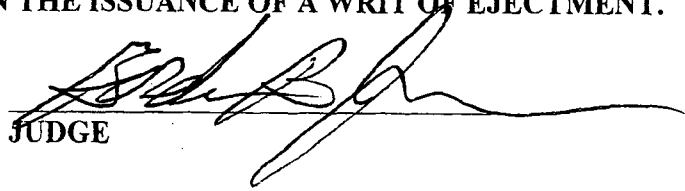
defendant(s), are a trespasser(s) and are occupying the premises at **544 Crowder Road, Kinards, SC 29355** without permission of the owner of said premises. You are required to immediately vacate the premises or contact the:

**Newberry Central Traffic Court Court
3239 Louis Rich Drive
Newberry, SC 29108
Phone: (803) 321-2144 Fax: (803) 321-2172**

within five (5) days to show cause, if any you can, why you should not be ejected from these premises.

FAILURE TO VACATE THE PREMISES OR TO CONTACT THIS OFFICE WITHIN FIVE (5) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

Dated: May 2, 2012


JUDGE

PERSONALLY appeared before me, the undersigned deponent, who being duty sworn, says that s/he served the herein Notice to Quit Premises/Rule to Show Cause on _____

_____ on the _____ day of _____,
20____ at _____ ☐ AM ☐ PM

Sworn to and subscribed before me
this _____ Day of _____, 20____

Sheriff's Deputy or Constable

NOTARY PUBLIC or JUDGE
My Commission Expires: _____

EXHIBIT J

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

RAYMOND HOBBY,
Plaintiff,

C.A. №
13-CP-36-332

-v-

ORDER

MARY T. HOBBY,
Defendant.

THIS APPEAL FROM THE MAGISTRATE'S COURT CAME BEFORE THE COURT on September 4, 2013. Present were Benjamin Bruner representing the Plaintiff and Pope Johnson, III representing the Defendant. Davis Howser appeared representing Frances Knowlton on a companion case which will be discussed below. Subsequent to the hearing, the court was provided with a copy of the transcript from the lower court proceedings, and the court has now had an opportunity to fully review the law, facts and consider the decision of the lower court. The court affirms the finding of the magistrate's court.

Standard of Review

In appeals from non-jury magistrate cases, the circuit court sits in an appellate capacity and may reverse a judgment based upon errors of fact or law. Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp., 280 S.C. 232, 312 S.E. 2d 20 (S.C. App. 1984). Review by the circuit court is limited to the issues raised before the magistrate. Indigo Associates v. Ryan Inv. Co., 314 S.C. 519, 431 S.E.2d 271 (S.C. App. 1993).

Procedural History

The procedural history of this case is convoluted. As background, Plaintiff and Defendant were formerly married. In the divorce decree, the marital home was placed in a trust overseen by a third-party trustee, Frances Knowlton. Per the agreement, Defendant resided there rent-free for several years. Subsequently, the Trustee sold the home out of trust to Plaintiff. Plaintiff then brought an action before the magistrate seeking removal of Defendant. A factual dispute may exist regarding both the scope of the Trustee's power to sell the property and the agreed terms of the sale. To date, this case has been transferred from the magistrate's court, to the family court, to the probate court, and to the circuit court. In every venue, Defendant has essentially asserted that the action is being brought in the wrong court or the judge before whom the case was heard found that jurisdiction was proper elsewhere.

A companion case was brought by Plaintiff in the circuit court (13-CP-36-193). In a prior hearing on that case, wherein Plaintiff requested a TRO, Judge McMahon issuing an order stating that the circuit court lacked jurisdiction to evict Defendant and that the magistrate's court had jurisdiction. Plaintiff then proceeded with his action before the magistrate, the order from which is the subject of this appeal.

The hearing of September 4, 2013 before the circuit court addressed Plaintiff's motion for partial summary judgment on case 13-CP-36-193 and also this appeal. Defendant again asserted that, because 13-CP-36-193 addresses matters involving the trust, jurisdiction was proper in the probate court. Out of an abundance of caution and in order to cure any jurisdictional defects, the court suggested that Plaintiff file his complaint with the probate court and then have the matter removed to the circuit court under Section 62-1-302 (d). During a break, Plaintiff filed an identical action in the probate court, the probate action was then removed to the circuit court

with the consent of the Defendant, and it was consolidated with 13-CP-36-193. For reasons stated at the hearing on 13-CP-36-193, the court found that Plaintiff's motion for partial summary judgment should be stayed pending a hearing on the Trustee's motion for summary judgment.

Merits of the Appeal

With regard to the magistrate's appeal, the hearing before the magistrate took place on June 28, 2013. Prior to taking testimony, Defendant objected on jurisdictional grounds, asserting that subject matter jurisdiction lay with the probate court, not the magistrate. Defendant also maintained that Judge McMahon's order in 13-CP-36-193 constituted *res judicata* on the issue of eviction in that the circuit court declined to issue temporary, injunctive relief. The magistrate found he had jurisdiction over the subject matter and that Judge McMahan's order did not constitute an adjudication on the merits. This appeal followed challenging the findings of the magistrate with regard to jurisdiction, the merits, and bond.

(a) Subject Matter Jurisdiction

Concerning the jurisdictional claim, the magistrate has jurisdiction over ejectments under Section 15-67-610. As will be explained in the following paragraphs, although Plaintiff received his title from the Trustee and although a trust was tangentially involved in the underlying factual presentation, the probate court does not have jurisdiction over ejectment. *See* Sections 15-67-610, 62-1-302. The court finds that the magistrate properly exercised jurisdiction over the subject matter.

(b) Findings on the Merits

On the merits, Plaintiff sought ejectment of Defendant under Section 15-67-610. Defendant claims insufficient evidence was presented demonstrating that Defendant was in



possession unlawfully. The record supports the order of the magistrate requiring Defendant to vacate the premises. Plaintiff possesses a quitclaim deed from the Trustee evidencing Plaintiff as the title owner of the property in fee. Although Defendant asserts that the Trustee breached his fiduciary duty to Defendant in selling the property to Plaintiff, this assertion is not fatal to the magistrate's ruling under 15-67-610. Section 15-67-610 essentially requires that two elements be met to warrant ejectment: (1) plaintiff must be the owner of the land, and (2) the person sought to be ejected must be on the property unlawfully. Having read the transcript and reviewed the law, this court finds that the magistrate did not err when he concluded that Plaintiff proved entitlement to relief under 15-67-610. The record fully supports the ruling of the magistrate's court.

To the extent that Defendant asserts the Trustee violated the terms of the trust and breached his fiduciary duty to Defendant, Defendant's remedy is for damages from the Trustee based upon the causes of action alleged in Defendant's third-party complaint against the Trustee in case 13-CP-36-193. Restatement (2d) of Torts, Section 874; Lowndes Products, Inc. v. Brower, 259 S.C. 322, 191 S.E.2d 761 (1972). To the extent Defendant asserts that Plaintiff lacks good title, that issue may also be raised in case 13-CP-36-193, but any claim of inferior or defective title does not divest the magistrate of jurisdiction in an action for ejectment. Metropolitan Life Ins. Co. v. Stuckey, 194 S.C. 469, 10 S.E. 2nd 3, at 5-6 (1940).

Although Defendant also complains that the Plaintiff did not introduce the trust document into evidence, thereby failing to prove his case, the court notes that Defendant did elect to present a case, so Defendant had a similar opportunity to move exhibits into evidence and inform the court of any instruments or documents which supported her position. Therefore, if the trust contained a provision permitting Defendant to reside on the property indefinitely, Defendant

could have alerted the court to that provision, or any other lease or agreement she had, permitting her to remain on the property. Clearly, a defendant possessing a valid lease and who is served with notice of ejectment would present that evidence to the trial court when given the opportunity. Therefore, the magistrate's conclusion that Defendant was present on the property without warrant of law is supported by the lack of evidence of any legal right she possessed which would permit her continued, legal occupation of the property.

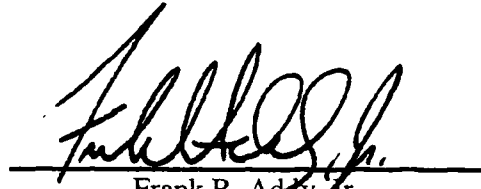
(c) *Bond*

Finally, the Defendant challenges the magistrate setting bond in the sum of \$10,000, per Section 15-67-620, in light of the \$7,500 jurisdictional limitation imposed in Section 22-3-10.¹ By the express language of 15-67-620, requiring bond is intended to protect a plaintiff pending a defendant's appeal. Furthermore, the court can conceive of situations where damage to a plaintiff could easily exceed \$7,500. Although the court can find no precedent reconciling the jurisdictional limitations of 22-3-10 with the requirements of 15-67-620, the court finds that the requirement of bond in the sum of \$10,000 is proper and authorized pursuant to 15-67-620.

Accordingly, the order of the magistrate is affirmed.

¹ At the hearing of September 4, 2013, the court was not entirely clear on whether Defendant was contesting jurisdiction based on the value of the real estate involved in this dispute, which clearly exceeded \$7,500, or whether Defendant was contesting the setting of bond in the sum of \$10,000, or both. The court cannot find any reference to this objection in the transcript. However, because the jurisdictional limit relates to subject matter jurisdiction, the issue may be raised at any time, even on appeal. Rock Hill Body Co. v. Rainey, 294 S.C. 426, 429, 365 S.E.2d 228, 230-31 (Ct. App. 1987) (*holding that the amount in controversy limits under 22-3-10 implicate subject matter jurisdiction*). To the extent Defendant's argument is that the value of the real estate exceeded \$7,500, thereby depriving the magistrate's court of jurisdiction under 22-3-10, the court rejects this argument, as the vast majority of habitable real estate in this State possesses a value exceeding \$7,500. State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention.).

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Frank R. Addy, Jr.", is written over a horizontal line.

Frank R. Addy, Jr.
Eighth Judicial Circuit

September 26, 2013
Greenwood, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	Civil Action No. 2013-CP-36-193
	)	
Raymond D. Hobby,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Mary T. Hobby,	)	THIRD PARTY DEFENDANT
	)	FRANCES B. KNOWLTON'S (CORRECTLY
Defendant/Third	)	KNOWN AS FRANCIS B. B. KNOWLTON)
Party Plaintiff,	)	MEMORANDUM IN OPPOSITION TO THIRD
	)	PARTY PLAINTIFF MARY T. HOBBY'S MOTION
vs.	)	FOR SUMMARY JUDGMENT
	)	
Frances B. Knowlton, Individually	)	
and as Trustee,	)	
	)	
Third Party Defendant.	)	

This memoranda is submitted by Third Party Defendant Francis B.B. Knowlton in opposition to Third Party Plaintiff Mary T. Hobby's motion for summary judgment.

Facts

Plaintiff Raymond D. Hobby ("Mr. Hobby") and Defendant/Third Party Plaintiff Mary T. Hobby ("Ms. Hobby") were married on June 24, 1978. (First Am. Compl. ¶ 6, **Exhibit 1**). They were subsequently divorced on October 8, 2010, after a final Order and Divorce Decree ("Divorce Order") was filed in Docket No. 2005-DR-36-56. (First Am. Comp. ¶ 6, Divorce Order, **Exhibit 2**). The Divorce Order required the parties to create a liquidating trust and to transfer a majority of their marital assets into the trust. (First Am. Comp. ¶ 7)

The Divorce Order prescribed certain terms that were to be included in the liquidating trust. (First Am. Comp. ¶ 7) The Divorce Order provides in relevant part:

To effectuate a complete, fair and equitable apportionment of marital assets and debts, the parties shall create a trust. The following terms shall govern the parties in the creation and operation of this trust and/or are relevant regarding each party's interest in this trust and the assets and debts to be placed in it.

- a. This trust is created pursuant to this Order. . . .
- f. Either party may purchase any asset from the trust, provided the sale and terms are reasonable, fair, and reflect fair market value or other terms mutually agreeable to the parties
- g. Except as otherwise detailed in this Order, [Mr. Hobby] shall be the beneficiary of fifty-seven and ½ percent (57.5%) of the trust.
- h. Except as otherwise detailed in this Order, [Ms. Hobby] shall be the beneficiary of forty-two and ½ percent (42.5%) of the trust.

(Divorce Order 8-9) (Emphasis added).

Among the marital property required to be placed into the liquidating trust was the marital home located at 544 Crowder Road, Kinards, South Carolina (the "Marital Home"). (Divorce Order ¶ 3(m), Schedule A) At the time of the entry of the Divorce Order, the Marital Home was titled solely in Ms. Hobby's name. (First Am. Comp. ¶ 10) The Divorce Order provides that Ms. Hobby shall have "sole and exclusive" use of the Marital Home and the surrounding three (3) acres of land "until such property is sold, or until vacated by her." (Divorce Order ¶ 3(s))¹

In compliance with the Divorce Order, Mr. Hobby and Ms. Hobby created and executed the Hobby Family Liquidating Trust (the "Trust") Agreement (the "Trust Agreement") on December 6, 2010 and December 9, 2010, respectively, a copy of which is attached hereto as **Exhibit 3**. (First Am. Comp. ¶ 8). According to the Trust Agreement, "The Liquidating Trust . . . was created pursuant to the Final Order and Divorce Decree dated October 8, 2010, of the

¹ The Trust Agreement executed by Mr. Hobby and Ms. Hobby also gave Ms. Hobby sole and exclusive use of the Marital Home until it was sold. (Trust Agreement, Article XII(f))

Honorable Joseph W. McGowan, III, Judge of the Family Court for the Eighth Judicial Circuit.”

(Trust Agreement, Article I(a)). Moreover, according to the Trust Agreement,

The Liquidating Trust is established for the sole purpose of liquidating various marital assets belonging to [Mr. Hobby and Ms. Hobby] in the most fair, objective, and impartial manner available and in a manner that maximizes the value of such marital assets and satisfies the debts associated with those assets to the extent reasonably possible. In effecting the purpose of this Liquidating Trust, the Trustee shall be mindful of the desire of the parties to divest the Trust Assets for amounts approximately equal to the fair market value of such properties and Trustee shall liquidate the Trust Assets in an orderly fashion while being mindful of prevailing market conditions and the term of the Trust. For the avoidance of doubt, although the Trustee shall have the right to exercise and [sic] all rights, powers and privileges set forth herein, such powers shall be exercised in the furtherance of the purposes of the Trust, specifically selling Trust Assets in a timely, prudent and efficient manner and distributing proceeds as provided herein. The Trustee . . . will not unreasonably prolong the duration of the Liquidating Trust. . . .

(Trust Agreement, Article I(c)).

The parties mutually agreed that Third Party Defendant Francis B.B. Knowlton (“Knowlton”) would serve as the trustee of the Trust. (Trust Agreement 1; *see* Divorce Order ¶ 3(d), Answer to Am. Compl., Countercl. And Third Party Compl. ¶ 20, **Exhibit 4**). The parties also agreed that Terry Williams (“Williams”) would serve as the independent accountant for the Trust. (*See* Affidavit of Terry Williams ¶ 6, **Exhibit 5**). It was Ms. Hobby’s counsel, John McDougall (“McDougall”), who first recommended that Knowlton serve as trustee. (Mary Hobby Deposition, Exhibit 5, November 13, 2013, **Exhibit 6**). McDougall also recommended that Williams serve as the Trust’s accountant.

Article IX (a) of the Trust Agreement contained the following provisions regarding the powers of the trustee:

Powers for Trustee. Consistent with the purposes of the Trust as a liquidating Trust and the purposes as further described in Article I (c), the Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of

reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, . . . **without authorization by any court . . .**

(xxxii) To sell, convey or otherwise deal with or dispose of any and all Trust Assets forming a part of the Liquidating Trust estate, at such time or times and in such manner and upon such terms as, **in the absolute and uncontrolled discretion of the Trustee may [sic] deem expedient and proper**, provided, however, that i) Trustee shall have an obligation to exercise appropriate and reasonable due diligence with respect to the sale of any Trust Asset such that Trustee is reasonably satisfied that any sale has occurred on an arms-length basis and has maximized the value of the Trust Asset being divested, and ii) Trustee may sell any Trust Asset to a Transferor provided the sale and terms of sale are reasonable, fair, and reflect fair market value **and** any other terms mutually agreeable by the parties.

(Emphasis added).

The provision of the Trust Agreement concerning the Trustee's ability to sell Trust Assets to Ms. Hobby or Mr. Hobby was nearly identical to the paragraph of the Divorce Order allowing for the same. (See Divorce Order 8-9; Trust Agreement, Article IX (a)(xxxii)). The only difference was the Trust Agreement substituted the conjunctive "and" in place of the conjunctive "or" immediately preceding the clause "any other terms mutually agreeable by the parties." *See id.*

Subsequent to the creation of the Trust, Knowlton made repeated requests to Ms. Hobby to transfer the title to the Marital Home to the Trust pursuant to the Divorce Order and Trust Agreement. (See, e.g., Mary Hobby Dep. 178:8-20, **Exhibit 7**; see also Mary Dep., Ex. 10, **Exhibit 8**) Although Ms. Hobby understood her obligation to transfer title to the home to the Trust, (Mary Hobby Dep. 7:11-14, 28:22-25, **Exhibit 9**), she refused to do so until April 2012 (Mary Hobby Dep. 43-44, **Exhibit 10**).

On December 1, 2011, McDougall, on behalf of Ms. Hobby, sent a letter to Knowlton informing him that Ms. Hobby was interested in purchasing the Marital Home from the Trust. (Aff. of John O. McDougall ¶ 3, **Exhibit 11**). On December 8, 2011, McDougall forwarded Ms.

Hobby's offer to Knowlton to purchase the Marital Home. (*Id.* ¶ 4). Ms. Hobby offered to purchase the Marital Property for \$225,000, of which \$127,231 would be paid in cash to the Trust. (*Id.*, Ex. B, **Exhibit 12**). This offer was based upon a November 23, 2011, appraisal of the Marital Home, which appraised the home's value at \$300,000. (*Id.*, Ex. B). Knowlton informed Mr. Hobby about Ms. Hobby's offer to purchase the Marital Property, and Mr. Hobby made a counteroffer to purchase the property on January 3, 2012. (*Id.*, Ex. C, **Exhibit 13**). Mr. Hobby offered to purchase the Marital Home for \$325,000. *Id.* Mr. Hobby's offer was based on a 2009 appraisal of the Marital Home, which valued the property at \$325,000. (*Id.*, Exs. B, C). After conferring with the Trust's accountant, Terry Williams, Knowlton determined that Mr. Hobby's offer was superior to Ms. Hobby's. (Aff. of Frank B. B. Knowlton ¶ 12, **Exhibit 14**; Aff. of Terry Williams ¶ 8).

Knowlton emailed Mr. Hobby's offer to both McDougall and Ms. Hobby on January 20, 2012. (Aff. John O. McDougall, Ex. D, **Exhibit 15**). McDougall responded to Knowlton's email on January 23, 2012, informing Knowlton that he had forwarded the offer to Ms. Hobby and would advise as to her response. *Id.* Knowlton responded to McDougall that same day (January 23, 2012), indicating "I will need to move fairly fast on this as the Trust needs an immediate infusion of cash to service the debt for February and beyond." *Id.* While Ms. Hobby denies ever seeing Mr. Hobby's counteroffer until months after it was made, (Mary Hobby Dep. 148-150, **Exhibit 16**), on January 24, 2012, Ms. Hobby emailed Mr. Hobby's offer to Burke Watson—who had appraised the property for \$325,000 in 2009—asking for his advice concerning the offer (Mary Hobby Dep., Ex. 25, **Exhibit 17**). Thus, the reasonable inference can be made that Ms. Hobby knew of Mr. Hobby's counteroffer by this date.

Throughout the following days and weeks, Knowlton corresponded frequently with McDougall and Ms. Hobby regarding whether Ms. Hobby intended to make a counteroffer to Mr. Hobby's offer. (Aff. of John O. McDougall, Exs. E, F, attached hereto as **Exhibit 18** and **Exhibit 19**, respectively). Knowlton sent a number of emails to McDougall and Ms. Hobby informing them that time was of the essence, as the Trust was on the verge of defaulting on several obligations for the month of February. *Id.* In an email dated February 2, 2012, Knowlton forwarded McDougall and Ms. Hobby the Trust's February 2012 balance sheet, which showed that the Trust would be short by nearly \$56,000. (Aff. of John O. McDougall, Ex. F). In this same email, Knowlton indicated that Mr. Hobby had recently agreed to pay into the Trust the funds necessary to cover the expenses for February 2012 as an advance under his offer to buy the Marital Home. *Id.* On February 7, 2012, Knowlton emailed McDougall and Ms. Hobby, informing them that he had received a check from Mr. Hobby as an advance on the purchase price and that "[u]nless I receive a materially better offer by the close of business today, I will accept Mr. Hobby's proposal and the advance. All of the mortgages are now or soon will soon [sic] be in default without this infusion of cash." (Mary Hobby Dep., Ex. 33, **Exhibit 20**). While McDougall continued to express Ms. Hobby's interest in making another offer on the house, no such offer was presented to Knowlton by February 9, 2012, the date Knowlton informed McDougall that he was accepting Mr. Hobby's January 3, 2012 counteroffer. (Aff. of John O. McDougall, Ex. F). Knowlton indicated in an email to McDougall and Ms. Hobby on February 9, 2012, that he was going to accept Mr. Hobby's counteroffer to purchase the Marital Home because the Trust was past due on most or all of the February loan payments and Mr. Hobby's offer was the superior offer before him at that time. (Mary Hobby Dep., Ex. 34,

Exhibit 21). Knowlton expressed his opinion that Ms. Hobby had had more than enough time—eighteen (18) days—to submit a superior counteroffer. *Id.*

Ms. Hobby maintains the reason she did not submit a counteroffer during this time was due to being heavily medicated for a pinched nerve. (Mary Hobby Dep. 62-64, **Exhibit 22**; see also Aff. of John O. McDougall, Ex. F, February 8, 2012 letter from McDougall to Knowlton, **Exhibit 23**). According to her deposition testimony, her doctor had informed her not to participate in any “court-related duties at this time.” (Aff. of John O. McDougall, Ex. F, February 8, 2012 letter from McDougall to Knowlton). Ms. Hobby also testified that because she was heavily medicated at the time, she could not remember receiving or sending the various emails discussed above—as well as other emails—regarding Knowlton’s requests that she submit a counteroffer. (See, e.g., Ms. Hobby’s Dep. 161, 162, 174-176, **Exhibit 24**). Ms. Hobby did eventually submit a counteroffer to purchase the Marital Home on March 20, 2012—fifty-seven (57) days after McDougall first acknowledged receipt of Mr. Hobby’s counteroffer. (Mary Hobby’s Dep., Ex. 37, **Exhibit 25**). However, by this date, Knowlton had already accepted Mr. Hobby’s January 3, 2012 offer to purchase the Marital Home and Mr. Hobby’s advance of the sales price to service the Trust’s financial obligations. (Aff. of John O. McDougall, Ex. F, April 4, 2012 email from Knowlton to McDougall and Ms. Hobby, **Exhibit 26**)

On April 19, 2012, the Trust’s sale of the Marital Home to Mr. Hobby was consummated, and the Trust delivered a quitclaim deed to Mr. Hobby. (Aff. of John O. McDougall, Ex. H, **Exhibit 27**). According to Williams, the independent accountant for the Trust, Ms. Hobby’s March 20, 2012, offer did not represent an increased value of the Marital Home compared to Mr. Hobby’s January 3, 2012, offer because the purchase price Ms. Hobby offered to pay (\$325,000)

was equal to the purchase price Knowlton received from Mr. Hobby. (Aff. of Terry Williams ¶ 10).

Ms. Hobby refused to vacate the Marital Home after its sale to Mr. Hobby. On April 26, 2013, Mr. Hobby instituted the present action against Ms. Hobby alleging several causes of action concerning her refusal to vacate the Marital Home. Ms. Hobby then filed a cross-claim against Knowlton, in his individual capacity and as trustee, alleging he breached his fiduciary duty to Ms. Hobby when he sold the Marital Home to Mr. Hobby. (Answer to Am. Compl., Countercl. And Third Party Compl. 3). Ms. Hobby's cross-claim further alleges she is entitled to indemnification from Knowlton. *Id.* On September 20, 2013, Ms. Hobby filed a motion for summary judgment on her claim that Knowlton "acted outside the scope of his powers and authority [under the Trust Agreement] in quitclaiming the marital residence to [Mr. Hobby] and [that] the quitclaim is therefore void and a nullity." (Defendant's Notice of Motion and Motion for Summary Judgment, **Exhibit 28**).

Legal Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." S.C. R. Civ. P. 56(c). "The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). When determining whether summary judgment should be granted, the trial court must consider the evidence and all reasonable inferences in a light most favorable to the non-moving party. *Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 84, 644 S.E.2d 58, 60 (2007). The party seeking summary judgment has the initial burden to

demonstrate that no genuine issue of material fact exists. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). The non-moving party need only establish a mere scintilla of evidence to survive a motion for summary judgment. *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 331, 673 S.E.2d 801, 803 (2009). “Summary judgment should not be granted even when there is no dispute as to the evidentiary facts, if there is a dispute as to the conclusions to be drawn therefrom. *MacFarlane v. Manly*, 274 S.C. 392, 264 S.E.2d 838 (1980).” *Laurens Emergency Med. Specialists, PA v. M.S. Bailey & Sons Bankers*, 355 S.C. 104, 108-09, 584 S.E.2d 375, 377 (2003)

Discussion

Ms. Hobby’s motion for summary judgment should be denied because the undisputed evidence clearly establishes that Knowlton acted within the scope of his powers and authority under the Trust Agreement when he quitclaimed the Marital Home to Mr. Hobby. Moreover, to the extent Ms. Hobby seeks summary judgment on her various claims that Knowlton breached his fiduciary duties to her by selling the Marital Home to Mr. Hobby, summary judgment as to these claims should likewise be denied as the undisputed evidence establishes that Knowlton at all relevant times administered the trust prudently, and exercised reasonable care, skill and caution. (See Affidavit of Julian W. Walker, Jr., **Exhibit 29**).

Ms. Hobby, through the affidavits of Arthur White and John McDougall, submits several arguments in support of her claims that Knowlton exceeded his authority under the Trust Agreement and breached his fiduciary duties. These arguments are addressed below.

I. The Trust Agreement authorized Knowlton to sell the Marital Home to Mr. Hobby without Ms. Hobby’s consent.

Ms. Hobby’s first contention that Knowlton exceeded his authority under the Trust Agreement is that Knowlton failed to obtain her consent prior to selling the Marital Home to Mr.

Hobby. Ms. Hobby's contention is based upon her interpretation of Article IX (a)(xxxii) of the Trust Agreement. According to Ms. Hobby's argument, this provision required Knowlton to "seek [her] approval of the terms of the sale to [Mr. Hobby]." (See Affidavit of John O. McDougall ¶ 14; Affidavit of Arthur White III ¶ 4, **Exhibit 30**). However, not only is this a strained interpretation of the Trust Agreement and inconsistent with the provision's plain language, but such an interpretation would frustrate the purpose of the Trust.

Whether Knowlton was required to obtain Ms. Hobby's consent prior to selling the Marital Home to Mr. Hobby requires interpretation of Article IX (a)(xxxii). A court's primary concern when interpreting and construing a trust instrument is to discern the settlor's intent. *Holcombe-Burdette v. Bank of Am.*, 371 S.C. 648, 658, 640 S.E.2d 480, 484-85 (Ct. App. 2006). "In ascertaining a settlor's intent, if the language of the trust instrument is perfectly plain and capable of legal construction, such language determines the force and the effect of the instrument." *Id* (internal citation omitted). When interpreting the meaning of the language of a trust agreement and ascertaining the intent of the settlor, the court must consider the trust document as a whole. *See id.* at 657, 640 S.E.2d at 484.

According to Article IX (a)(xxxii) of the Trust Agreement, the "Trustee may sell any Trust Asset to a [beneficiary of the Trust] provided the sale and terms of sale are reasonable, fair, and reflect fair market value **and any other terms mutually agreeable by the parties.**" (Emphasis added). Ms. Hobby appears to rely on the use of the conjunctive "and" preceding the clause "any other terms mutually agreeable by the parties," to support her interpretation that Article IX (a)(xxxii) requires her agreement to the terms of any sale of trust property to Mr. Hobby.

However, to the extent Ms. Hobby's interpretation depends on the use of the conjunctive "and," it is important to note that the above-quoted language of the Trust Agreement differs from the language of the Divorce Order. Whereas Article IX (a)(xxxii) contains the conjunctive "and" prior to the clause "any other terms mutually agreeable by the parties," the Divorce Order uses the conjunctive "or." Given that the Divorce Order expressly states its terms "shall govern the parties in the creation and operation of [the] trust," the language of the Divorce Order must control the interpretation of Article IX (a)(xxxii). Moreover, because the Trust Agreement expressly provides the Trust was created pursuant to the Divorce Order, (Trust Agreement, Article I(a)), it is clear from the Trust Agreement's language that it was the parties' intent that Article IX (a)(xxxii) follow the language used in the Divorce Order. Therefore, the conjunctive "and" in Article IX (a)(xxxii) should be read as "or." See *Smith v. United Television, Inc. Special Severance Plan*, 474 F.3d 1033, 1037 (8th Cir. 2007) (noting that "courts have recognized the principle of contract interpretation that the terms 'and' and 'or' may be interchanged, in context, to carry out the parties' intent and the agreement's purpose"); *Dumont v. United States*, 98 U.S. 142, 143, 25 L. Ed. 65 (1878) ("The word 'or' is frequently construed to mean 'and,' and *vice versa*, in order to carry out the evident intent of the parties."). In the alternative, the use of the conjunctive "and" in Article IX (a)(xxxii) should be held to be a scrivener's error. See *Holroyd v. Requa*, 361 S.C. 43, 60, 603 S.E.2d 417, 426 (Ct. App. 2004) ("Our courts have corrected scriveners' errors when warranted.").

When Article IX (a)(xxxii) is read with the conjunctive "or," it is clear that the Trust Agreement did not require Ms. Hobby's consent to the terms of the sale of the Marital Home to Mr. Hobby. Rather, the most reasonable interpretation of this provision is that Knowlton, as trustee, had the authority to sell trust property to either beneficiary without the consent of the

other beneficiary where the sale and terms of the sale are reasonable, fair and reflect market value; but that the parties were free to mutually agree to other terms. Not only is this interpretation consistent with the plain language of the Divorce Order and the intent of the parties, it is the only way to interpret Article IX (a)(xxxii) without frustrating the very purpose of the Trust as a liquidating trust. Allowing one beneficiary to have unconstrained veto power over a sale of trust property to the other beneficiary that is otherwise reasonable, fair and reflects market value would frustrate the trustee's obligation to sell trust assets "in a timely, prudent and efficient manner." (Trust Agreement, Article I(c)).

Here, there is no evidence that sale of the Marital Home to Mr. Hobby, or the terms of said sale, were unreasonable or unfair; nor is there any evidence that the sales price was less than market value. Thus, Knowlton did not act outside the scope of his authority under the Trust Agreement when he sold the Marital Home to Mr. Hobby.

Moreover, even if the use of the conjunctive "and" in Article IX (a)(xxxii) is read as "and," the plain language of this provision still does not have the meaning Ms. Hobby suggests. The conjunctive "and" as used in the subject sentence simply means that, in addition to the requirement that any sale and its terms reflect fair market value, said terms must also reflect "any other terms" the parties may mutually agree to. However, there is no evidence that there were any additional terms that the parties mutually agreed to include in the sale. Therefore, this portion of Article IX (a)(xxxii) has no application to the present sale.

It is also noteworthy that Ms. Hobby herself admitted in her deposition that she did not believe she had the authority under the Divorce Order or Trust Agreement to veto or approve the sale of trust property (*See* Ms. Hobby's Dep. 6-7, 93-95, **Exhibit 31**). Although at one point during her deposition Ms. Hobby suggested she did have the right to object to the sale of the

Marital Home to Mr. Hobby, she refused to admit that Mr. Hobby had a reciprocal right to object to the sale of the home to her. (Ms. Hobby's Dep. 100-101, **Exhibit 32**). Interpreting the Trust Agreement to provide only Ms. Hobby with veto power is illogical and contradicts the plain language and meaning of Article IX (a)(xxxii).

Finally, to the extent that Ms. Hobby contends that Knowlton had "a fiduciary duty to seek court approval" of the sale of the Marital Home to Mr. Hobby, this argument ultimately fails. According to the Trust Agreement, Knowlton was authorized to sell trust property without a court order. (Trust Agreement, Article IX (a)).

II. Knowlton exercised appropriate and reasonable due diligence with respect to the sale of the Marital Home to Mr. Hobby

Ms. Hobby next argues that Knowlton exceeded his authority under the Trust Agreement because he failed "to exercise appropriate and reasonable due diligence" in selling the Marital Home to Mr. Hobby. (See Aff. of John O. McDougall ¶ 11). In particular, Ms. Hobby argues that Knowlton "failed to maximize the value of the [Marital Home]." (See *id.* at ¶ 11). However, there is no dispute that at the time the trustee accepted Mr. Hobby's offer, it was the best offer before him. In fact, Ms. Hobby does not appear to contest that Mr. Hobby's offer to purchase the Marital Home was superior to her offer to purchase the home for \$225,000. Rather, Ms. Hobby contends that her March 20, 2012 offer ("2012 Offer")—which was submitted more than a month after the Knowlton communicated to McDougall that he was accepting Mr. Hobby's offer—was superior to Mr. Hobby's offer. This argument lacks merit for two reasons. First, according to the Trust's accountant, Ms. Hobby's 2012 Offer did not value the Marital Home any more than Mr. Hobby's offer, as the purchase price of both offers was identical. Second, even if Ms. Hobby's 2012 Offer was somehow superior to Mr. Hobby's, which Knowlton adamantly denies, Ms. Hobby's argument ignores the fact that her 2012 Offer was

made after Knowlton had already accepted Mr. Hobby's offer and his advance of the purchase price.

According to the affidavit of McDougall, Ms. Hobby suggests that Knowlton should have waited longer for her to make a counteroffer. Ms. Hobby contends that Knowlton knew that Ms. Hobby intended to make another offer and that although the Trust's financial obligations were past due at the time Knowlton accepted Mr. Hobby's offer, delaying these payments "would not have likely triggered a foreclosure action in the period of time" it took Ms. Hobby to make a second offer. (*See id.*) This position lacks merit. At the time Knowlton accepted Mr. Hobby's offer there was no indication as to when he could expect another offer from Ms. Hobby. In fact, Ms. Hobby did not even make another offer until March 20, 2012—fifty-seven (57) days after McDougall first acknowledged receipt of Mr. Hobby's offer. Meanwhile, the Trust was in default. It was not unreasonable for Knowlton to accept the best offer before him at the time in order to avoid the risk of foreclosure. *See Ex parte Wheeler v. Estate of Green*, 381 S.C. 548, 673 S.E.2d 836 (Ct. App. 2009) (holding that the personal representative of a decedent's estate did not breach her fiduciary duties by accepting an offer for the sale of the decedent's residence without considering a substantially higher offer submitted by another prospective purchaser after the offer was accepted).

In *Ex parte Wheeler*, the beneficiaries under a decedent's will and a prospective purchaser of the decedent's residence alleged the Personal Representative (PR) of the decedent's estate had breached her fiduciary duties to the beneficiaries by accepting an offer from another buyer. *Id.* at 552-53, 673 S.E.2d at 839. The decedent's will directed the PR to sell the residence, along with any other real property, "at such time as, in his sole discretion, the sale would be most advantageous financially to [the] estate" *Id.* at 551, 673 S.E.2d at 838.

Prior to the PR being appointed, the prospective purchaser expressed her interest in purchasing the decedent's residence to the PR. *Id.* at 552, 673 S.E.2d at 838. The PR met with the prospective purchaser to discuss the property. *Id.* The prospective purchaser also called the PR several times over the following weeks to check the status of the property and to inquire about an appraisal of the home. *Id.* The PR never responded to these calls. *Id.* When the appraisal of the home was completed, the PR never provided the appraisal to the prospective purchaser. *Id.* The PR subsequently accepted an offer to purchase the home from another buyer for \$325,000, which was \$5,000 above the home's appraised value. *Id.* The following month, the prospective purchaser's attorney sent a letter to the PR, indicating that she was willing to purchase the property for \$350,000. *Id.* However, a formal offer was not submitted until after the PR filed a petition with the probate court to approve the sale of the home to the other buyer. *Id.*, 673 S.E.2d at 839. The PR acknowledged in the petition that the prospective purchaser objected to the sale, but maintained that she had not received the purchaser's offer prior to accepting the other buyer's offer. *Id.*

The South Carolina Court of Appeals held that the PR did not breach her fiduciary duty by accepting the buyer's offer. The court of appeals found significant the fact that, despite the PR's knowledge of the prospective purchaser's interest in the home, at the time the PR accepted the other buyer's offer it was the only formal offer that had been presented to the PR for the purchase of the residence. *Id.* at 556, 673 S.E.2d at 841. According to the court:

Faced with the prospect of waiting on a speculative written offer to materialize, or accepting an in-hand, written offer that was for more than the estate's own appraisal, [the PR] decided it was in the best interest of the Beneficiaries to accept the [buyer's] contract. . . . Given the circumstances, [the PR] would have most likely breached her fiduciary duties had she not accepted the [buyer's] offer.

Id. at 556-57, 673 S.E.2d at 841.

Like the personal representative in *Ex parte Wheeler*, Knowlton accepted Mr. Hobby's offer because he decided it was in the best interest of the Trust, and ultimately Ms. Hobby and Mr. Hobby. Had Knowlton not accepted Mr. Hobby's offer, he most likely would have breached his fiduciary duties. After all, Mr. Hobby's offer was \$100,000 more than Ms. Hobby's initial offer and \$25,000 more than the most recent appraisal of the Marital Home. Thus, Knowlton did not abuse his discretion or exceed his authority under the Trust Agreement by accepting Mr. Hobby's offer and not waiting on Ms. Hobby's speculative written offer to materialize.

III. By selling the Marital Home to Mr. Hobby, Knowlton exercised the discretion delegated to him under the Trust Agreement in good faith and consistently with the primary purpose of the Trust.

Ms. Hobby, through the affidavits of White and McDougall, questions the terms of the sale of the Marital Home to Mr. Hobby. Ms. Hobby contends that Knowlton should not have transferred the home out of the Trust, but rather, should have "insisted that [Mr. Hobby] purchase the property under a contract of sale whereby a deed would not be delivered until the entire purchase price was paid." (Aff. of Arthur E. White III ¶ 5; *see also* Aff. of John O. McDougall ¶ 14). Knowlton's decision to sell the Marital Home to Mr. Hobby on the terms that he did was a proper exercise of his discretionary powers as trustee.

A trustee's discretion must be exercised in good faith, consistent with the primary purpose of the trust. *Sarlin v. Sarlin*, 312 S.C. 27, 30, 430 S.E.2d 530, 532 (Ct. App. 1993). "The mere fact that if the discretion had been conferred upon the court, it would have exercised the power differently is not a sufficient reason for interfering with the exercise of the power by the trustee. *Estate of Stevens v. Lutch*, 365 S.C. 427, 431, 617 S.E.2d 736, 738 (Ct. App. 2005) (internal quotation marks and citation omitted).

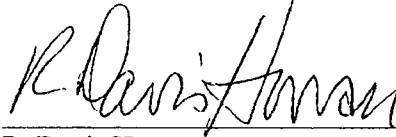
Under the Trust Agreement, Knowlton, as trustee, has the authority to sell trust assets “at such time or times and in such manner and upon such terms as, in the absolute and uncontrolled discretion of the Trustee[, the Trustee] may deem expedient and proper,” so long as the sale is one at arms-length, is fair and reasonable, and reflects market value. (Article IX (a)(xxxii)). Ms. Hobby has not presented any evidence to suggest that Knowlton failed to exercise this discretion in good faith or that the terms of the sale were inconsistent with the Trust’s purpose. Knowlton had the discretion to enter a contract to sell the Marital Home on whatever terms he deemed appropriate and in the best interest of the trust, so long as it was an arms-length transaction, reasonably maximized the value of the property, and reflected fair market value. No one has questioned whether the offer was fair market value. There is also no evidence that the sale was not one at arms-length. Moreover, the Trust’s overriding purpose, and Knowlton’s overall obligation, is to liquidate the assets of the Trust. By entering a contract with Mr. Hobby for the sale of the Marital Home, Knowlton exercised his discretion in good faith and consistently with the Trust’s purpose. The fact that Ms. Hobby would have structured the sale differently is thus irrelevant.

IV. Knowlton acted impartially toward Ms. Hobby and Mr. Hobby in deciding to accept Mr. Hobby’s offer to purchase the Marital Home.

Ms. Hobby argues that Knowlton breached his duty of impartiality by selling the Marital Home to Mr. Hobby. However, the mere fact that a trustee accepts one beneficiary’s offer to purchase a trust asset over another’s is not evidence that the trustee is favoring one beneficiary over the other. This is especially true here where Knowlton provided Ms. Hobby ample time to submit a counteroffer to Mr. Hobby’s offer. Moreover, had Knowlton refused to sell the Marital Home to Mr. Hobby based solely on Ms. Hobby’s objection to the sale, Knowlton arguably would be favoring Ms. Hobby over Mr. Hobby.

Conclusion

In light of the foregoing, Third Party Defendant Francis B. B. Knowlton requests the Court deny Third Party Plaintiff Mary T. Hobby's motion for summary judgment.



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March 11, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

Raymond D. Hobby,)
Plaintiff,)

C/A No.: 2013-CP-36-0193

v.)

Mary T. Hobby,)
Defendant.)

FIRST AMENDED COMPLAINT
(Non-Jury)

Plaintiff Raymond D. Hobby ("Plaintiff"), complaining of Mary T. Hobby ("Defendant"), hereby amends his complaint in this action, pursuant to Rule 15, SCRCF, to allege as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a citizen of South Carolina and a resident of Newberry County.
2. Defendant is a citizen of South Carolina and a resident of Newberry County.
3. The allegations in this complaint relate to real property commonly described as 544 Crowder Road in Newberry County ("the Property").

4. This Court has jurisdiction over these claims pursuant to Art. V, Sec. 11 of the South Carolina Constitution, S.C. Code § 22-3-10, S.C. Code § 27-33-40, the South Carolina Residential Landlord and Tenant Act, S.C. Code §27-40-10, *et seq.*, and as otherwise provided by law.

5. Venue in this Court is proper pursuant to Chapter 7 of Title 15 of the 1976 South Carolina Code of Laws, as amended.

FACTUAL ALLEGATIONS

6. Defendant and Plaintiff were married on June 24, 1978, and divorced by a Final



Order and Divorce Decree ("Divorce Decree") filed October 8, 2010 in Docket No. 2005-DR-36-56.

7. The Divorce Decree required the parties to create a liquidating trust and transfer the vast majority of their marital assets into the trust. By the terms of the Divorce Decree, certain provisions were ordered to be included to the trust.

8. In compliance with the Divorce Decree, Plaintiff and Defendant created and signed the Hobby Family Liquidating Trust Agreement (the "Trust") on December 6, 2010 and December 9, 2010, respectively.

9. One of the assets the Divorce Decree required to be transferred to the Trust is the Property, which was the marital home and included three (3) surrounding acres.

10. At the time of the entry of the Divorce Decree, the Property was titled solely in the Defendant's name.

11. By the terms of the Trust, the Trustee is granted various powers, including but not limited to the power to "sell or dispose of . . . any property, real or personal, constituting a part of the Trust Estate . . . , for cash or on credit . . . at such times and upon such terms and conditions as it may deem best. . . ."

12. By operation of its own terms, the Trust is a liquidating trust, so that assets and debts owned by it are managed and controlled and disposed of in the manner directed by the Trustee, with distributive benefits flowing to Plaintiff and Defendant in accordance with the terms of the Trust.

13. The Divorce Decree and Trust terms further provide that Defendant had sole and exclusive possession of the Property until it was "sold, or until vacated by her."

14. Beginning in December 2011, over a year after the entry of the Divorce Decree, Plaintiff and Defendant each made offers to the Trustee to purchase the property.

15. The Trustee intended to sell the Property because the Trust was in need of cash to keep operating.

16. On December 8, 2011, Defendant submitted an offer to the Trustee to purchase the Property for \$225,000, of which \$127,231 would be paid in cash to the Trust. A true and accurate copy of Defendant's offer is attached as Exhibit A and incorporated herein.

17. On or about January 3, 2012, the Plaintiff submitted a counteroffer to the Trustee to purchase the Property for \$325,000, \$138,125 of which would be paid in cash to the Trust. A true and accurate copy of the Plaintiff's offer is attached as Exhibit B.

18. After giving the Defendant a reasonable time to outbid Plaintiff, the Trustee accepted Plaintiff's offer on or about February 9, 2012.

19. On April 11, 2012, the Defendant transferred the Property into the Trust by general warranty deed, finally complying with the October 2010 Divorce Decree.

20. On April 19, 2012, the Trustee transferred the Property to Plaintiff by quitclaim deed after Plaintiff paid the Trust in accordance with the offer accepted by the Trustee. A true and accurate copy of the quitclaim deed is attached as Exhibit C and is incorporated herein by reference.

21. After April 19, 2012, Defendant continued to live on the Property.

22. Since at least April 19, 2012, Defendant has been either a trespasser or a holdover tenant because she has not owned the Property and has continued living there without Plaintiff's permission.

23. Since April 19, 2012, Plaintiff alone has held legal title to the Property.

24. After purchasing the Property, Plaintiff requested that Defendant move out and has taken actions to remove her, but she has refused to vacate the Property.

25. Any agreement allowing the Defendant to live on the Property expired on April 19, 2012, when the Trustee closed the sale to the Plaintiff.

26. Since April 19, 2012, Defendant has wrongfully and unlawfully exercised exclusive possession over Property she does not own, denied Plaintiff any use of Property he purchased and owns, occupied the Property without Plaintiff's consent, and she has failed to pay Plaintiff any compensation for living on the Property.

27. On May 2, 2012, Plaintiff filed a Notice to Quit in the Magistrate's Court for Newberry County, C/A No.: 2012-CV-36-10100450, ("Ejectment Case").

28. On May 14, 2012, Plaintiff served Defendant with the Notice to Quit.

29. On May 15, 2012, Defendant filed suit in the Family Court for Newberry County, C/A No. 2012-CP-36-194, ("Family Court Case") seeking (1) alimony (as permitted by the Divorce Decree), (2) a declaration that the Trustee's Deed to Plaintiff for the Property was void *ab initio*, (3) a determination of whether Plaintiff or Defendant should be allowed to purchase the Property, (4) exclusive possession of the Property until all of the Trust assets are liquidated, (5) an order prohibiting Plaintiff from pursuing eviction proceedings against Plaintiff during the pendency of the case, (6) discovery rights, and (7) attorney's fees and costs.

30. On May 15, 2012, the Family Court issued an Emergency Order prohibiting Plaintiff from pursuing eviction proceedings in the Ejectment Case pending a hearing in the Family Court.

31. On or about May 16, 2012, Defendant filed an Answer in the Ejectment Case. In answer, Defendant contested the magistrate's jurisdiction.

32. On November 13, 2012, the Family Court held a hearing in the Family Court Case.

33. On January 7, 2013, the Family Court entered an Order dismissing the Defendant's claims related to the Property in the Family Court Case. A true and accurate copy of the Court's Order is attached hereto as Exhibit D.

34. Defendant's subsequent motion to reconsider was also denied, and Plaintiff is informed and believes no appeal has filed or served.

35. After learning the Family Court Case had been dismissed, the Plaintiff contacted the Magistrate's Court to reschedule a hearing in the Ejectment Case.

36. However, the Magistrate declined to reschedule the hearing based on jurisdictional concerns.

37. Defendant filed a financial declaration in the Family Court Case stating her monthly costs for a home similar to the Property are \$1,787. A true and accurate copy of Defendant's financial declaration is attached as Exhibit E.

38. Plaintiff is informed and believes the reasonable monthly rental value of the Property is \$1,750. A copy of Plaintiff's Affidavit is attached as Exhibit C to the original verified complaint filed in this action, which is incorporated herein by reference.

39. Plaintiff is therefore entitled to an order directing Defendant to vacate the Property in addition to judgment against her for an ascertainable sum in excess of \$21,000, for double his actual damages, for punitive damages, for other damages as may be discovered and incurred during the course of this action, and for attorney's fees, prejudgment interest and costs.