

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

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SC Court of Appeals

Raymond D. Hobby Respondent

vs.

Mary T. Hobby Appellant

vs.

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

SUPPLEMENTAL RECORD ON APPEAL
Volume IV

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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

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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

1 that she could have entered into the record in the
2 magistrate's court case and now she's trying to shoehorn
3 in.

4 MR. JOHNSON: I'm ---

5 THE COURT: Okay.

6 MR. JOHNSON: --- I'm not asking you ---

7 MR. BRUNER: Yeah.

8 MR. JOHNSON: --- to do that ---

9 THE COURT: Yeah.

10 MR. JOHNSON: --- Your Honor.

11 THE COURT: I -- I -- I'm going to limit -- I've -- of
12 course, I'm going to limit my -- my decision on the
13 magistrate's court action based upon the record from that
14 particular case. I have some qualms with -- with the
15 argument that was made in front of Judge McMahon that this
16 needs to be in front of the magistrate; and then when you
17 get in front of the magistrate, the argument's made: Well,
18 you shouldn't be in front of the magistrate; we should be
19 in circuit court. And now the argument on the circuit
20 court case is that: Well, we need to be over in probate
21 court.

22 I want to see this case resolved. It has to end at
23 some point in time. And the question of subject-matter
24 jurisdiction, of course, is a very, very important one.
25 More important, however, is that there be some resolution.

1 These parties couldn't live together; they got divorced.
2 They entered into this arrangement themselves. It isn't
3 working out. It has to end ---

4 MR. BRUNER: I -- I ---

5 THE COURT: --- somehow.

6 MR. BRUNER: --- agree.

7 MR. JOHNSON: We -- we agree, Your Honor.

8 MR. BRUNER: Well -- well, I think we all agree with
9 that, Your Honor. And it -- but the point you raise is
10 key, because if I -- if I -- if I agree to -- to dismiss my
11 circuit court case and bring the same claims that I raise
12 in the damages case in probate court, I don't think the
13 probate court has original jurisdiction over several of
14 those.

15 And so then I'm left in a position where they've
16 already contested subject-matter jurisdiction at every
17 turn. And you better believe if they don't contest it at
18 the trial level, they can raise it on the appellate level.
19 And here I am, left with, you know, an appeal of a court --
20 of a case that -- that I agreed to bring in probate court.
21 It -- you know, the only solution I know of is to go ahead
22 and file the identical claim -- the -- the identical claims
23 in probate court, remove it, and consolidate the two.
24 Because then, there's no way they can argue ---

25 THE COURT: That the two ---

1 MR. BRUNER: --- if -- if that makes any sense, Your
2 Honor.

3 THE COURT: Right.

4 MR. BRUNER: And that's what -- and that's what I'm
5 struggling with. I think this Court does have
6 jurisdiction. And -- and I don't think we need to go to
7 probate court for my -- for the plaintiff's claims. The
8 defendant's claims, you better believe, belong in probate
9 court.

10 MR. JOHNSON: Your Honor, since it's my motion ---

11 THE COURT: Yeah. Let's hear from you.

12 MR. JOHNSON: I ---

13 THE COURT: Go ahead.

14 MR. JOHNSON: --- I -- I would like to tell you the --
15 the road map I think you could follow that would do exactly
16 what you just talked about doing and would ensure that
17 subject-matter jurisdiction was treated appropriately.
18 I've had this subject-matter-jurisdiction thing used
19 against me when I've filed suits and that -- that have been
20 kicked back to the probate court, where I have to just
21 start over and then remove them.

22 And, you know, it's a headache. But you got to do it,
23 because the statute says that's what you've got to do.

24 And so here, 62-1-302 provides for trusts or within
25 the original, exclusive jurisdiction, Mr. Bruner correctly

1 points out there's a statute in the -- in the trust code
2 that provides that there is jurisdiction in the -- in the
3 probate court involving internal matters that involve the
4 administration and distribution of assets from the trust
5 rights and authorities. And, of course, that's the very
6 issue that we've got in our case, is whether the trustee
7 had authority to convey the property to Mr. Hobby and/or
8 did not have the right to do it as part of his
9 administration of the trust.

10 And whether you look under the trust code or whether
11 you look under the probate code, 62-1-203, we would say
12 that it is clear that these claims have to be brought in
13 the probate court. And then they can be removed. There's
14 no question they can be removed and removed up.

15 But if the Court doesn't do that and a -- an appellate
16 court later says, "Wait a minute; these are within the
17 original, exclusive jurisdiction of the probate court,"
18 then we will have to start all over with everything. It
19 could be clarified right now by letting the matters proceed
20 -- dismiss; let the matters proceed in the -- in probate
21 court; remove them back up; and would get all of the issues
22 before the Court in a -- in a format that we would know the
23 circuit court had jurisdiction. And that's -- that's the
24 whole point of it, Your Honor.

25 THE COURT: All right.

1 MR. BRUNER: Your Honor, I -- I'd like to point out
2 that for purposes of determining whether this Court has
3 subject-matter jurisdiction, the -- it -- it's based solely
4 on the two statutes that -- that Mr. Johnson referenced. I
5 referenced them in my memo.

6 I think also the Court has to look at the claim. They
7 have to look at the claim -- the Court has to look at the
8 claim that is brought. And in the plaintiff's claims, the
9 claims that -- the claims that I'm bringing and that I'm
10 seeking summary judgment on, are based on the defendant's
11 failure to move out of house -- out of a house that she
12 doesn't own and that she has no right to live in.

13 My client bought the house. Just -- as just as a
14 third party who could've bought the house, he's got a right
15 to use it. He's got a right to enjoy it. He's got a right
16 to rent it out and use it however he wants.

17 He can't do that. He cannot do that. That is not --
18 that does not require construction of any term of the
19 trust. That does not relate to -- that does not require a
20 determination of parties' rights to the trust, because it's
21 no longer trust property. It's out.

22 If anything -- if anything, the issues that -- that
23 Mr. Johnson has raised relate to his claims against the
24 trustee. If the trustee -- if the trustee breached some
25 duty, which I don't think he did, but if he breached some

1 duty in distributing and selling the property, then -- then
2 that relates to the claim against -- that she has against
3 the trustee. That doesn't relate my plaintiff's -- the
4 plaintiff's trespass and quantum meruit and landlord-
5 tenant-act claims.

6 So -- and -- and I think -- I think the proper thing
7 to do would be for Mr. Johnson to bring his claims in the
8 probate court. If we want to adjudicate them all in one
9 fell swoop, he can remove them and then we can all be back
10 in the same place, postured differently procedurally. But
11 -- but that's -- that's the basis of it.

12 I -- I don't -- I don't think this is an internal
13 matter related to a trust, because we're not asking the
14 Court to -- to remove the trustee. She is. We're not
15 asking the Court to determine rights of parties to the
16 trust. She is. And I don't believe that she can simply
17 bring those claims that should be brought in the probate
18 court and destroy subject -- this Court's subject-matter
19 jurisdiction for claims that it can hear.

20 MR. JOHNSON: Your Honor, just briefly, if it was
21 uncontested that he acquired title to the property and the
22 owner -- is owner of the property, I might agree with
23 counsel. But we've submitted an affidavit from an expert
24 in -- in these matters who says, in his opinion ---

25 MR. BRUNER: Your Honor, I'm -- I'm going to object to

1 this affidavit and to Mr. Johnson's reading it in the
2 record. I -- I -- I state my reasons in my memorandum.
3 There's no evidence that he's an expert, and it's purely
4 opinion testimony.

5 THE COURT: All right.

6 MR. JOHNSON: Well ---

7 THE COURT: Just so that the record's complete, I'll
8 let you go ahead and proffer the evidence.

9 MR. JOHNSON: Thank you, Your Honor. In any event, he
10 points out that the trust agreement on transferor requires
11 that the transfer be for fair market value. There's no
12 evidence to show that that occurred. And it -- it requires
13 her approval to the terms of it. And here the terms were
14 the fact that there was financing. And she agreed to
15 nothing about the sale.

16 So it's our position that the Court necessarily, in
17 determining whether he's the owner or not, would have to
18 determine whether the trustee had authority to do what the
19 trustee did. And if the trustee didn't, it would
20 necessarily be a nullity. He can't acquire what the
21 trustee doesn't have authority to give him.

22 And so given that and the dispute over that, it
23 involves the right and the privilege and the duty of the --
24 of the trustee to make a transfer. It requires a
25 determination regarding a distribution of a trust. And so

1 all of those are within -- involve the internal affairs of
2 the trust and the probate court has original jurisdiction.

3 THE COURT: Okay. The point that he makes, though,
4 concerning the plaintiff's cause of actions or his client's
5 cause of action in the circuit court case are somewhat well
6 taken. It -- I -- I -- this isn't a situation where the
7 defendant can seek removal to federal court because it
8 involves, you know, a federal claim or a federal statute or
9 something. So it's not like -- as I see it, it's not like
10 the wife is able to defeat the circuit court subject-matter
11 jurisdiction by pleading causes of action which could be
12 brought in the probate court.

13 I -- I do feel that his contention that you have to
14 look at the underlying cause of action to determine where
15 it should be brought, that's valid. At the same time, if
16 the actions of the trustee are a nullity because he's
17 acting outside the scope of the trustee's authority, then
18 perhaps that is a matter to be determined in the probate
19 court.

20 However, in this case, wife -- you did interplead the
21 trustee into the common-pleas action, right? Am I -- or am
22 I ---

23 MR. JOHNSON: Your Honor ---

24 THE COURT: --- thinking incorrectly?

25 MR. JOHNSON: --- we -- we did bring a third-party

1 claim against the trustee.

2 THE COURT: Okay.

3 MR. JOHNSON: And the -- the distinction I would ask
4 you to make is this: They have a cause of action for
5 trespass. And they have a cause of action for unjust
6 enrichment that are premised upon the plaintiff being the
7 sole and exclusive legal owner of the property. That is
8 disputed, because it's our position the trustee had no
9 authority to do what the trustee did. So that's going to
10 necessarily involve fighting -- if we had asserted no
11 claims or no third-party complaint, that in itself would be
12 a -- would -- would require a court to look at the terms of
13 the trust to determine whether the trustee has authority
14 and the right to do what the trustee and determine if it's
15 right that he's the sole and exclusive owner.

16 THE COURT: No argument. Let's go back to basic
17 property law, though. If we're dealing with A transfers to
18 B and B transfers to C and C transfers to D, D then brings
19 an action against C after he purchases the property,
20 presumably -- or -- bad example. Let -- let me -- let me
21 -- let me move back.

22 If -- if -- if the underlying person who got the
23 property, you know, or who -- who sold the person -- that
24 -- who sold the property at the beginning, the one -- the
25 first one in the chain of title, if they didn't have

1 authority to sell to Person A, then A doesn't have
2 authority to sell to B; B's got nothing, okay? And that
3 would be an -- an affirmative defense perhaps that could be
4 asserted by somebody who has an interest in the property
5 that you -- you don't own it because this problem with the
6 chain of title. Why can't you bring that same argument in
7 the common-pleas action and litigate that question as an
8 affirmative defense ---

9 MR. JOHNSON: Your Honor, I think you can, but you got
10 to start in the probate court. And the -- this -- this ---

11 THE COURT: Why hasn't she done that, then?

12 MR. JOHNSON: Your Honor, we made a motion to dismiss
13 and answered. It -- it made our answer, I believe, subject
14 to our motion to dismiss for lack of subject-matter
15 jurisdiction. As you know, we can challenge that at any
16 time, even if we had done otherwise. But ---

17 THE COURT: I understand. But if the wife is truly
18 genuine in her interest to get this resolved and if she's
19 also genuine in her belief that the probate court is the
20 court with jurisdiction, I would think that she would've
21 already brought an action in the probate court to
22 adjudicate the authority of the trustee. The -- the only
23 other alternative, if -- if she hasn't brought that, is
24 that she is simply trying to stall and buy more time for
25 her to live in the house.

1 MR. JOHNSON: Your Honor, it's a loser for her to
2 stall and buy more time to live in the house, to the extent
3 he has a claim for trespass. And so the -- the only
4 benefit to her is that if she prevails that the trustee had
5 no authority, on that point, does she have the right to
6 live there rent-free?

7 So it's -- and, of course, had we brought that claim
8 in the probate court, it may have been subject to a
9 12(b)(8) motion to have matters pending before the same
10 parties in the circuit court. I mean, we're not the only
11 ones who've raised procedural issues.

12 THE COURT: Certainly.

13 MR. JOHNSON: And the -- I -- I guess I come back to
14 where I started on this argument. I -- I know the one way
15 we can be sure: I think anything less than that -- and
16 it's very simple: Just file over; remove it right up;
17 we're right back where we are. But if we don't do that and
18 we guess wrong -- not guess, but reason wrong here -- it's
19 going to be hanging over us the rest of the way out through
20 this case.

21 And the one thing, Judge, I've only been in this
22 matter since, I think, June. I touched the tar baby at
23 that point. But these parties have shown a propensity to
24 litigate. They've been litigating a long time. I think
25 the divorce action started in 2005. So I -- I want to see

1 us start where we know we got jurisdiction.

2 THE COURT: That's not a bad practical suggestion.

3 MR. BRUNER: That's -- and -- and Your Honor points
4 out a -- I think you made a pretty good point: that the --
5 she could go ahead and file her claims in the probate court
6 if the -- what the record shows in this case -- and -- and
7 really, in -- in all of the -- the family court case, the
8 damages case in circuit court, and the ejectment case in
9 magistrate's court -- what that shows is we have been
10 actively trying to -- to bring this thing to a head and get
11 it resolved; get everything -- move it through the process;
12 get an adjudication; and get it off the Court's docket.

13 That's what we've been trying -- we have been the ones
14 filing claims. We've been the ones looking for
15 jurisdiction. And -- and she has contested it at every
16 turn.

17 So I don't think it's fair to say that if -- that if I
18 turn around and file a complaint in -- in the probate
19 court, that we'll be sure that we'll have jurisdiction.
20 Because I -- I fully expect a subject-matter-jurisdiction
21 challenge, if not at the trial level, at the appellate
22 level, because she can do that. And -- and maybe the thing
23 to do is for her to file her claims in the probate court
24 and then I can remove them. And if they'll stipulate to
25 consolidating the two cases, this case with that, we can go

1 on our merry way.

2 THE COURT: All right. Well, let's -- let's ask that
3 question, then. We're here at the courthouse annex because
4 they're reroofing the main courtroom in the courthouse.
5 Assuming that he walks across the street -- or walks
6 across, rather, the hallway to the probate court office
7 and, five minutes, files an action in the probate court
8 while everybody's here, I'm assuming that you're willing to
9 stipulate to removal and file the exact same answer in the
10 probate court that was filed here; is that right?

11 MR. JOHNSON: Yes, sir, Your Honor.

12 THE COURT: All right. Well, let's do that. I'll
13 take the matter under advisement. Then we'll consolidate
14 the two actions as soon as you make a copy of this, file it
15 in the probate court, pay them \$150, and let Ms. -- let
16 Judge Nobles know that we have a common-pleas action that
17 this can be consolidated with and the defendant has agreed
18 to consolidate it and we'll have it all in the same court
19 ---

20 MR. BRUNER: So I've got to ---

21 THE COURT: --- without any problem.

22 MR. BRUNER: I've got to draft the complaint and pay
23 the filing fee? I ---

24 THE COURT: I'd ---

25 MR. BRUNER: If ---

1 THE COURT: --- just -- I think ---

2 MR. BRUNER: --- if he's the one bringing the
3 complaint, you know, he's the one raising the issue and my
4 claims are within the circuit court's jurisdiction and his
5 are not, I think the proper thing to do would be to have
6 her file the complaint and then I can answer with the same
7 claims.

8 THE COURT: I -- I'm trying to get it done today.

9 MR. BRUNER: I understand.

10 THE COURT: And you get costs if you win. So why
11 don't y'all -- I'll take it under advisement. Make a copy
12 of this complaint; walk next door; file it with Judge
13 Nobles. He can file a handwritten answer, saying: "I
14 consent to removal to -- I consent to the removal of the
15 action to the Court of Common Pleas." Judge Nobles will be
16 an appreciate person and thank me for doing that. And
17 we'll make sure that we have jurisdiction all the way
18 around.

19 I -- I don't know -- he has a point. I don't know --
20 if you're right, he has been fighting -- the wife has been
21 fighting jurisdiction throughout. What I would hate to see
22 is for me to simply deny his motion to dismiss; we have an
23 appeal to the Court of Appeals; they take six months to
24 decide whether to even hear the appeal; some clerk reads
25 that, "Oh, well, it involves subject-matter jurisdiction

1 between the magistrate's court, the circuit court, the
2 family court, and the probate court," and feels like it'd
3 make for a nice bar-exam question to research, and so they
4 decide to take it up; the clerk convinces Judge Few to take
5 the thing up; and all of the sudden, we're two years down
6 the road and we get a decision from the Court of Appeals.
7 So I'd rather get it done today.

8 MR. BRUNER: Yes, sir.

9 THE COURT: That's ---

10 MR. BRUNER: I don't ---

11 THE COURT: --- just me.

12 THE COURT: --- think any of that, though, affects the
13 appeal -- the magistrate's court appeal ---

14 THE COURT: I ---

15 MR. BRUNER: --- because ---

16 THE COURT: --- I would agree.

17 MR. BRUNER: --- because that's subject-matter-
18 jurisdiction question is settled.

19 THE COURT: Right. But I'm taking that under
20 advisement too.

21 MR. BRUNER: Okay.

22 THE COURT: Thank you. And then y'all let me know
23 when it's all consolidated and appealed and -- or
24 consolidated and removed and we'll be in good shape. All
25 right?

1 MR. JOHNSON: Good.

2 MR. HOWSER: Your Honor, may I make inquiry?

3 THE COURT: Sure. Yes, sir.

4 MR. HOWSER: I -- I -- I'm Dave Howser. I represent

5 ---

6 THE COURT: --- the trustee?

7 MR. HOWSER: --- Mr. Knowlton, the trustee. And I --
8 I'm sort of at a loss to see how this is going to affect
9 Mr. Knowlton as trustee if they file in the probate court
10 and ---

11 THE COURT: I don't think it should, because it'll all
12 get removed right back up here. And so we're -- we should
13 be in the exact same position that we were in. So I think
14 that you simply file the complaint; he can file -- you file
15 a copy of your complaint with the probate court; he files a
16 copy of the answer with the probate court. You've had a
17 copy -- you've already filed an answer on behalf of the
18 trustee, right?

19 MR. HOWSER: I have.

20 THE COURT: We can file that as well. We create a
21 separate file over there. And everybody has consented to
22 removal on the record. So I'm going to hold them to that.

23 MR. BRUNER: Yeah. And I -- and -- and I probably
24 will -- just to avoid any appearance of impropriety, I
25 probably will file the amended complaint that I -- that

1 removed that -- the possession claim from the circuit
2 court, and it'll be for damages only. Because ---

3 THE COURT: Either way.

4 MR. BRUNER: --- I think -- yeah.

5 THE COURT: But let's do it right now, if we could.

6 We have a copier; we have the ability to do it.

7 Everybody's here. Let's do it now.

8 MR. JOHNSON: If he wants to file the amended
9 complaint, that's fine. I just got to have to respond to
10 it. I can't -- my original doesn't work.

11 THE COURT: No. I understand.

12 MR. JOHNSON: That's fine.

13 MR. BRUNER: I don't know the best way to handle that,
14 Your Honor, because we've got -- I mean, we -- the -- the
15 first amended complaint, which is the operative complaint,
16 some of the relief we seek in that has been stipulated and
17 waived.

18 THE COURT: I understand.

19 MR. BRUNER: So I'd rather ---

20 THE COURT: And that may -- you -- you may be ahead of
21 the game.

22 MR. BRUNER: While we're ironing it out, I want to
23 iron out all the wrinkles.

24 THE COURT: Well, the amended complaint, what does
25 that include that does not include -- that's not included

1 in the -- in the current action?

2 MR. BRUNER: The -- the -- the amended complaint for
3 the circuit court case -- for this case?

4 THE COURT: Right.

5 MR. BRUNER: The amended complaint is -- that has --
6 that has five causes of action and -- and requests
7 ejectment and damages. We have -- we waived, in
8 magistrate's court on the record, the ejectment, the
9 possession claim.

10 THE COURT: Okay.

11 MR. BRUNER: And we're seeking only damages now ---

12 THE COURT: Okay.

13 MR. BRUNER: --- and attorney's fees, everything else
14 to which we're entitled.

15 THE COURT: But you did file the amended -- the
16 complaint we're operating on now is the amended ---

17 MR. BRUNER: Is the ---

18 THE COURT: --- complaint?

19 MR. BRUNER: --- first amended complaint.

20 THE COURT: First amended complaint?

21 MR. BRUNER: That's right.

22 THE COURT: Okay. I understand. It sounds like
23 everybody's aware of that.

24 MR. JOHNSON: Right.

25 MR. BRUNER: Right.

1 MR. JOHNSON: And I don't -- I don't object to him
2 amending. I just will respond to whatever you ---

3 MR. BRUNER: Right.

4 MR. JOHNSON: Good.

5 MR. BRUNER: And -- and -- and I think Mr. Johnson
6 only filed a motion to dismiss in response to the first
7 amended complaint anyway.

8 THE COURT: Right.

9 MR. BRUNER: So ---

10 THE COURT: Very good.

11 MR. BRUNER: --- he hasn't answered that one yet.

12 THE COURT: All right. Let -- let's do it that way,
13 just so that we know and we're not, two years from now,
14 with a decision from the Court of Appeals one way or
15 another. Let's just be sure -- let's be certain at this
16 point in time. It's not a bad suggestion.

17 MR. BRUNER: Should we follow up with Your Honor to
18 reschedule the hearing or -- I -- I presume my motion for
19 summary judgment is continued.

20 THE COURT: You file it and we remove it now, I'll do
21 the summary judgment now. I mean, when I say we file it
22 today, I mean we file it today ---

23 MR. BRUNER: We can go ---

24 THE COURT: --- and we ---

25 MR. BRUNER: --- file it ---

1 THE COURT: --- can keep rolling with this.

2 MR. BRUNER: Okay.

3 THE COURT: I mean, I just want to make sure I've got
4 jurisdiction. All right. We'll be at ease for a few
5 minutes.

6 (Whereupon, the proceeding was adjourned at 10:41 a.m.
7 and reconvened at 12:07 p.m.)

8 THE COURT: Okay. We're back where we started, as the
9 Cure would say. We're on -- back on 11-CP-36-193
10 (verbatim). The action has been filed in the probate court
11 and removed. Are we okay?

12 MR. BRUNER: Yes, Your Honor. It has been. It's been
13 -- Mr. Johnson has accepted service of the summons and
14 complaint and consented to removal. I have a filed order
15 from the probate court. I can hand a copy up to Your Honor
16 if you'd like.

17 THE COURT: That's fine. No objection, then, from
18 anybody consolidating that action with this action?

19 MR. JOHNSON: Your Honor, the -- I do have an
20 objection to proceeding with the motion today.

21 THE COURT: Okay.

22 MR. JOHNSON: And ---

23 THE COURT: The summary judgment motion ---

24 MR. JOHNSON: The ---

25 THE COURT: --- that he has?

1 MR. JOHNSON: --- summary judgment motion today.

2 THE COURT: Sure.

3 MR. JOHNSON: Counsel announced, when we started to
4 argue, that he had an objection to my affidavit for some
5 reason, and I want to cure that. I want an opportunity to
6 cure it. I don't mind coming to where you are next week or
7 at some reasonable time after I get -- you know, we get a
8 time to respond.

9 But I think -- I think it would be procedurally flawed
10 to proceed anyway. And -- but if -- if the Court continues
11 -- carries the motion over to whenever you want to hear it
12 or have some other judge hear it, I have no objection to
13 the consolidation.

14 THE COURT: Okay. Well, just for the record, do we
15 have a probate number and what's the order removing it?

16 MR. BRUNER: Yes, Your Honor. The probate court case
17 number is 2013-GC-36-0016.

18 THE COURT: -0016. Okay. All right. Well, the Court
19 will consolidate that action with this action. With regard
20 to your motion for summary judgment, I'm trying to remember
21 the basis for that motion. Is it that he has not provided
22 the affidavit that's necessary? Is that the heart of it,
23 or are there other aspects to it?

24 MR. BRUNER: Most of ---

25 THE COURT: Because I ---

1 MR. BRUNER: --- the -- the heart of it is -- is the
2 only evidence that he's presented is an argument that says:
3 "Nunh-unh." He's presented no evidence to contradict that
4 Mr. Hobby owns the property. He's presented -- he's
5 created no issue of fact that his client continues to live
6 on the property and has lived there as long as Mr. Hobby's
7 owned the property. And he's presented no evidence
8 whatsoever that she has a right to continue living on the
9 property.

10 And that -- those three key points are what entitle
11 us, at a minimum -- I -- and I want to clarify: I've moved
12 for partial summary judgment. I think he has, at -- at --
13 at worst, for -- for me, created a question of fact as to
14 damages. So I'm asking the Court today for -- for judgment
15 against the defendant as to liability only. And then, we
16 can later come back and determine how much.

17 What Mr. Johnson's asking for, essentially, is a
18 second bite at the apple. He had an opportunity to get an
19 affidavit from Mr. White. The affidavit is insufficient.
20 And -- and I hesitate, with every memorandum I file in
21 advance and serve in advance. Of course, the Court needs
22 to get in time to read it. But it -- it tips your hand to
23 the other side.

24 And what he's done is he's read my memorandum. He --
25 and he's now heard the arguments about the insufficiencies

1 in the expert affidavit. And he wants a second bite at the
2 apple.

3 I don't think he's entitled to that. He had up until
4 two days before the hearing to get one. And he -- and he
5 didn't.

6 You know, Mr. White's a 2009 graduate of the South
7 Carolina law school, and then he did a year at Florida. So
8 I think the -- I -- it -- that may just go to the weight of
9 his testimony, if that were to come in. But as a matter --
10 as a matter of law, I think it's inadmissible because it
11 doesn't pass the threshold test of 702 of the South
12 Carolina Rules of Evidence.

13 I think that's separate and apart. I don't know that
14 even if Mr. White's affidavit comes in, that it would
15 create a question of fact. And I'll tell you why: Because
16 Mr. White says: "I read Ray Hobby's offer to purchase.
17 And it says that it can leave the property in the trust."

18 Well, his opinion about what that document says
19 doesn't matter. Whether -- whether the -- the offer to
20 purchase and the trust agreement and the contract for the
21 purchase of the property that was between the trustee and
22 my client -- whether those are clear and unambiguous is an
23 issue of law for Your Honor, not for Mr. White.

24 Furthermore -- furthermore, they're -- those are
25 unambiguous; they're clear. And there's nothing in those

1 documents that gives her a right to continue living there.

2 And I want to point to the Court -- I want to point to
3 the Court to the defendant's responses to my requests to
4 admit. This -- this is the crux of my motion.

5 THE COURT: Okay. Let me hear ---

6 MR. BRUNER: And they're ---

7 THE COURT: --- from you.

8 THE COURT: --- attached as Exhibit A to my motion.
9 And I have a copy for the Court if -- if you can't lay your
10 hands on one quickly.

11 Do you have a copy, Your Honor?

12 THE COURT: Let me see here.

13 MR. BRUNER: If I may approach, I can . . .

14 THE COURT: That's not it. No. It's -- it's attached
15 to the memorandum?

16 MR. BRUNER: It's attached to my motion here ---

17 THE COURT: The motion. Okay.

18 MR. BRUNER: --- the motion that was filed in July.

19 THE COURT: Go -- go ahead and hand me what you got,
20 and that'll save me the trouble of ---

21 MR. BRUNER: And I've got ---

22 THE COURT: --- trying to ---

23 MR. BRUNER: --- a copy for your law clerk ---

24 THE COURT: --- leaf through it.

25 MR. BRUNER: --- as well.

1 THE COURT: Thanks.

2 MR. BRUNER: You need a copy, Pope?

3 MR. JOHNSON: Yeah.

4 MR. BRUNER: And if you look at Exhibit A to my
5 motion, Your Honor, the -- the grounds for this motion are
6 that there's no genuine issue of fact: that the property
7 was sold; it's no longer trust property; the trust does not
8 own it. There's no genuine issue of fact: the plaintiff
9 has been the owner of the property since April 19th, 2012.
10 And finally, there's no genuine issue of fact: the
11 defendant has continued living there after it was sold
12 without the plaintiff's permission, without making any
13 payment.

14 And if you look at Exhibit A, my Request to Admit No.
15 2: "Admit the terms of the trust allow the defendant to
16 live on the property until it was sold or until she moved
17 out." That tracks the language of the trust agreement.
18 "Admitted."

19 So then, we go to the next one. If you -- if you skip
20 down to No. 6, there were some offers back and forth
21 because the defendant made an offer to buy the property,
22 based on a -- based on a suppressed valuation that she
23 gave. My client then offered to buy the property for more
24 money. And then the trustee took my client's offer. And
25 she got mad about it, because she didn't think that was

1 fair.

2 Number 6: "Admit the trustee sold the property."

3 "Admitted."

4 Number 7: "Admit the trustee sold the property before
5 April 20th, 2012" -- which is key, because that established
6 -- that established the time that she's been there and been
7 trespassing.

8 Number 8 -- and she admits No. 7. Number 8: "Admit
9 the trustee sold the property to the plaintiff."

10 "Admitted."

11 She admits that -- that my client paid the trust
12 \$325,000, but they have admitted the authenticity of the
13 purchase agreement and the authenticity of the quitclaim
14 deed, which recite the consideration given in exchange.

15 Number 10: "Admit the plaintiff owns the property."
16 She admits only that he got a quitclaim deed.

17 Now, the only question of fact as to ownership that
18 the defendant has raised was attempted to be raised in Mr.
19 White's affidavit, where Mr. White says: "Well, we don't
20 know who owns the property. We can't know unless a title
21 search is done and you have a title opinion."

22 That's not true. That's not true at all. We have
23 presented a prima facie case that -- that Mr. Hobby owns
24 the property. You don't need an attorney's title opinion
25 to take judicial notice of what's on record at the clerk of

1 court's office across the street.

2 And what the clerk of court's office will show is that
3 Ms. Hobby owned the property and conveyed it into the
4 trust. The trustee, roughly a week later -- ten days later
5 -- conveyed it to Mr. Hobby. The reason there was the
6 short time span between those two deeds is because Ms.
7 Hobby did not convey the property into the trust as
8 directed in the 2010 divorce -- divorce decree that Judge
9 McGowan issued.

10 And this is -- and -- and I'm relying on documents
11 that are attached to my memorandum, which -- which are
12 either public record or which, in response to my Request to
13 Admit No. 1, the defendant has admitted the authenticity
14 of.

15 So it is extremely disingenuous for Ms. Hobby to now
16 say, "Well, we don't -- we don't know if he owns the
17 property." Because she knows who owned it. She knows he
18 owns it, because she owned it a week before he did.

19 And if I'm not mistaken, Your Honor, the only reason
20 she conveyed it is because they -- action was taken in the
21 family court to make her convey it.

22 Your Honor, I'm -- I can -- I can go through the --
23 the causes of action that I'm seeking summary judgment on:
24 trespass, Residential Landlord-Tenant Act, and quantum
25 meruit. I think Your Honor is well apprised of the -- the

1 elements of those. And -- and I go through them in my --
2 in my memorandum.

3 There is absolutely no evidence that the defendant has
4 presented in this case to create a genuine issue that Mr.
5 Hobby doesn't own the property, zero. All of her claims --
6 all of her claims are: "The trustee did me wrong. The
7 trustee shouldn't have done this. The trustee shouldn't
8 have done that. The trustee shouldn't have sold the
9 property."

10 I respectfully disagree. I think Your Honor can read
11 through the trust agreement and see that it's clear and
12 unambiguous. But that doesn't create an issue of fact
13 about whether Mr. Hobby owns the property.

14 THE COURT: Okay. And -- and, of course, I'm --
15 you're relatively new to the litigation. I realize things
16 have been moving fairly quickly in -- in this whole thing.
17 So I -- I will be more than happy to afford you additional
18 time to get someone else to get perhaps a more detailed
19 opinion if you feel that that is necessary.

20 The 50-cent question that I have, though is that when
21 he says that the question of who the owner is, is a matter
22 for the Court, I tend to agree with you -- with him.
23 That's -- that's a matter -- that would seem to be a matter
24 of law. And if you simply look -- all you would need to do
25 is look at the four corners of the trust agreement, the

1 quitclaim that was filed, to determine what the scope of
2 the authority of the trustee was.

3 I realize we have the lawyer for the trustee here.
4 And clearly, your client has a cause of action against
5 them. We don't have his motion for summary judgment
6 presently before the Court. That's sort of what I was
7 trying to think through, in terms of how that affects this.

8 MR. JOHNSON: Well, Your Honor, here's where I would
9 say it does. First of all, I appreciate the opportunity
10 for more time. Because apparently, counsel is challenging
11 the qualifications of my expert, my young expert, to give
12 an opinion, even though he puts in his memorandum that he's
13 an associate with the firm of Todd & Johnson, which is one
14 of the leading estate-planning probate firms in Columbia.

15 THE COURT: Right.

16 MR. JOHNSON: And I can give his qualifications, which
17 I think the Court would find acceptable. But what --
18 you've got several issues raised by what he says and what
19 is in the liquidating agreement. The liquidating agreement
20 says that the property cannot be -- can only be transferred
21 to a transferor, one of the parties, if it's for fair
22 market value and it's fair and reasonable and if the other
23 party mutually agrees to the terms.

24 And the whole idea is if we had -- you know, there's a
25 question of fact as to whether it's fair value or fair

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 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 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 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 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 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 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 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 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) 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 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 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

-
7

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

Raymond D. Hobby Respondent

vs.

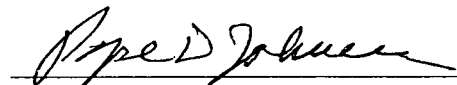
Mary T. Hobby Appellant

vs.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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Columbia, South Carolina
June 1, 2015

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

Raymond D. Hobby Respondent

vs.

Mary T. Hobby Appellant

vs.

Frances B. Knowlton, individually and as trustee, ...Respondent.

PROOF OF SERVICE

I, Susan J. Mondello, of Pope D. Johnson, III, Attorney at Law, hereby certify that I have served Benjamin C. Bruner, attorney for Respondent Raymond D. Hobby, and R. Davis Howser and Jeffrey Silverberg, attorneys for Respondent Frances B. Knowlton, 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 2nd day of June, 2015.

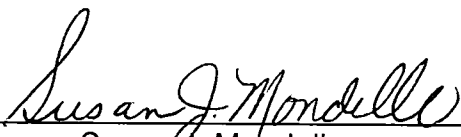
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PLEADINGS:

Supplemental Record on Appeal


Susan J. Mondello