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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY
In the Court of Common Pleas

SC Court of Appeals

The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2014-CP-42-1081
Appellate Case No. 2014-002726

Lenora Whitfield Tucci,

Appellant,

v.

April Tucci and Robert D.
Ganyard, Personal
Representatives of the Estate
of Francis Paul Tucci, Jr.

Respondents.

RECORD ON APPEAL

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Spartanburg, SC 29306
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Attorneys for Appellant

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Attorneys for Respondent

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-42-1081

Lenora Whitfield Tucci

April Tucci

PLAINTIFF(S)

Francis Paul Tucci Jr

DEFENDANT(S)

Submitted by: The Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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:

This matter is before the Court on motions of the parties to dismiss the appeal and cross-appeal for failure to perfect pursuant to S. C. Code 62-1-308. After a consideration of the record, the argument of counsel, and the applicable law, this Court finds that the motions to dismiss should be and therefore are granted. State v. Brown, 358 SC 382 (2004) (The failure of a party to comply with the procedural requirements for perfecting an appeal divests the court of appellate jurisdiction).

ORDER INFORMATION

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.

Entrance
Circuit Court Judge

2053

Judge Code

9/30/14

Date

For Clerk of Court Office Use Only

This judgment was entered on the 30 day of Sept, 20 14 and a copy mailed first class or placed in the appropriate attorney's box on this 1st day of Oct, 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth Philip Shabel

175 Magnolia Street, Suite 201

Spartanburg, SC 29306

ATTORNEY(S) FOR THE PLAINTIFF(S)

James W. Shaw

Heather G. Hunter

PO Box 891

Spartanburg, SC 29304

ATTORNEY(S) FOR THE DEFENDANT(S)

W. Hope Barclay
CLERK OF COURT

Court Reporter: Linda Moffitt

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

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SC

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS
	)	
LENORA WHITFIELD TUCCI,	)	
Appellant-Respondent,	)	MEMORANDUM OF LAW
vs.	)	OF RESPONDENT-APPELLANT
	)	
APRIL TUCCI and ROBERT D.	)	CASE NUMBER 2014-CP-42 01081
GANYARD, Personal Representatives	)	
of the Estate of Francis Paul Tucci, Jr.	)	
Respondent-Appellant.	)	

Statement of Facts

This matter is on appeal from the Order of the Probate Court dated February 28, 2014. Appellant-Respondent Lenora Whitfield Tucci filed a Notice of Intent to Appeal on March 19, 2014. Respondent-Appellant April Tucci and Robert D. Ganyard, as Personal Representatives of the Estate of Francis Paul Tucci, Jr., filed a cross-appeal by Notice of Intent to Appeal on March 20, 2014.

On May 23, 2014, Respondent-Appellant filed and served a Notice of Motion and Motion to dismiss Appellant-Respondent's appeal, based on failure to comply with the strict time requirements set forth in *South Carolina Code* § 62-1-308(b), which require that the appellant file the Statement of Issues on Appeal within forty-five (45) days after receipt of written notice of the Order of the Probate Court. Appellant-Respondent filed and served a Notice of Motion and Motion to dismiss Respondent-Appellant's cross-appeal on June 13, 2014.

Statement of Law

Pursuant to *South Carolina Code* § 62-1-308(b), Appellant is required to file her Statement of Issues on Appeal within forty-five (45) days after receipt of written notice of the Order of the Probate Court. Form 4 of the Probate Court indicates that written notice of the Order was mailed to attorneys for the parties on March 7, 2014. Appellant-Respondent's Notice of Motion and Motion

reflect that she received notice of the Order on March 11, 2014. Forty-five (45) days after receipt of the Order was April 25, 2014, which is the deadline for Appellant-Respondent to have filed and served her Statement of Issues on Appeal. The Proof of Service of Appellant-Respondent states that a copy of her Statement of Issues on Appeal was mailed to Respondent-Appellant on May 15, 2014, which was sixty-five (65) days after the date that Appellant-Respondent acknowledges having received the Order of the Probate Court.

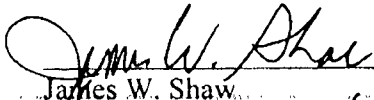
Because the appeal from the Order of the Probate Court was initiated by Appellant-Respondent, for purposes of the appeal, Respondent-Appellant is treated as the Respondent. Thus, the Respondent-Appellant timely filed its Statement of Issues on Appeal, which were filed thirteen (13) days after Appellant-Respondent filed her Statement of Issues on Appeal.

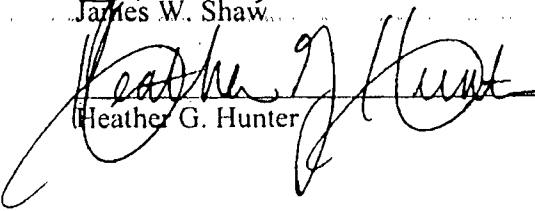
Conclusion

Respondent-Appellant's Motion to Dismiss the appeal filed by Appellant-Respondent should be granted due to the failure by Appellant-Respondent Lenora Whitfield Tucci to comply with the strict time requirements set forth in *South Carolina Code* § 62-1-308(b). Appellant-Respondent's Motion to Dismiss the cross-appeal filed by Respondent-Appellant should be denied.

Respectfully submitted,

DENNIS, SHAW, DRENNAN & PACK, LLC
Attorneys for Respondent-Appellant


James W. Shaw


Heather G. Hunter

2014 SEP 30 PM 2:08

Mell Woods, Appellant,

v.

Robert H. Breakfield, as Personal Representative of
the Estate of Reba P. Hinson, Respondent.

Appellate Case No. 2011-201066

No. 2013-UP-256

Court of Appeals of South Carolina

June 19, 2013

UNPUBLISHED OPINION

Submitted May 1, 2013

Appeal From Chester County Brooks P. Goldsmith,
Circuit Court Judge.

Mell Woods, of Lancaster, pro se.

B. Michael Brackett, of Moses & Brackett, PC, of
Columbia, for Respondent.

PER CURIAM:

Mell Woods appeals the circuit court's order affirming the probate court's denial of Woods's motion to remove the personal representative, Robert H. Breakfield, for cause. Woods argues the circuit court erred in (1) proceeding with the appeal without the entire record from the probate court as required by section 62-1-308(b) of the South Carolina Code, (2) failing to remove Breakfield because he lied under oath, and (3) failing to issue to Woods subpoenas upon his request. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the circuit court erred in proceeding without the entire probate court record: *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987) (stating a complainant must show error and prejudice to be entitled to relief for a procedural violation); *Cox v. Cox*, 290 S.C. 245, 248, 349 S.E.2d 92, 93-94 (Ct. App. 1986) ("The burden is on [the appellant] to demonstrate the trial court committed reversible error."); *id.* at 248, 349 S.E.2d at 94 (finding appellant was not entitled to relief when he produced no evidence showing the trial court's findings were incorrect or the alleged error prejudiced him); *id.* ("This [c]ourt will not reward a party's recalcitrant and obstructionist conduct at trial by overturning the decree for technical noncompliance with [a rule of civil procedure].");

2. As to the remaining issues: *Cowburn v. Leventis*, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005) ("In order for an issue to be preserved for appellate review, with few exceptions, it must be raised [to] and

ruled upon by the trial [court]."); *id.* ("When a trial court makes a general ruling on an issue, but does not address the specific argument raised by a party, that party must make a Rule 59(c) motion asking the trial court to rule on the issue in order to preserve it for appeal."); *Ort, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) ("If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.");

AFFIRMED.[1]

FEW, C. J., and GEATHERS and LOCKEMY, JJ.,
concur

Notes:

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

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M. HORTON

Page 26

362 S.E.2d 26 (S.C.App. 1987)

294 S.C. 1

Ted Alan McCall, Appellant,

v.

Alton FINLEY, Jr., and T. Walter Brashier,
Defendants,

of whom T. Walter Brashier is Respondent.

No. 1034.

Court of Appeals of South Carolina.

October 26, 1987

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Heard Sept. 16, 1987.

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[294 S.C. 3] Robert M. Ariail, Greenville, for appellant.

Ray D. Lathan, Greenville, for respondent.

James H. Cassidy, Greenville, for defendants.

SANDERS, Chief Judge:

Appellant Ted Alan McCall sued Alton Finley, Jr. and respondent T. Walter Brashier for fraud and violations of the Uniform Securities Act. Sections 35-1-10 et seq. to 1590, Code of Laws of South Carolina, 1976, as amended. The Circuit Court granted the motion of Brashier for summary judgment. McCall appeals. We affirm.

I

McCall first argues that the Circuit Court erred in denying him a continuance of the hearing on the motion for summary judgment.

McCall sought the continuance based on the fact that the grounds for the motion were not stated with particularity by the motion itself and a memorandum which the motion said would be filed setting out the grounds was not served until the day before the hearing.

The Circuit Court denied the continuance but gave McCall ten days after the hearing "to submit any additional evidence on behalf of his client." McCall did not avail himself of this opportunity, and the Circuit Court issued an order

[294 S.C. 4] granting the motion for summary judgment. McCall moved "for a reconsideration of the factual and legal conclusions in said Order." The Circuit Court heard arguments of McCall and Brashier on the motion for reconsideration and issued a further order confirming the previous order granting the motion for summary judgment.

McCall argues that reversal is required because the motion for summary judgment did not comply with the particularity requirements of S.C.R.Civ.P. 7(b).

Appellate courts recognize--or at least they should recognize--an overriding rule of civil procedure which says: whatever doesn't make any difference, doesn't matter. *E.g., Cox v. Cox*, 290 S.C. 245, 349 S.E.2d 92 (Ct.App.1986) (appellant has the burden of showing that an error was prejudicial). Consistent with this heretofore unstated rule, McCall must show he was somehow harmed by having been denied a continuance. He has failed to do so. Any error in not granting the continuance was rendered harmless when the Circuit Court allowed additional evidence to be submitted after the hearing on the motion for summary judgment and heard additional arguments at the subsequent hearing on the motion for reconsideration.

II

McCall further argues that the Circuit Court erred in granting summary judgment on his causes of action for fraud and violation of the Uniform Securities Act.

A motion for summary judgment should be granted forthwith where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. S.C.R.Civ.P. 56(c). The undisputed facts necessary to our decision in the instant case can be summarized as follows.

Finley owned fifty-one percent of the stock in a corporation named Telecastics, and Brashier owned forty-nine percent of the stock. The sole asset of Telecastics was a radio station known far and wide as WMRB. Finley approached Brashier about buying his stock. Brashier agreed to sell the stock for \$50,000.

Finley contacted McCall about selling him forty-nine percent of the stock in Telecastics. McCall and Finley agreed

[294 S.C. 5] that McCall would buy the stock for \$60,000, and they signed a written agreement, styled "Loan and Future Ownership Agreement, & quod This agreement provided that:

1. Mr. McCall will advance a loan to Mr. Finley on this date in the amount of fifteen thousand dollars (\$15,000).

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JAMES H. CASSIDY, JR.
JAMES H. CASSIDY, JR.

2. Mr. Finley will utilize funds to bind the purchase of forty nine percent (49%) of the stock in Telecastics, Inc.

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3. Mr. McCall agrees to, by the end of the business day June 7th of this year, to advance to Mr. Finley an additional forty five thousand dollars (\$45,000) to be used in securing the sale of the forty nine percent stock in Telecastics, Inc.

4. Mr. Finley agrees to pay, via WMRB Radio, interest on these notes monthly, in the amount that Mr. McCall must remit to the bank originating the loan to him.

5. Mr. Finley agrees to sell to Mr. McCall forty nine percent of the stock in the above mentioned corporation no later than July 15th of this year, or another date mutually agreed to by the two parties involved.

6. Mr. McCall and Mr. Finley agree that all stock-holder investments shall be repaid in the future by WMRB Radio with monthly interest payments made by the company.

7. Mr. McCall agrees to accept the stock in lieu of this personal note for the amounts referred to above.

McCall knew Finley and Brashier owned all of the stock in Telecastics and had been in business together for some time. He assumed Finley was handling the sale for Brashier.

McCall never questioned or investigated the authority of Finley to act for Brashier.

The payment for the stock involved five checks. McCall delivered a \$15,000 cashier's check to Finley on the same day the written agreement was signed. Finley immediately negotiated this check, delivered a \$10,000 cashier's check to Brashier and retained \$5,000. Two days later, McCall delivered two checks to Finley in the amounts of \$5,000 and \$40,000. These checks were drawn on the personal account of another person and made payable to McCall, who endorsed them to Finley. Finley retained the \$5,000 check and endorsed the \$40,000 check to Brashier as "Payment in full".

[294 S.C. 6] 49% stock in Telecastics. Either Brashier or Finley obtained a cashier's check to replace the \$40,000 check, and Brashier deposited both this check and the \$10,000 check he had previously received from Finley. McCall had the \$15,000 cashier's check made payable to Finley and endorsed the \$5,000 check and the \$40,000 check to Finley because Finley asked him to make the payments in this way.

Brashier and McCall met for the first time several months later and signed a document styled "Memorandum of Assignment of Stock". This document recited that it embodied a previous oral

agreement between them whereby Brashier had agreed to transfer his stock to McCall "in consideration for the sum of Fifty Thousand (\$50,000.00) Dollars." McCall told Brashier that he had paid Finley \$60,000 for the stock. Brashier responded that he had received \$50,000 and McCall would have to talk to Finley about "the rest of it."

Brashier also signed an endorsement on the stock certificates selling, assigning and transferring the stock to McCall "for value received."

A

The cause of action of McCall for fraud is based on allegations that Finley made certain representations to him which "were false, fraudulent, incomplete and misleading." McCall concedes that Brashier made no such representations but argues that there is an issue of fact as to whether an agency relationship existed between Finley and Brashier.

A party asserting agency as a basis of liability must prove the existence of the agency, and the agency must be clearly established by the facts. *Paramount Fund, Inc. v. Cusaac*, 282 S.C. 497, 319 S.E.2d 354 (Ct.App.1984).

"It is the duty of one dealing with an agent to use due care to ascertain the scope of the agent's authority." *Justus v. Universal Credit Co.*, 189 S.C. 487, 495, 1 S.E.2d 508, 511 (1939). McCall did not ascertain the authority of Finley to act for Brashier.

"The test to determine [actual] agency is whether or not the purported principal has the right to control the conduct of his alleged agent." *Fernander v. Thigpen*, 278 S.C. 140, 144, 293 S.E.2d 424.

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426 (1982).

[294 S.C. 7] There is no evidence that Brashier had the right to control Finley.

To establish apparent agency, a party must prove that the purported principal has represented another to be his agent by either affirmative conduct or conscious and voluntary inaction. *Watkins v. Mobil Oil Corp.*, 291 S.C. 62, 352 S.E.2d 284 (Ct.App.1986). There is no evidence that Brashier represented Finley to be his agent by either affirmative conduct or conscious and voluntary inaction. A party must also prove a reliance on the representation of agency by the purported principal and a change of position as a result of such a reliance. *ZIV Television Programs, Inc. v. Associated Grocers, Inc. of South Carolina*, 236 S.C. 448, 114 S.E.2d 826 (1960). McCall could not have relied on any representation of agency by Brashier in agreeing to buy the stock because he had no contact with Brashier until several months after he agreed

to do so.

B

Section 35-1-1490 of the Uniform Securities Act provides that any person who:

(2) Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission;

Is liable to the person buying the security from him....

McCall argues that, even though Brashier made no statements to him, he is liable for "omissions to state a material fact."

Section 35-1-1490(2) applies by its terms to persons who sell or offer to sell a security. Finley, not Brashier, sold the stock to McCall. Brashier offered to sell the stock to Finley, not McCall. Nevertheless, McCall argues that, under Section 35-1-20(10)(a) of the Act, the transfer of the stock to him by Brashier was a "sale." This section provides that the terms

[294 S.C. 8] "[s]ale' or 'sell' includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value." We are aware of no South Carolina cases construing this section of the Act for the purpose of deciding when a person who participates in a sale is a "seller."

The Act is similar to the Federal Securities Act of 1933, 15 U.S.C. Section 77a to 77aa (1981). In the absence of South Carolina authority, we look to federal cases for guidance. *Carver v. Blanford*, 288 S.C. 309, 342 S.E.2d 406 (1986). Two basic tests may be gleaned from the various federal cases.

The Second and Third Circuits require strict privity, absent scienter or some special relationship, for a person to be a "seller." See *Akerman v. Oryx Communications, Inc.*, 810 F.2d 336, 344 (2d Cir.1987) (strict privity absent scienter); *Collins v. Signetics Corp.*, 605 F.2d 110, 112 (3d Cir.1979) (strict privity absent special relationship). Under this test, Brashier is clearly not a "seller."

The Fourth, Fifth, Sixth, Eighth, Ninth and Eleventh Circuits hold generally that a person who is either in privity with the buyer or significantly participates in a sale is a "seller." See *Adalman v. Baker, Watts & Co.*, 807 F.2d 359, 363-64 (4th Cir.1986) and *Stokes v. Lokken*, 644 F.2d 779, 785 (8th Cir.1981) (participation equals substantial factor causing

transaction to occur); *Junker v. Crory*, 650 F.2d 1349, 1360 (5th Cir.1981) (persons who are a motivating force behind the sale; direct and proximate causation of buyer's injury); *Davis v. Avco Financial Services, Inc.*, 739 F.2d 1057, 1067 (6th Cir.1984) and *SEC v. Rogers*, 790 F.2d 1450, 1456 (9th Cir.1986) (persons whose acts are necessary to and substantial factor in transaction; direct and proximate causation of buyer's injury); *Foster v. Jesup and Lamont Securities Co., Inc.*, 759 F.2d 838, 843-44 (11th Cir.1985) (participation equals substantial causative factor directly and proximately causing buyer's injury). Even under

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the more expansive test recognized in these circuits, Brashier is not a "seller." His only participation in the sale of the stock was the transfer of the stock certificate. This purely ministerial act does not constitute significant participation in the sale.

[294 S.C. 9] Moreover, the argument of McCall fails even if Brashier is a "seller." Section 35-1-1490(2) imposes liability for "any omission to state a material fact." However, such liability is imposed only where the material fact omitted is "necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading." Since Brashier did not make any statements himself and there is no evidence he was aware of any statements made by Finley, he cannot be liable for any omission.

For these reasons, the order of the Circuit Court is

AFFIRMED.

GARDNER and GOOLSBY, JJ., concur.

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MARION SQUARE

Fred Witzig resided in Aiken County at the time of his death on December 24, 1994. His daughter, the Appellant, was appointed personal representative of his estate on January 10, 1995. Thereafter, Respondent sought to remove Appellant and have herself appointed personal representative on the ground that she was the wife of the deceased.

The probate court, relying on S.C. Code Ann. § 62-2-802(b), held that Respondent was not the surviving spouse of Fred Witzig. Pursuant to that provision of the probate code, "a surviving spouse does not include.... (3) a person who was a party to a valid proceeding concluded by an *365 order purporting to terminate all marital property rights or confirming equitable distribution between spouses." Therefore, by order dated April 25, 1995, the probate court denied Respondent's application to remove Appellant as personal representative.

Respondent's attorney received a copy of the probate court's order on May 1, 1995. The appeal was referred, with finality, to the master-in-equity for Aiken County. Respondent filed a notice of appeal to the circuit court dated May 15, 1995. Thereafter, Appellant filed a motion to dismiss the appeal, asserting the appeal was not timely filed.

****299** By order dated December 15, 1995, the master-in-equity, sitting as special circuit judge, denied Appellant's motion to dismiss the appeal and reversed the decision of the probate court, holding that the Alabama decree did not terminate all property rights and that S.C. Code Ann. § 62-2-802(b) was thus inapplicable.

DISCUSSION

On appeal, Appellant asserts, *inter alia*, that the master erred in failing to dismiss the appeal because it was not timely filed. We agree.

The master found Respondent filed her appeal within fifteen days of the mailing of the probate court order. Although he recognized that S.C. Code Ann. § 62-1-308(a) (1987 version) requires that the notice of intention to appeal from probate court to circuit court must be filed and served within ten days after receipt of written notice of the order, he held that Rule 6(e), SCRPC, afforded Respondent five additional days due to mailing. The master also held that Rule 74, SCRPC, allowed an appellant thirty days in which to appeal to circuit court.

Rule 6(e), SCRPC, provides that notice of intention to appeal from the probate court to the circuit court "must be filed in the office of the circuit court and in the office of the probate court and a copy thereof served on all parties within *ten* days after receipt of written notice of the decision appealed from, order, sentence, or decree of the probate court." (emphasis added). Rule 6(e), SCRPC, states: "Whenever a party has the right or is required to do some act *366 or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail ... five days shall be added to the prescribed period." Rule 74, SCRPC, imposes a general thirty-day deadline for filing notice of appeal to the circuit court from the order of an inferior court. While it requires service on all parties of notice of appeal "within thirty (30) days after receipt of written notice of the judgment, order, or decision appealed from," Rule 74 applies only "when no time is fixed by statute." Rule 74, SCRPC.

[1] [2] It is a well settled principle of statutory construction that specific laws prevail over general laws, and later legislation takes precedence over earlier legislation. *Langley v. State*, 213 S.C. 401, 40 (1985), 243 (1993). Thus, the specific ten-day filing period provided by S.C. Code Ann. § 62-1-308(a) controls over the general provisions of Rule 74, SCRPC. Moreover, although Rule 74, which was adopted prior to the enactment of the amended version of section 62-1-308(a), provides thirty days for appeals to circuit court, it specifically states "the notice of intention to appeal shall be filed ... within the time provided by the statute, or by this rule when no time is fixed by statute...."

[3] Rule 6(e), SCRPC, does not provide an additional five days to file a notice of intent to appeal. Unlike Rule 74, SCRPC, and S.C. Code Ann. § 62-1-308(a), which pertain to appeals, Rule 6(e) is a pleadings rule and applies only when service is effective upon mailing. The extra five days provided by Rule 6(e) compensates for the time notice is in the mail. James F. Flanagan, *South Carolina Civil Procedure* 52 (2d ed. 1996). Even though an order is effective when filed and may be served by mail, the deadline for filing notice of intent to appeal does not begin to run until receipt of the notice of the order appealed from, as opposed to the date the notice of the order was mailed. S.C. Code Ann. § 62-1-308(a) (requiring notice of intention to appeal within ten days after receipt of notice of probate court's order).

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CLERK OF COURT

Witzig v. Witzig, 325 S.C. 363 (1996)
479 S.E.2d 297

Because of our disposition of this issue, it is not necessary for us to reach the remaining grounds for appeal raised by Appellant. Respondent's appeal from the probate court order *367 was not timely filed; therefore, the master's order must be reversed and the order of the probate court reinstated.

REVERSED.

Footnotes

We decide this case without oral argument pursuant to Rule 213, S.C. A.C.R.

CONNOR and STEWELL, JJ., concur.

Parallel Citations

479 S.E.2d 297

U.S. GOVERNMENT WORKS
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FILED
CLERK OF COURT
2014 SEP 30 PM 2:08
M. HOPKINS, CLERK

365 S.C. 12
Supreme Court of South Carolina.

In re ESTATE OF Charles H. CRETZMEYER, Jr.
Stacy Cretzmeyer, as Personal Representative of
the Estate of Charles H. Cretzmeyer, Jr., Appellant,

v.

Anne C. Bloch, Regan Cretzmeyer, and
Watts B. Stroman, Trustee, Respondents.

No. 26003. | Heard April 7,
2005. | Decided June 20, 2005.

Synopsis

Background: Appeal was taken from probate court order by mailing notice of appeal to circuit court on day after the order. The Circuit Court, Georgetown County, James B. Lockery, J., dismissed appeal as untimely. Appeal was taken.

Holding: The Supreme Court, Kittredge, Acting J., held that the notice of appeal had to be filed in the circuit court within ten days.

Affirmed.

West Headnotes (1)

[1] Courts

Appeal of probate court order was not timely

filed in the circuit court by mailing notice of appeal to circuit court on day after the order; the notice had to be filed in the circuit court within ten days. Code 1976, § 62-1-308(a).

See also this headnote

Attorneys and Law Firms

****116** For Appellant: M. E. Foyel, Jr., of Conway, and Robert N. Berry, of Newberry, for Appellant.

Susan Taylor Wall and J.W. Nelson Chandler, both of Parker, Poe, Adams & Bernstein, of Charleston, and William S. Duncan, of Georgetown, for Respondents.

Opinion

Acting Justice KITTREDGE:

*13 This is an appeal from a circuit court order that dismissed Appellant's appeal from an order of the probate court. The circuit court held that Appellant failed to file her notice of appeal in the circuit court within ten days of receiving the probate court order, as required by South Carolina Code section 62-1-308(a) (Supp.2004). We affirm.

FACTS

Appellant received the probate court order on December 19, 2002. According to Appellant, on December 20, she mailed original notices of appeal to the probate court and the circuit court and mailed copies to Respondents' attorneys.¹ Because there was no record that a notice of appeal had been filed in the circuit court within ten days of December 19,² the circuit court held that Appellant failed to timely file her notice of appeal under South Carolina Code section 62-1-308. The circuit court therefore dismissed the appeal.

The sole issue is whether the notice of appeal was timely filed in the circuit court.

***14 ANALYSIS**

South Carolina Code section 62-1-308 governs an appeal from a probate court order to the circuit court. The statute provides in pertinent part:

A person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county. *The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties within ten days after receipt of written notice*

*of the appealed from order, sentence,
or decree of the probate court.*

... (a) (Supp.2004) (emphasis added).

We decline Appellant's invitation to construe the statute in a manner inconsistent with its unambiguous terms. Our settled rules of statutory construction mandate the ****117** result we reach, for the statute is clear that the notice of appeal "must be filed" in the circuit court within the ten-day period. See ... 617, 629, 887 S.E.2d 662, 663 ... ("When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer."); *see also* *State v. Brown*, 358 S.C. 382, 387, ... (noting that failure to comply with the procedural requirements for an appeal divests the court of appellate jurisdiction).

Footnotes

The evidence of mailing is an affidavit of Appellant's attorney's secretary.
December 30, 2002, was the last day for filing. *See* Rules 6 and 71. **SECRET.**

CONCLUSION

The circuit court properly dismissed Appellant's appeal from the order of the probate court. The judgment of the circuit court is

AFFIRMED.

... A.C.J., WALLER, BURNETT, JJ., and Acting
Justice JAMES R. BARBER, III, concur.

Parallel Citations

615 S.E.2d 116

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SEP 30 2014
M. HOPE SLAY
2014 SEP 30 PM 2:08

325 S.C. 363
Court of Appeals of South Carolina.

Terese Gagnon WITZIG, Respondent,

v.

Wendy A. WITZIG, Individually and as Personal
Representative of the Estate of Fred Witzig,
and the Estate of Fred Witzig, Appellants.

No. 2601. | Submitted Oct.
1, 1996. | Decided Dec. 9, 1996.

Application to remove personal representative of decedent's estate was denied and the Circuit Court, Aiken County, Robert A. Smoak, Jr., Master-In-Equity, denied motion to dismiss appeal and reversed decision of probate court denying removal application. Appeal was taken, contesting timeliness of appeal from probate court order. The Court of Appeals, Hearn, J., held that: (1) ten-day statutory period for appealing probate court order applied, rather than default rule providing 30 days for appealing when no time is fixed by statute, and (2) pleadings rule providing an additional five days to respond to paper served by mail did not apply.

Reversed.

West Headnotes (3)

11 Statutes

General and specific statutes

Statutes

Earlier and later statutes

Specific laws prevail over general laws and later legislation takes precedence over earlier legislation when construing statute.

Cases that cite this headnote

12 Courts

Review and vacation of proceedings

Rule requiring service of notice of appeal within 30 days after receipt of written notice of judgment when no other time is fixed by statute did not apply to appeal from probate court order; statute required that notice of intention to appeal

be filed and served within ten days after receipt of written notice of order. Code 1976, § 62-1-308(a); Rules Civ. Proc., Rule 74.

Cases that cite this headnote

13 Appeal and Error

Time for filing

Rule permitting additional five days to respond when notice or paper is served by mail did not provide additional five days to file notice of intent to appeal; rule was pleadings rule that applied only when service was effective upon mailing and deadline for filing notice of intent to appeal did not begin to run until receipt of notice of order appealed from. Code 1976, § 62-1-308(a); Rules Civ. Proc., Rule 6(c).

Cases that cite this headnote

Attorneys and Law Firms

****298 *364** Jacob L. Schless, Aiken, for appellants.

Richard L. Pearce, Toole & Toole, Aiken, for respondent.

Opinion

HEARN, Judge:

Respondent, Terese Gagnon Witzig, commenced this action to remove Appellant, Wendy Witzig, as the personal representative of the estate of her father, Fred Witzig. The probate court denied the removal and the master-in-equity reversed the decision of the probate court. We reverse and reinstate the order of the probate court.

FACTS

Respondent and Fred Witzig were married on May 24, 1986. On May 24, 1994, the Circuit Court of Madison County, Alabama, issued a Final Judgment of Divorce from Bed and Board to Fred and Terese Witzig. That order incorporated an agreement between the deceased and Respondent which equitably divided their property and allegedly resolved all issues relating to the dissolution of their marriage.

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

LIONORA WHITFIELD TUCCI

Appellant-Respondent,
vs.

ARIL TUCCI, ET AL

Respondent-Appellant.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-42-1081

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Appellant-Respondent's Attorney:
KENNETH P. SHABEL, Bar No. 16136

Address:
115 MAGNOLIA STREET, SUITE 201
SPARTANBURG, SC 29306

Phone: 583-0001 Fax 583-1199

Email: kshabel@gc-lawfirm.com Other:

Respondent-Appellant's Attorney:

JAMES W. SHAW, ESQ., Bar No. _____

Address:
PO BOX 891
SPARTANBURG, SC 29306

Phone: _____ Fax: _____

E-mail: _____ Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Reconsideration

Estimated Time Needed: Unknown

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Appellant-Respondent

10/13/14
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 250.00

☐ EXEMPT:
(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions.

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

FILED
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SPARTANBURG COUNTY
2014 OCT 13 PM 2:25
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE MATTER OF:
FRANCIS PAUL TUCCI, JR.
Decedent)

LEONORA WHITFIELD TUCCI,
Appellant-Respondent,

vs.

APRIL TUCCI, Personal Representative of the
Estate of Francis Paul Tucci, Jr., and APRIL
TUCCI, Sole Beneficiary of the Estate of Francis
Paul Tucci, Jr.

Respondent-Appellant.

IN THE CIRCUIT COURT

Appeal from Probate Court for
Spartanburg County

CASE NUMBER: 2014-CP-42-1081

**NOTICE OF MOTION
AND MOTION FOR
RECONSIDERATION**

TO: RESPONDENT-APPELLANT AND HER ATTORNEY, JAMES W. SHAW:

YOU WILL PLEASE TAKE NOTICE that not less than ten (10) days from the date hereof, at a time and place convenient to this Court and of which you will be advised, the Appellant-Respondent LEONORA WHITFIELD TUCCI (by and through the undersigned attorney) will move before the Court for an Order for Reconsideration of the Order filed on September 30, 2014 and received by the undersigned attorney on October 2, 2014. The Appellant-Respondent further seeks Relief from Judgment in accordance with Rule 59 of the South Carolina Rules of Civil Procedure. A copy of the Order at issue is attached to, and incorporated into, this Motion as "Appendix A."

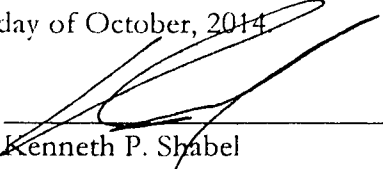
The Appellant-Respondent seeks an order setting aside the dismissal of the appeals filed in this case and an order allowing the appeal to move forward. The Appellant-Respondent so moves based upon the following:

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1. State v. Brown, 358 S.C. 382 (2004) does not apply to this case. In Brown, the Court looked at whether a party had begun a timely appeal.
2. Other relevant cases dealing with South Carolina Code Section 62-1-308(a) discuss the filing of an appeal, not a procedural element within the appeal itself. See, e.g., In re: Estate of Charles H. Cretzmeyer, Jr., 365 S.C. 12, 615 S.E.2d 116 (2005) (failure to file timely notice of appeal).
3. Furthermore, once an appeal is filed timely, the Court does not lose subject matter jurisdiction if a procedural element within the appeal is late. See, e.g., Skinner v. Westinghouse Elec. Corp., 380 S.C. 91, 668 S.E.2d 795 (2008) (Court not deprived of subject matter jurisdiction if a timely filed appeal is not timely served upon a party).
4. When a party fails to comply with "the procedural requirements for perfecting an appeal," it "may deprive the court of 'appellate' jurisdiction over the case, but it does not affect the court's subject matter jurisdiction." Great Games, Inc. v. South Carolina Department of Revenue, 339 S.C. 79, 83 n.5, 529 S.E.2d 6, n. 5 (2000) (emphasis added).
5. In this case, both parties filed timely appeals. Therefore, the Court retains subject matter jurisdiction to hear the appeal. Any delay in filing the Statement of Issues on Appeal does not deprive the Court of the ability to hear the appeal.

WHEREFORE, the Appellant-Respondent respectfully requests that the Court grant her Motion to set aside the Order dismissing the appeals or, in the alternative, grant her a hearing to have her Motion heard before the Court.

The Plaintiff so moves this thirteenth day of October, 2014.



Kenneth P. Shabel

SC Bar #16166

CAMPBELL & SHABEL, Attorneys at Law

175 Magnolia Street, Suite 201

Spartanburg, South Carolina 29306

864.583.0001

864.583.1199 (Fax)

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SPARTANBURG COUNTY
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STATE OF SOUTH CAROLINA
COUNTY OF Spartanburg
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-42-1081

Lenora Whitfield Tucci

April Tucci

PLAINTIFF(S)

Francis Paul Tucci Jr

DEFENDANT(S)

Submitted by: The Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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:

This matter is before the Court on motions of the parties to dismiss the appeal and cross-appeal for failure to perfect pursuant to S. C. Code 62-1-308. After a consideration of the record, the argument of counsel, and the applicable law, this Court finds that the motions to dismiss should be and therefore are granted. State v. Brown, 358 SC 382 (2004) (The failure of a party to comply with the procedural requirements for perfecting an appeal divests the court of appellate jurisdiction).

ORDER INFORMATION

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.

William de
Circuit Court Judge

2053
Judge Code

9/30/14
Date

For Clerk of Court Office Use Only

This judgment was entered on the 30 day of Sept, 20 14 and a copy mailed first class or placed in the appropriate attorney's box on this 1st day of Oct, 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth Philip Shabel

175 Magnolia Street, Suite 201
Spartanburg, SC 29306

ATTORNEY(S) FOR THE PLAINTIFF(S)

James W. Shaw
Heather G. Hunter

PO Box 891
Spartanburg, SC 29304

ATTORNEY(S) FOR THE DEFENDANT(S)

M. Hope Bracey
CLERK OF COURT

Court Reporter: Linda Moffitt

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

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2014 SEP 30 PM 2:07
M. HOFF

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-42-1081

Lenora Whitfield Tucci

April Tucci

PLAINTIFF(S)

Francis Paul Tucci Jr

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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:

This matter is before the Court on motion of the plaintiff, pursuant to Rule 59(2), SCRPC, to alter or amend the judgment entered on September 30, 2014, dismissing an appeal from the Probate Court for failure to perfect pursuant to S. C. Code Section 62-1-308.

This Court finds that the grounds stated in the motion have previously been argued and considered by the Court in its decision to dismiss the appeal and therefore further oral argument is not now necessary. Having considered the grounds, the previous argument of counsel, and the applicable law, this Court finds that the plaintiff's motion to alter or amend its previous judgment should be and is therefore denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

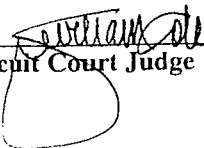
INFORMATION FOR THE JUDGMENT INDEX

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:		

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SPARTANBURG COUNTY
2014 NOV 20 PM 3:29
M. HOPE BLACKBURN

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.**


Circuit Court Judge

2053
Judge Code

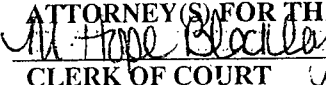
11/20/14
Date

For Clerk of Court Office Use Only

This judgment was entered on the 20th day of Nov., 2014 and a copy mailed first class or placed in the appropriate attorney's box on this 20th day of Nov., 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth Philip Shabel
175 Magnolia Street, Suite 201
Spartanburg, SC 29306
ATTORNEY(S) FOR THE PLAINTIFF(S)

James W. Shaw and Heather G. Hunter
PO Box 891
Spartanburg, SC 29304

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Linda Moffitt

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

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SPARTANBURG COURT
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M. HOPE BLACKLEY

2014-CF-42-1001

CASE NO. 2012ES4201144

APRIL TUCCI, PERSONAL REPRESENTATIVE OF THE ESTATE OF FRANCIS PAUL TUCCI, JR., AND APRIL TUCCI, SOLE BENEFICIARY OF THE ESTATE OF FRANCIS PAUL TUCCI, JR., RESPONDENTS.

The issues have been tried and the verdict rendered.

[illegible]

☐ Action Dismissed. ☐ Rule 12(b), SCRCP ☐ Rule 40(c)(3), SCRCP
☐ Rule 41(a), SCRCP (Vol. Nonsuit) ☐ Settled
☐ Other, Explain: _____

IT IS ORDERED AND ADJUDGED: [X] See attached Order
[] Statement of Judgment by Court

Dated at SPARTANBURG, South Carolina, this 28TH DAY
FEBRUARY, 2014.

DAVID F. ANDERSON
Associate Probate Judge

This judgment was entered on the 28TH day of FEBRUARY, 2014, and a copy mailed first class this 7TH Day of MARCH, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

KENNETH P. SHABEL

JAMES W. SHAW

ATTORNEY AT LAW

HEATHER GWINN HUNTER

104 N. DANIEL MORGAN AVE.

ATTORNEYS AT LAW

SPARTANBURG, SC 29306

~~PO~~ BOX 891

SPARTANBURG, SC 29304

CONFIDENTIAL SUPERVISOR

- 24 -

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE PROBATE COURT

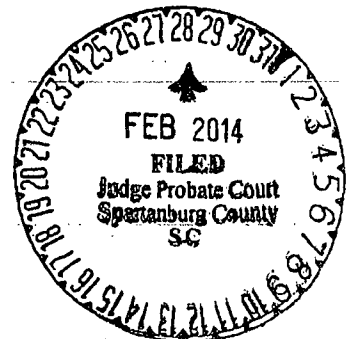
Lenora Whitfield Tucci,)
Petitioner,)

ORDER

vs.)

Probate Court File No.
2012ES4201144

April Tucci, Personal)
Representative of the Estate)
of Francis Paul Tucci, Jr.,)
and April Tucci, Sole)
Beneficiary of the Estate of)
Francis Paul Tucci, Jr.,)
Respondents.)



Trial Judge: David F. Anderson
Plaintiff's Attorney: Kenneth P. Shabel
Defendant's Attorney: James W. Shaw
Recorder: Tabitha Jackson
Trial date: February 3, 2014

Lenora Whitfield (Lenora) and Frank P. Tucci, Jr. (Frank) were married in July, 2006, and separated November 6, 2011. A family court action was begun, and a February 21, 2012 Temporary Order left wife in the marital home with the responsibility of maintaining payments. Husband executed a new Will July 10, 2012, omitting spouse and leaving all to his daughter by a prior marriage. Husband died July 29, 2012, with the domestic litigation continuing on the issue of division of marital property. One issue may have been special equity in the wife's favor in the marital home, and another perhaps the husband's efforts to seek a share of the wife's retirement funds earned during the short marriage. Regardless, the litigants did not dismiss the domestic action until March 29, 2013. This date coincides with the deadline for filing for an elective spousal share in Probate Court.

On or about May 31, 2013, Lenora filed two claims and a Petition for elective share. The Personal Representative responded by disallowing the claims and opposing the elective

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SPARTANBURG COUNTY

share on the grounds that it was not timely filed. These matters came for hearing before the Court on February 3, 2014.

Lenora maintains the Family Court had exclusive jurisdiction over the parties and the marital property during the pendency of that action. Accordingly, it was argued that the Probate Court's proceedings and jurisdiction over the estate of her late estranged husband were stayed, and that the statutory time limits imposed for filing the elective share petition were likewise stayed. This Court is aware of no such stay or usurpation of Probate Court jurisdiction, nor was any supporting law provided. It seems to this Court that while the contents of Frank's estate may not have been finalized until conclusion of the family court litigation, administration of that probate estate continued simultaneously. This would include the need for filing of claims and elective share petition.

A corollary argument was proffered that the Family Court action was purposely continued by the Personal Representative until the passing of the elective share deadline, at which time the Personal Representative sought dismissal. In essence, Lenora's counsel was making sort of a clean hands argument. Regardless of the Personal Representative's sanitation practices or motives, Lenora voluntarily consented to the dismissal without having timely filed for an elective share in Probate Court.

South Carolina Code 62-2-205(a) sets the time for filing of the elective share petition as being the later of eight months from date of death or six months of the opening of the estate. In the instant case, these ending dates would have been March 29, 2013 or March 21, 2013, both missed by over two months by the Plaintiff. As put forth in Simpson v. Sanders, 445 S.E.2nd 93, (S.C. 1994), the remedy of elective share is statutory and must be complied with strictly. On that basis, the Court concludes that the Petition for elective share must be denied for failure to file timely.

The two claims were timely filed, and actions timely brought upon notice of disallowance.

DFA
2-26

FILED
CLERK OF COURT
SPARTANBURG COURT
2014 MAR 19 PM 2:27
M. HOPE BLANKLEY

The larger of the claims is based upon the Plaintiff having paid the bulk of the down payment when the marital home was purchased. In retrospect, she likely wishes she had not placed the home in the parties' joint names. Love is indeed blind. She was the moneyed partner in an ill fated short term marriage. The factors which would have supported a claim for special equity in Family Court may well have been present. However, that action was dismissed, and this is Probate Court. In a legal brief arguing against allowance of the claims, the counsel for the Estate cited the principle of transmutation. As noted, this is Probate Court.

The Court concurs with counsel for the Personal Representative that the down payment money on the jointly titled home constituted a gift at the time made. **As such, the claim for one half of the down payment against Frank's estate is denied.**

The smaller of the claims is based upon the monthly mortgage payments Lenora has made since her estranged husband's death. She is seeking reimbursement for one half of those payments. The argument is that she is preserving an estate asset. The Court agrees, in part. She is also living in the house rent free, which this Court finds she has a right to as cotenant. If the heir wishes to move in with her and argue over groceries and the thermostat, have at it. She can also pay one half of the interest in that event. In the interim, Lenora is protecting the asset, paying all of the taxes and insurance, bearing the burden of the total interest payment, and is reducing the encumbrance, all to the benefit of the Estate. The Estate cannot argue that this as a gift, as in the down payment.

Lenora's claim for payments made since date of death is allowed, but only for that portion of the payments as represent one half of the taxes, insurance and reduction in the mortgage balance since that time. Based upon the documents submitted at trial, the monthly payment of \$829.92 breaks down as follows:

Principle and interest	\$665.10
Taxes	85.82
Hazard insurance	79.00

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DI-27-
344

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CLERK OF COURT
SPARTANBURG CO.

2019 MAR 19 PM 2:22

Accordingly, the accumulated paid taxes and insurance from August 1, 2012 through the date of the hearing was \$3,131.58, one half of which is \$1,565.79. This figure will grow by \$82.41 for each payment made beginning March 1, 2014.

As to the mortgage debt, this was a \$127,500.00 mortgage on a thirty year note at 4.750 interest beginning January 1, 2010. After the July 1, 2012 payment the mortgage balance would have been \$122,220.32. After the February 1, 2014 payment, the balance would have been \$118,649.88. This is a reduction of indebtedness of \$3570.44, one half of which is \$1,785.22.

Accordingly, the claim allowed as of the February 2014 payment is \$3,351.01 (\$1,565.79 plus \$1,785.22). This is an open claim, and will accrue additional monthly increases of \$82.41 representing one half of the current monthly taxes and insurance, together with one half of the reduced principal in accordance with the attached simple amortization table, beginning with the March 1, 2014 mortgage payment. Should the escrows or mortgage balance change due to adjustments, the allowed claim will change accordingly.

IT IS SO ORDERED.

Given under my hand and seal of office this 28th day of February, 2014.


David F. Anderson
Associate Probate Judge

2014 MAR 19 PM 2:28
M. HORE-BLACKLEY
CLERK OF PROBATE
SPARTANBURG COUNTY

2014-CP-42-1081

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE MATTER OF:
FRANCIS PAUL TUCCI, JR.
(Decedent)
LEONORA WHITFIELD TUCCI,

Appellant(s),

vs.

APRIL TUCCI, Personal Representative of the
Estate of Francis Paul Tucci, Jr., and APRIL
TUCCI, Sole Beneficiary of the Estate of Francis
Paul Tucci, Jr.

Respondent(s).

IN THE CIRCUIT COURT

Appeal from Probate Court for
Spartanburg County

CASE NUMBER: 2012-ES-42-01144

**NOTICE OF INTENT TO APPEAL TO
CIRCUIT COURT**

Pursuant to SCPC 62-1-308, Appellant hereby provides his/her/its Notice of Appellant's Intent to Appeal the Order/Sentence/Decree of the Probate Court dated February 28, 2014. Said Order/Sentence/Decree was received by the Appellant or Appellant's counsel on March 11, 2014. A copy of said Final Order is attached.

Respectfully submitted,

SWORN to before me this 19th
day of March, 2014.

Notary Public for: South Carolina

My Commission Expires: 10-6-2015

Signature:

Print Name:

Address:

Telephone (Work):

(Home):

(Cell):

Email:

Relationship to Decedent/Estate:

Attorney:

Address:

Telephone:

Email:

Kenneth P. Shabel

104 N. Daniel Morgan Avenue, Suite 201
Spartanburg, SC 29306

864-583-0001

kshabel@gc-lawfirm.com

Attorney for Appellant (Widow of Decedent)

Kenneth P. Shabel

104 N. Daniel Morgan Avenue, Suite 201
Spartanburg, SC 29306

864-583-0001

kshabel@gc-lawfirm.com

CLERK OF COURT
SPARTANBURG COUNTY
2014 MAR 11 PM 1:28
M. HOPE LACHNEY

IMPORTANT:

1. This Notice must be filed with the Probate Court, the Circuit Court, and all parties not in default within ten (10) days after receipt of written notice of the appealed-from order, sentence, or decree of the Probate Court. Parties must comply with requirements set forth in SCPC 62-1-308.

2. This form is not intended for appeals other than appeals to the County Circuit Court. An Appeal to a Court other than the County Circuit Court must follow SCPC 62-1-308(l) and the South Carolina Appellate Court Rules, as applicable.

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE MATTER OF:
FRANCIS PAUL TUCCI, JR.
(Decedent)

LEONORA WHITFIELD TUCCI,
Appellant(s),

vs.

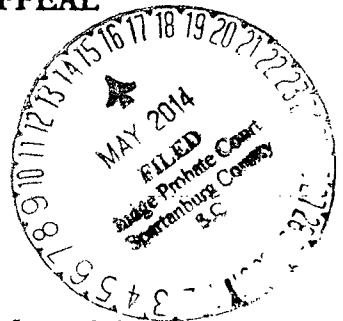
APRIL TUCCI, Personal Representative of the
Estate of Francis Paul Tucci, Jr., and APRIL
TUCCI, Sole Beneficiary of the Estate of Francis
Paul Tucci, Jr.
Respondent(s).

IN THE CIRCUIT COURT

Appeal from Probate Court for
Spartanburg County

CASE NUMBER: 2014-CP-42-1081

**STATEMENT OF
ISSUES ON APPEAL**



In accordance with South Carolina Code Section 62-1-308(b), the Appellant (by and through the undersigned attorney) hereby states the following issues are on appeal in this matter:

- I. DID THE PROBATE COURT ERR IN DENYING APPELLANT'S ELECTIVE SHARE WHEN THE FAMILY COURT'S JURISDICTION OVER THE DECEDENT'S ESTATE ENDED LESS THAN TWO MONTHS PRIOR TO APPELLANT'S FILING FOR THE ELECTIVE SHARE?**

The undersigned so certifies this fifteenth day of May, 2014

Kenneth P. Shabel

SC Bar #16136

CAMPBELL & SHABEL, Attorneys at Law
104 North Daniel Morgan Avenue, Suite 201
Spartanburg, South Carolina 29306
864.583.0001
864.583.1199 (Fax)

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE MATTER OF:
FRANCIS PAUL TUCCI, JR.
(Decedent)

LEONORA WHITFIELD TUCCI,
Appellant(s),

vs.

APRIL TUCCI, Personal Representative of the
Estate of Francis Paul Tucci, Jr., and APRIL
TUCCI, Sole Beneficiary of the Estate of Francis
Paul Tucci, Jr.

Respondent(s).

IN THE CIRCUIT COURT

Appeal from Probate Court for
Spartanburg County

CASE NUMBER: 2014-CP-42-1081

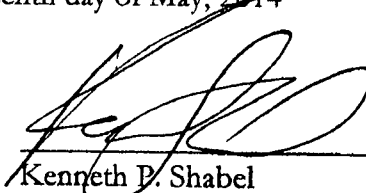
PROOF OF SERVICE



The undersigned attorney for the Appellant hereby certifies that on this date he has served a copy of the Statement of Issues on Appeal (as required by South Carolina Code Section 62-1-308(b) by mailing a copy via United States Mail, regular postage, to the following attorney for the Respondents:

Mr. James W. Shaw, Esq.
Dennis, Shaw & Drennan, LLC
Post Office Box 891
Spartanburg, South Carolina 29304.

The undersigned so certifies this fifteenth day of May, 2014


Kenneth P. Shabel

SC Bar #16136

CAMPBELL & SHABEL, Attorneys at Law

104 North Daniel Morgan Avenue, Suite 201

Spartanburg, South Carolina 29306

864.583.0001

864.583.1199 (Fax)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

IN THE MATTER OF:)
FRANCIS PAUL TUCCI, JR. (Decedent))

LENORA WHITFIELD TUCCI)

Appellant-Respondent,)

vs.)

APRIL TUCCI, Personal Representative)
of the Estate of Francis Paul Tucci, Jr.)
and APRIL TUCCI, sole beneficiary of)
the Estate of Francis Paul Tucci, Jr.)

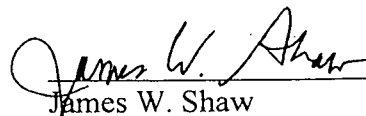
Respondent-Appellant.)

NOTICE OF MOTION AND MOTION
CASE NUMBER: 2014-CP-42 01081

**TO APPELLANT-RESPONDENT AND HER ATTORNEY, KENNETH SHABEL,
ESQ.:**

YOU WILL PLEASE TAKE NOTICE that not less than ten (10) days from the date hereof, at a time and place convenient to this Court and of which you will be advised, Respondent-Appellant, APRIL TUCCI, will move before this Court for an Order dismissing the Appeal filed by Appellant-Respondent, LEONORA WHITFIELD TUCCI, on the grounds that Appellant-Respondent failed to comply with the statutory time requirements for filing her Statement of Issues on Appeal, as set forth in *South Carolina Code* § 62-1-308(b), which requires that Appellant file the Statement of Issues on Appeal within forty-five (45) days after receipt of written notice of the Order of the Probate Court. This Motion will be supported by statutory law, affidavits and/or memoranda, and other applicable evidence to be presented at the hearing.

May 23, 2014.



James W. Shaw
Dennis, Shaw, Drennan & Pack, LLC
103 Lafayette Street
Spartanburg, SC 29302
(864) 582-0708
jshaw@dsdlegal.com
Attorneys for Respondent-Appellant

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 MAY 23 PM 2:38
M. HOPE BLACKLEY

12-1144

STATE OF SOUTH CAROLINA

COUNTY OF: Spartanburg

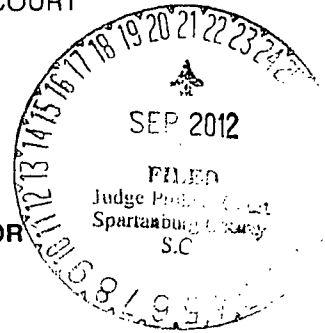
IN THE MATTER OF:

Francis Paul Tucci, Jr.
aka Frank P. Tucci, Jr.

IN THE PROBATE COURT

CASE NUMBER:

2012ES4201144



APPLICATION FOR

INFORMAL

☒ PROBATE OF WILL
☒ APPOINTMENT

(check any that apply)

Same address & phone # for both

PETITION FOR

FORMAL

☐ TESTACY
☐ APPOINTMENT

Applicant/Petitioner:

April A. Tucci

Robert D. Ganyard

Address:

697 Harness Mill Court, Marietta, GA 30068-2215

Telephone:

678 215 4196 (C)

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding.

Daughter - named in will & Friend - nominee of named PR

2. Decedent Information

aka Frank P. Tucci, Jr.

Name: Francis Paul Tucci, Jr.

Social Security Number:

[REDACTED]

Date of Birth:

[REDACTED] 28

Date of Death:

07-29-12

Age at date of death:

83

Domicile at date of death:

Spartanburg
(county)

SC
(state)

3. Venue for this proceeding is proper in this county because:



Decedent was domiciled in this county at date of death.



Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.



Decedent has a right to take legal action in this county because:

- 4.a. Names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state.

Name

Date of Birth

Address

Relationship to Decedent

April A. Tucci [REDACTED] 51 697 Harness Mill Ct, Marietta, GA 30068-2215 Daughter

NO Minors

(use additional sheet if necessary)

- 4.b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Address	Relationship to Decedent
Kenora W. Tucci	Adult	206 Culdass Ct, Moore, SC	Legally Separated Wife
Dawn T. Pollack	~~Adult~~	1937 Charlais St, Tallahassee, FL 32317	Daughter
Jon J. Tucci	Adult	424 Hollydale Drive, Nashville TN 37217	Son
No Minors			

(use additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)
- ☒ NO ☐ YES If yes, please explain, on page 3.
6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?
- ☒ NO ☐ YES If yes, please explain, on page 3.
7. Has a guardian or conservator ever been appointed for this person?
- ☒ NO ☐ YES If yes, please explain on page 3.
8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?
- ☒ NO ☐ YES If yes, please state details, including name and address of such Personal Representative on page 3.
9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?
- ☒ NO ☐ YES If yes, please state details, including names and addresses on page 3.
10. Have more than ten years passed since the decedent's death?
- ☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.
11. The decedent died with a personal estate of about the value of TBD and real estate of about the value of TBD. (A full inventory and appraisal, Form #350PC, must be filed within 90 days.) If decedent was non-resident, please attach South Carolina Commission form ET 101.
12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?
- ☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

SCANNED

DEC 13 2012

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:

- ☐ The original is attached
☒ The original is in the Court's possession
☐ An authenticated copy of a will probated in another jurisdiction is attached
☐ An authenticated copy of a will not probated in another jurisdiction is attached
☐ The will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the will described above was validly executed?

- ☒ Yes ☐ NO If no, please explain on page 3.

3. The date of execution of the will was: 7-10-12
codicil(s): _____

4. Are you aware of any instrument or document amending or revoking the will?

- ☒ NO ☐ YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

- ☒ YES ☐ NO If no, please explain on page 3.

6. Do you believe the will defined in "1" above is the decedent's last will?

- ☒ YES ☐ NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheet.)

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:
April A. Succi + Robert D. Ganyard
2. Priority for this appointment is:
☒ named as Primary Personal Representative in will
☐ named as Alternate Personal Representative in will
☒ nominee of above Primary Personal Representative in will
☐ nominee of above Alternate Personal Representative in will
☐ surviving spouse of decedent who is devisee of decedent or nominee of said spouse
☐ other devisee of decedent, (describe): _____ or nominee of said devisee
☐ surviving spouse of decedent or nominee of said spouse
☐ other heir of decedent (describe): _____
☐ creditor (Forty-five days after death must have passed), or nominee of creditor
☐ other (describe): _____
3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).
None

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 21st day of Sept, 20 12
Loretta Rocotoch
Notary Public for South Carolina
My Commission Expires: 5/2/2015

Signature: April A. Succi
Name: _____
Address: _____
Signature: Robert D. Ganyard
E-mail: _____
Telephone (O): _____
(H): _____

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☒ GRANTED ☐ DENIED informally
this 21st day of Sept 20 12

Ponda A. Caldwell

, Probate Court Judge

SCANNED

DEC 13 2012

12-1144

ORDER FOR HEARING ON FORMAL PETITION

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: _____

TIME: _____

PLACE: _____

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this _____ day of _____, 20 _____

_____, Probate Court Judge

ORDER OF FORMAL TESTACY

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

☐ the decedent died intestate. The heirs are:

☐ the decedent died testate. IT IS HEREBY ORDERED that the Last Will and Testament of the above-named decedent, dated _____, be admitted formally to probate.

Executed this _____ day of _____, 20 _____

_____, Probate Court Judge

SEE ATTACHED ORDER

ORDER OF APPOINTMENT

IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this 21st day of Sept, 20 12

Ronda A Caldwell

_____, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: April A. Tucci
Name: APRIL A. TUCCI
Address: 697 Harness Mill Ct
Marietta, GA 30068-2215
E-mail: apriltucci@gmail.com
Telephone (O): 678 215 4196 (C)
(H): _____

Signature: Robert D. Ganyard
Name: Robert D. Ganyard
Address: 697 Harness Mill Ct
Marietta, GA 30068-2215
~~E-mail: 7678-215-4196 (C)~~
Telephone (O): _____
(H): _____

Attorney: _____
Address: _____
E-mail: _____
Telephone (O): _____

SCANNED

DEC 13 2012

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

LENORA WHITFIELD TUCCI,

Petitioner,

Vs.

APRIL TUCCI, Personal Representative of the
Estate of Francis Paul Tucci, Jr., and
APRIL TUCCI, Sole Beneficiary of the Estate
of Francis Paul Tucci, Jr.,

Respondents.

IN THE PROBATE COURT

SEVENTH JUDICIAL CIRCUIT

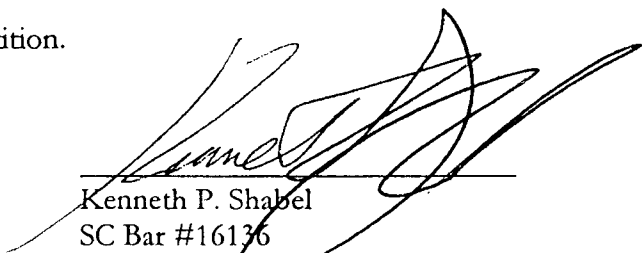
SUMMON



Docket Number:
2012-ES-42-01144

TO THE RESPONDENT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, an Affidavit of Default will be filed in this case against you, and the Petitioner shall apply to the Court for the relief demanded in the Petition.


Kenneth P. Shabel

SC Bar #16136

CAMPBELL & SHABEL, Attorneys at Law

104 North Daniel Morgan Avenue, Suite 201

Spartanburg, South Carolina 29306

864.583.0001

864.583.1199 (Fax)

Dated: May 28, 2013
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF: SPARTANBURG

IN THE MATTER OF: FRANCIS PAUL TUCCI JR

LENORA WHITFIELD TUCCI

Petitioner

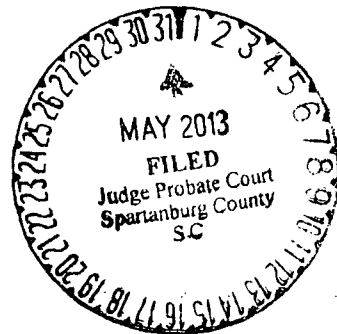
vs.

APRIL TUCCI, Personal Representative of the Estate of Francis Paul Tucci, Jr., and
APRIL TUCCI, Sole Beneficiary of the Estate of Francis Paul Tucci, Jr.

Respondent(s)

IN THE PROBATE COURT

CASE NUMBER: 2012-ES-42-01144



PETITION FOR ELECTIVE SHARE

The undersigned, Lenora Whitfield Tucci, alleges:

1. I am the surviving spouse of the decedent in this matter, who died on or about July 29, 2012.
2. I married the decedent on July 2, 2006. (A certified true copy of the marriage license may be required.)
3. I am not aware of any final order of divorce that would render me unable to make my claim for an elective share.
4. I elect to take my elective share of the decedent's estate.

This election is made within the later of eight months after the date of death or within six months after the probate of the decedent's Will.

Executed this twenty-fourth day of May, 2013.

Signature: Lenora Whitfield Tucci

Name: Lenora Whitfield Tucci

Address: 2 Culdass Court
Moore, SC 29369

Telephone (O): _____

(H): 864-327-9254

Attorney: Kenneth P. Shabel, Esq.

Address: 104 N. Daniel Morgan Avenue, Suite 201
Spartanburg, SC 29306

Telephone: 864-583-0001

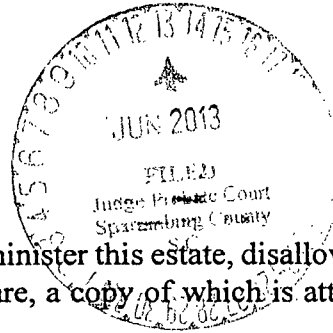
STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
IN THE MATTER OF:)
)
Francis Paul Tucci, Jr.)
_____)

IN THE PROBATE COURT
CASE NUMBER: 2012ES4201144

NOTICE OF DISALLOWANCE OF CLAIM

TO:

Name: Lenora W. Tucci
Address: 206 Culdass Court
Spartanburg, SC 29301



The undersigned, as the Personal Representatives appointed to administer this estate, disallows the claim filed by Lenora W. Tucci on May 24, 2013 for elective share, a copy of which is attached hereto.

Your claim was disallowed for the following reason(s):

Under SC Code 62-2-205, a claim for elective share must be made within the later of eight months after date of death or six months after probate of the will. Decedent died July 29, 2012 and the eight month period expired on March 29, 2013. Decedent's Will was admitted to Probate on September 21, 2012 and the six month period expired on March 21, 2013. Claimant did not make her claim until May 24, 2013 which is outside the time frame allowed for such a claim, and for this reason, the claim is barred by law.

Failure to protest this disallowance of your claim, i.e., failing to file your petition for its allowance (Form 373PC) in the Probate Court and failing to commence a proceeding on the claim within thirty days after the mailing of this Notice of Disallowance of Claim, shall result in your claim or the disallowed portion of your claim being forever barred.

Executed this 10 day of June, 2013.

Signature: April A. Tucci
Name: April A. Tucci
Address: 697 Harness Mill Court
Marietta, GA 30068
Telephone: (678) 215-3640

Signature: Robert D. Gaynard
Name: Robert D. Gaynard
Address: 697 Harness Mill Court
Marietta, GA 30068
Telephone: (678) 215-3641

FORM#372PC

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

IN THE MATTER OF: Estate of
Francis Paul Tucci, Jr.

Lenora Whitfield Tucci

Petitioner,

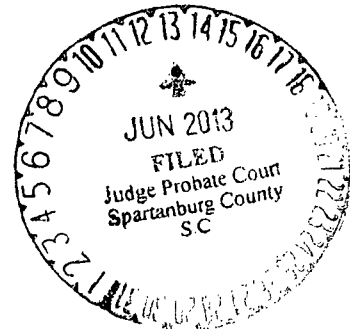
vs.

April Tucci, as Personal Representative
of the Estate of Francis Paul Tucci, Jr.
and as sole beneficiary of the Estate of
Francis Paul Tucci, Jr.

Respondent.

IN THE PROBATE COURT

MOTION TO DISMISS
CASE NO. 2012 ES 4201144



TO: KENNETH SHABEL, ESQ., ATTORNEY FOR PETITIONER LENORA WHITFIELD
TUCCI:

The Respondents, APRIL TUCCI, INDIVIDUALLY AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF FRANCIS PAUL TUCCI, JR., respectfully move the
Court to dismiss the elective share claim by Lenora Whitfield Tucci, on the following grounds:

1. Petitioner filed a Petition for Elective Share dated May 24, 2013 which was served
on the Respondents on May 28, 2013 evidenced by a Proof of Delivery, a copy of which is attached.

2. Decedent died on July 29, 2013, and Decedent's Will was duly admitted to Probate
on September 21, 2012.

3. South Carolina Code § 62-2-205 states that a claim for elective share must be made
within the later of eight months after date of death or six months after probate of a Decedent's will.
Decedent died on July 29, 2012 and the eight month period expired on March 29, 2013. Decedent's
will was admitted to probate on September 21, 2012 and the six month period expired on March 21,
2013. Petitioner's claim for Elective Share was made on or about May 24, 2013, outside of the time
period required for such a claim, and is therefore time-barred.

WHEREFORE, Respondents move that this Court:

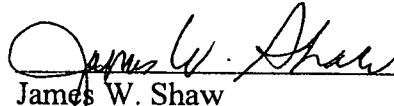
a. For an Order dismissing the Petition for Elective Share dated May 24, 2013, pursuant
to Rule 12(b)(6), South Carolina Rules of Civil Procedure.

b. For an Order directing the Petitioner to pay to Respondents reasonable attorneys' fees on the following grounds:

1. The Petition fails to state facts sufficient to constitute a cause of action, in that no facts are alleged which entitle the Petitioner to any relief against the Respondents.
2. The Respondent, April Tucci, individually as sole beneficiary of the Estate of Francis Paul Tucci, Jr., is not a necessary party to this action.
3. By signing the Summons, Petitioner's attorney has certified that to the best of his knowledge, information and belief, there is good ground to support the Petition. The Respondents would show the Court that there are not good grounds to support the Petition, that the Respondents have been required to take steps to have the Petition dismissed, and that they are entitled to have the Petitioner pay to them the reasonable expenses incurred because of the filing of the Petition, pursuant to Rule 11, South Carolina Rules of Civil Procedure.

June 11, 2013.

DENNIS, SHAW & DRENNAN, LLC



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(864) 582-0708

Attorneys for Respondents

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Lenora Whitfield Tucci,)
5 Plaintiff,) TRANSCRIPT OF RECORD
6 -vs-) 2014-CP-42-1081
7 April Tucci, et al,)
8 Defendants.) September 29, 2014
9 Spartanburg, South Carolina
10

11 B E F O R E :

12 HONORABLE J. DERHAM COLE, JUDGE
13
14

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

16 KENNETH P. SHABEL, ESQUIRE
17 Attorney for the Plaintiff

18 JAMES W. SHAW, ESQUIRE
19 HEATHER GWINN HUNTER, ESQUIRE
20 Attorney for the Defendants
21

22
23 Linda D. Moffitt
24 Circuit Court Reporter
25

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Motions -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: All right. Tucci vs. Tucci.

2 MR. SHAW: Yes, sir.

3 MR. SHABEL: Yes, Your Honor, No. 1 and No. 2 on the
4 docket. They're both motions on an appeal, and I think the
5 motions, in essence, are almost identical.

6 THE COURT: Okay. Who wants to be heard first?

7 MR. SHAW: Your Honor, we would be -- we were the
8 initial filer of a motion to dismiss the appeal, and so
9 we'd like to go first.

10 THE COURT: Okay.

11 MR. SHABEL: I was going to ask that they go first.
12 No problem.

13 THE COURT: Okay. Y'all are first. Who is going to
14 do it?

15 MR. SHAW: Ms. Hunter.

16 THE COURT: Okay. Ms. Hunter.

17 MS. HUNTER: Your Honor, may it please the Court.

18 MR. SHAW: Your Honor, we've got a memorandum of law
19 too I want to hand up.

20 MS. HUNTER: I'm Heather Hunter of Dennis, Shaw,
21 Drennan & Pack, and we represent April Tucci and Robert
22 Ganyard, the personal representatives of the estate of
23 Francis Paul Tucci, Jr.

24 This motion stems from an appeal from a probate court
25 order. Judge Anderson published his final order on

1 February 28th of this year.

2 The appellant, Ms. Lenora Tucci, filed a notice of
3 intent to appeal on March 19th and we filed a notice of
4 intent to cross appeal on March 20th.

5 The appellant in this case has also filed a motion to
6 dismiss our cross appeal.

7 As evidenced by the appellant's motion by Mr. Shabel,
8 he received the written order of the probate court on
9 March 11th.

10 Pursuant to South Carolina Code 62-1-308(b) the
11 appellant must file a statement of issues on appeal within
12 45 days of written notice of the order of the probate
13 court, which date would have been April 25th of this year.
14 Mr. Shabel instead filed his statement of issues on appeal
15 on May 15th, which was approximately 65 days after written
16 notice of the order.

17 Due to his untimeliness in filing the statement of
18 issues on appeal we ask that his appeal be dismissed.

19 THE COURT: Okay. Mr. Shabel.

20 MR. SHABEL: May it please court. If I may, I have
21 two cases I'd like to present to the court for purposes of
22 my argument. I do have duplicate copies for opposing
23 counsel if I may approach.

24 THE COURT: Sure.

25 MR. SHABEL: Your Honor, I believe the timeline that

1 was stated as far as the dates and relevance are correct.
2 I would note that I received a copy of the order on March
3 the 11th.

4 Neither I nor opposing counsel are disputing the
5 timeliness of the filing of the notice of intent to appeal.
6 That's not before you today.

7 what is at issue is compliant -- both of our motions
8 Your Honor, is compliance with 62-1-308(b). And I will say
9 my statement of issues on appeal was filed on May the 15th.
10 They filed their motion to dismiss on May the 23rd of 2014.

11 They filed a cross appeal on their own claim. As a
12 bit of background, the probate court issued two issues of
13 relevance, No. 1, denying my client's request for an
14 elective share of the decedent's estate for statutory --
15 statute of limitations purposes. That was the nature of my
16 appeal.

17 Opposing counsel's appeal was based upon Judge
18 Anderson's ruling that my client had a valid claim on the
19 estate for some principal and/or interest on the mortgage
20 upon a piece of real estate that is co-owned now by the
21 estate and my client.

22 My client was legally married to the deceased at the
23 time of the divorce, but he changed his will shortly before
24 his death. And that was -- that's basically the issue of
25 the case that went before Judge Anderson.

1 But, as I stated, I filed my statement of issues on
2 appeal and served them on May the 15th. They are correct
3 on the April 25th timeline.

4 They filed their motion to dismiss their appeal on May
5 the 23rd claiming my appeal should be dismissed, but they
6 didn't file their statement of issues on appeal for their
7 cross appeal until five days after they filed a motion to
8 dismiss my appeal. That was only filed on May the 28th.

9 So I take the position, Your Honor, if you're going to
10 dismiss one of the appeals you have to dismiss both.

11 However, I believe you should not dismiss either of them.

12 I presented to the Court two different cases. One is
13 McCall vs. Finley, 362 S.E.2d 26, which, in essence, states
14 that if there's going to be an alleged violation of
15 procedure you have to show prejudice. And in both of these
16 circumstances both myself and opposing counsel had received
17 the statement of issues on appeal prior to filing the
18 motions. So I would argue there has been no prejudice
19 whatsoever.

20 The second case I handed to Your Honor is a case of
21 Woods vs. Breakfield. And I will be the first to say this
22 is an unpublished opinion, and I fully state this has no
23 precedential value to this Court today, but I present that
24 to the Court as a 2013 opinion because it applied the
25 prejudice standard to a case where they were asking for a

1 dismissal based on the very statute that's before you
2 today, 62-1-308(b).

3 So while it is not precedent, there's at least some
4 documentable history that the courts have looked at these
5 two cases together.

6 Your Honor, the case has proceeded. Everybody's filed
7 their briefs. Everybody's filed -- the record on appeal
8 has been filed. The case's ready for oral argument.

9 I don't believe, quiet frankly, that opposing counsel
10 can establish prejudice that would require a dismissal.

11 I would state for the record and say if you're going
12 to dismiss one I believe you have to dismiss both, but I
13 believe that neither should be dismissed. Thank you.

14 THE COURT: Ms. Hunter.

15 MS. HUNTER: Your Honor, we -- we'd argue that the
16 timelines and the statutes are strict and must be followed,
17 not specific to missing the deadline for statement of
18 issues on appeal but -- but for missing the deadlines for
19 filing a notice on appeal.

20 The Court -- and I can hand up two different cases in
21 which the Court says missing deadlines is reason to dismiss
22 an appeal.

23 We are agreeable to dismissing both appeals. We
24 offered that as a remedy to Mr. Shabel previously, so we're
25 agreeable to that if that's what the Court decides they

1 want to do.

2 THE COURT: Is that what you want to do, Mr. Shabel?

3 MR. SHABEL: No, Your Honor. We want to proceed with
4 the appeal.

5 THE COURT: Okay. Is the appeal set to be heard today
6 too?

7 MR. SHABEL: It is not, Your Honor. The only thing
8 before the Court is the motions to dismiss.

9 THE COURT: Oh, okay. Well, have you got any cases
10 you want me to look at?

11 MS. HUNTER: Yes, sir.

12 THE COURT: Anything else y'all need to tell me?

13 MR. SHABEL: If I can see which cases she --

14 THE COURT: She handed up In Re: Estate of Charles
15 Cretzmeyer, Jr. and Witzig vs. Witzig.

16 MR. SHABEL: I have both of those, Your Honor, and I
17 would only submit to the Court that those deal with -- I'm
18 asking the Court to rule and to hear an appeal when the
19 notice of intent to appeal has not been timely filed.

20 This is not an issue where the appeal was timely
21 filed. It was a timeliness argument as far as the filing
22 within the appeal. And I know the court of appeals issues
23 warning letters all sorts -- in all sorts of appeals. It
24 doesn't just arbitrarily strike that appeal just because a
25 deadline has been missed.

1 THE COURT: Well, let me ask this, and then I'll do
2 some research. But the appeal, the notice of appeal,
3 itself was timely filed. Is everybody in agreement on
4 that?

5 MR. SHABEL: Yes, sir.

6 MR. SHAW: That's correct, Your Honor.

7 THE COURT: But it did not contain the grounds for the
8 appeal? Is what that I'm understanding?

9 MR. SHABEL: No, Your Honor. Under rule -- under
10 62-1-308 -- or 608 I should say -- the requirement is there
11 has to be a filing in the probate court, a subsequent
12 filing in the circuit court, just saying there's an intent
13 to appeal.

14 62-1-308(b) requires that 45 days after receipt of the
15 entry of the order the parties who appeal a case are
16 required to file what's called a statement of issues on
17 appeal. And that's what is at issue today.

18 I think both of us would have to admit that neither of
19 us submitted those within a timely fashion as required by
20 62-1-308(b). The question is whether or not both of our
21 failures should constitute a dismissal of both of the
22 appeals.

23 MS. HUNTER: Your Honor --

24 THE COURT: Yes, ma'am.

25 MS. HUNTER: -- we -- we took the position that

1 because Mr. Shabel filed his appeal first that he is the
2 primary appellant for filing purposes, and that's the
3 reason we did not file a statement of issues on appeal
4 until after he did.

5 MR. SHABEL: And --

6 THE COURT: Well, don't you have a different issue?

7 MR. SHAW: We do have a different issue, yes, sir.

8 THE COURT: So your position is you believe that
9 you're not required to file your statement of issues on
10 appeal until he files his?

11 MS. HUNTER: Yes, sir.

12 THE COURT: Okay. Anything else?

13 MR. SHABEL: No, Your Honor.

14 THE COURT: All right. I'll do some research and
15 issue an order.

16 END OF REQUESTED TRANSCRIPT OF RECORD
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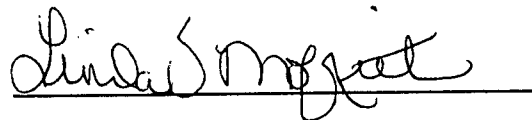
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 29th day of September 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 2, 2015



Linda D. Moffitt
Circuit Court Reporter

) IN THE PROBATE COURT
)
)
)

TESTIMONY

Probate Court File No.
2012ES4201144

HEARING HELD ON FEBRUARY 3, 2014, AT 10:00 A. M.

MR. SHAW: TUCCI.

MR. SHABEL: YES, YOUR HONOR. WE FILED FOR A PETITION FOR ELECTIVE SHARE ON MAY 24, 2013. WE ALSO FILED A PETITION FOR

ALLOWANCE OF CLAIM ON I BELIEVE IT WAS JULY THE 9TH OF 2013, AND THOSE ARE THE TWO ISSUES THAT ARE BEFORE THE COURT TODAY.

JUDGE ANDERSON: OKAY. AND...

MR. SHAW: YOUR HONOR, IF I MAY, I'M GOING TO HAND UP AN AMENDED ANSWER. I'VE GIVEN MR. SHABEL A COPY OF IT, AND ALSO A MEMORANDUM OF LAW.

JUDGE ANDERSON: IF I HAD READ THIS, IT WOULD TELL ME YOU AMENDED IT IN WHAT FASHION?

MR. SHAW: YOUR HONOR, PRIMARILY, IT RELATES--THE AMENDMENT RELATES TO THE ISSUE AS TO WHETHER OR NOT THE PETITIONER IS ENTITLED TO BE REIMBURSED FOR PAYMENTS ON THE NOTE MADE SUBSEQUENT TO THE DECEDENT'S DEATH. AND IN DISCOVERY WE SUBPOENAED LOAN CLOSING DOCUMENTS WHEN THEY REFINANCED THEIR MORTGAGE IN 2009, AND MR. TUCCI, THE DECEDENT, DID NOT SIGN THE NOTE. HE WAS NOT A BORROWER IN THE TRANSACTION, AND WE JUST WANTED TO CLARIFY THAT, AND TO CONFORM OUR ANSWER TO THE EVIDENCE.

JUDGE ANDERSON: ALL RIGHT.

MR. SHAW: AND YOUR HONOR, THERE HAVE ALSO BEEN SOME STIPULATIONS THAT THE PARTIES HAVE AGREED TO IN TERMS OF CERTAIN EVIDENCE RELATED TO A REFINANCE THAT MR. SHABEL HAS AGREED TO ALLOW US TO ADMIT.

MR. SHABEL: THAT'S CORRECT, YOUR HONOR, BUT WITH REGARD TO THE SUBPOENA FROM THE CLOSING ATTORNEY'S OFFICE AND HE DIDN'T

NEED TO BE HERE AS A WITNESS.

JUDGE ANDERSON: ALL RIGHT.

MR. SHAW: AND YOUR HONOR, THERE'S A MOTION TO DISMISS THAT WE FILED IN JUNE OF 2013, AND WE'RE THE MOVING PARTY ON THAT ISSUE, AND THAT RELATES TO THE TIMELINESS OF THE ELECTIVE SHARE AND SO I WOULD SUGGEST, YOUR HONOR, THAT RESPONDENT BE HEARD ON MOTION TO DISMISS BEFORE PETITIONER PRESENTS--PETITIONER HAS THE BURDEN OF PROOF ON THE TWO CREDITOR CLAIMS THAT HAVE BEEN FILED.

JUDGE ANDERSON: ALL RIGHT, MR. SHABEL.

MR. SHABEL: YOUR HONOR, AS TO THE ELECTIVE SHARE, OUR DEFENSE TO THEIR MOTION TO DISMISS, I BELIEVE, IS BASED ON COURT ORDERS AND THE FACTS THAT AREN'T GOING TO BE DISPUTED, SO IF THE COURT WILL ALLOW THEM TO MAKE ARGUMENT, I MEAN YOU CAN PROFFER THE EVIDENCE, I WILL BE HAPPY TO DO SO, BUT IF HE WANTS TO GO AHEAD AND MAKE HIS MOTION, I'M NOT AT THIS POINT, I'M FINE WITH THAT.

JUDGE ANDERSON: GO AHEAD.

MR. SHAW: ALL RIGHT, YOUR HONOR, RELATING TO THE ELECTIVE SHARE CLAIM THAT PETITIONER, MRS. TUCCI, FILED, SHE FILED HER CLAIM EITHER MAY 24TH OR MAY 28TH OF 2013. THE DECEDENT DIED ON JULY 29TH OF 2012. APRIL TUCCI, HIS DAUGHTER, WHO'S IN COURT TODAY BEHIND ME, AND ROBERT GANYARD ARE THE CO-PERSONAL REPRESENTATIVES OF THE ESTATE. THEY WERE APPOINTED BY THIS COURT AS CO-PERSONAL REPRESENTATIVES ON SEPTEMBER 21, 2012. THE

FIRST NOTICE TO CREDITORS WAS PUBLISHED ON OCTOBER 3, 2012. THE ELECTIVE SHARE STATUTE PROVIDES A TWO PRONGED TEST FOR THE TIMELINESS OF FILING AN ELECTIVE SHARE CLAIM. THE FIRST PRONG OF THAT TEST IS SIX MONTHS AFTER THE PROBATE OF A WILL AND THAT MEANS WHEN THE PERSONAL REPRESENTATIVE WAS APPOINTED. SIX MONTHS AFTER THE APPOINTMENT OF A PERSONAL REPRESENTATIVE WAS MARCH 21, 2013. THE SECOND PRONG OF THAT TEST IS THAT THE ELECTIVE SHARE CLAIM MUST BE FILED AND SERVED WITHIN EIGHT MONTHS AFTER THE DECEDENT'S DEATH. THAT DATE IS MARCH 29, 2013. THE ELECTIVE SHARE CLAIM WAS FILED, AND THAT'S THE LATER OF THE TWO DATES, AND THAT'S THE DATE THE IT RELATES TO IN THIS PARTICULAR CASE FOR THE ELECTIVE SHARE CLAIM TO HAVE BEEN FILED IN A TIMELY MANNER. THE ELECTIVE SHARE CLAIM WAS DATED, I THINK, MAY 24TH AND I THINK WAS NOT ACTUALLY FILED WITH THE COURT UNTIL MAY 28TH.

JUDGE ANDERSON: WAIT A MINUTE. I'VE GOT MY DATES MESSED UP. THE FIVE TWENTY-ONE--WHEN WAS THE P.R. APPOINTED?

MR. SHAW: THE P.R. WAS APPOINTED ON NINE TWENTY-ONE 2012.

JUDGE ANDERSON: OKAY.

MR. SHAW: SIX MONTHS AFTER THAT WAS MARCH 21, 2013.

JUDGE ANDERSON: UH-HUM. (AFFIRMATIVE RESPONSE.)

MR. SHAW: EIGHT MONTHS AFTER THE DATE OF DEATH WAS MARCH 29, 2013. AN ELECTIVE SHARE CLAIM WAS FILED MAY 28, 2013, RIGHT AT TWO MONTHS AFTER THE FILING DEADLINE FOR FILING A TIMELY

CLAIM FOR THE MARITAL ELECTIVE SHARE.

JUDGE ANDERSON: MY MATH IS OFF I GUESS. I THOUGHT THE SIX MONTHS WAS FIVE TWENTY-ONE 2013?

MR. SHAW: NO, SIR. THE APPOINTMENT DATE WAS NINE TWENTY-ONE 2012. SIX MONTHS AFTER THAT IS MARCH 21, 2013.

JUDGE ANDERSON: OKAY. I GOT THAT REVERSED.

MR. SHAW: OKAY. EIGHT MONTHS AFTER THE DATE OF DEATH, WHICH WAS THE LATER OF THOSE TWO FILING DEADLINES, WAS MARCH 29, 2013, BECAUSE THE DECEDENT DIED JULY 29, 2012.

JUDGE ANDERSON: OKAY.

MR. SHAW: WELL, THE STATUTE IS VERY CLEAR THAT A CLAIM FOR ELECTIVE SHARE MUST BE MADE WITHIN THE LATER OF THOSE TWO DATES; EITHER EIGHT MONTHS AFTER THE DATE OF THE DECEDENT'S DEATH OR SIX MONTHS AFTER THE PROBATE OF THE WILL. SO IN THIS CASE, THE EIGHT MONTHS AFTER THE DATE OF DEATH IS THE ULTIMATE DEADLINE FOR THE PETITIONER HAVING MADE A TIMELY CLAIM FOR HER MARITAL ELECTIVE SHARE. THERE'S NO DISPUTE AND THE COURT RECORDS WILL REFLECT THAT THE ELECTIVE SHARE CLAIM WAS FILED APPROXIMATELY TWO MONTHS AFTER THE DEADLINE FOR CLAIMING THE ELECTIVE SHARE, AND YOUR HONOR, I DON'T THINK IT MAKES ANY DIFFERENCE IN TERMS OF THE VALIDITY OF THE ELECTIVE SHARE CLAIM IN TERMS OF WHAT THE REASON FOR A LATE FILING WAS, BUT THE STATUTE DOES NOT EXCUSE A LATE FILING. AND THERE IS CASE LAW THAT SAYS THAT THE ELECTIVE SHARE STATUTE IS A STATUTE OF CREATION. IT'S STRICT COMPLIANCE

WITH ITS TERMS IS MANDATORY IN ORDER TO EXERCISE THE RIGHT TO AN ELECTIVE SHARE. SO OUR POSITION WOULD BE, YOUR HONOR, WITH RESPECT TO THE ELECTIVE SHARE IS THAT IT IS EXPLICITLY TIME BARRED BY THE TERMS OF THE STATUTE, WHICH IS 2-205(A). SO, YOUR HONOR, WE FILED THIS MOTION TO DISMISS IN JULY, EXCUSE ME, JUNE 12, 2013. WE FILED THE MOTION TO DISMISS, AND WE WOULD ASK THE COURT TO DISMISS PETITIONER'S ELECTIVE SHARE BEFORE PROCEEDING WITH THE PETITIONER'S CREDITOR CLAIMS.

JUDGE ANDERSON: MR. SHABEL.

MR. SHABEL: MAY IT PLEASE THE COURT. FIRST OF ALL, AS TO THE DATES THAT OPPOSING COUNSEL HAS JUST MENTIONED, I CERTAINLY STIPULATE THOSE ARE THE DATES IN QUESTION, BUT THERE ARE SOME OTHER DATES WHICH HAVE SIGNIFICANCE TO THIS CASE. ON NOVEMBER 30, 2011, MR. TUCCI FILED AN ACTION IN THE FAMILY COURT IN SPARTANBURG COUNTY, CASE NUMBER 2011DR423324. THAT WAS AN ACTION FOR SEPARATE MAINTENANCE. THE PARTIES WERE SPLITTING UP. THERE WAS A TEMPORARY ORDER IN THAT CASE THAT WAS FILED ON FEBRUARY 21, 2012. THAT ORDER REFLECTS BY AGREEMENT MY CLIENT WAS TO KEEP TEMPORARY POSSESSION OF SEVERAL ITEMS OF MARITAL PROPERTY INCLUDING BUT NOT LIMITED TO A HOME, WHICH IS GOING TO BE OF BIG DISCUSSIONS HERE TODAY, AND THAT ORDER WAS FILED FEBRUARY 21ST OF 2012. MR. TUCCI PASSED AWAY ON JULY 29TH OF 2012, BUT THAT WAS NOT THE END OF THE FAMILY COURT LITIGATION. THERE WERE AT LEAST TWO DIFFERENT HEARINGS FOLLOWING THE DATE OF

THE DEATH THAT THE PERSONAL REPRESENTATIVES ACTIVELY PARTICIPATED IN. THERE WAS MEDIATION IN THE FAMILY COURT CASE IN DECEMBER OF 2012, AGAIN THAT THE PERSONAL REPRESENTATIVES ACTIVELY PARTICIPATED IN. THEY WERE REPRESENTED IN THAT CASE BY THE CATE LAW FIRM WHO WAS THE SAME LAW FIRM THAT WAS REPRESENTING MR. TUCCI IN THE DIVORCE CASE. THE CASE DIDN'T END. THE CASE CONTINUED BEYOND MR. TUCCI'S DEATH, AND AGAIN, IF I NEED TO PROFFER THIS, I WILL.

JUDGE ANDERSON: DID THAT CASE COME TO A CONCLUSION AT THAT POINT?

MR. SHABEL: IT DID, YOUR HONOR.

JUDGE ANDERSON: AND HOW DID IT CONCLUDE?

MR. SHABEL: IT CAME TO A CONCLUSION BECAUSE MS. CATE WROTE MY CLIENT AS ATTORNEY ON MARCH THE 28TH OF 2013 SAYING THAT THE PERSONAL REPRESENTATIVES NO LONGER WISHED TO PURSUE IT, HERE'S A DRAFT ORDER OF DISMISSAL, PLEASE SIGN IT. AND IT ULTIMATELY WAS SIGNED MARCH 29, 2013. VERY IRONIC THAT THAT DATE IS THE DATE THAT THE ORDER OF DISMISSAL WAS FILED. OUR POSITION, YOUR HONOR, IS THAT THE FAMILY COURT, AS THE COURT AS YOUR HONOR KNOWS, HAS EXCLUSIVE JURISDICTION FOR DISTRIBUTION OF ASSETS OF A MARRIAGE. SO WHILE A FAMILY COURT CASE WAS ON-GOING, THEY WERE THE ONLY COURT THAT HAD JURISDICTION OVER THE REAL PROPERTY AND THE PERSONAL PROPERTY OF MR. TUCCI AND MRS. TUCCI.

JUDGE ANDERSON: WELL, LET ME ASK A QUESTION.

MR. SHABEL: YES, SIR.

JUDGE ANDERSON: WHAT DID YOUR CLIENT, EVEN THOUGH THEY MIGHT HAVE WANTED TO QUIT, WHY DID YOUR CLIENT QUIT?

MR. SHABEL: YOUR HONOR, SHE WAS READY TO MOVE ON. SHE DID NOT ULTIMATELY, SHE DID NOT KNOW WHY THE FAMILY COURT WAS STILL ON-GOING. THE ULTIMATE FACT OF THE MATTER IS THAT THE TUCCIS WANTED TO PURSUE IT. MY CLIENT WANTED TO HAVE A FAIR SHARE, BUT ULTIMATELY, YES, THE CASE WAS DISMISSED.

JUDGE ANDERSON: BUT SHE COULD HAVE PURSUED IT IN FAMILY COURT?

MR. SHABEL: SHE COULD HAVE PURSUED IT IN FAMILY COURT, AND MAYBE THE REMEDIES WOULD BE A LITTLE BIT DIFFERENTLY UP THERE, BUT MY POSITION IS BECAUSE FAMILY COURT HAS EXCLUSIVE JURISDICTION OVER THE ASSETS OF BOTH MR. AND MRS. TUCCI THAT WERE INCURRED DURING THE MARRIAGE, IT WAS ONLY WHEN THAT CASE WAS DISMISSED ON MARCH 29TH OF 2013, THAT THIS COURT HAD JURISDICTION OVER THE ASSETS OR MR. TUCCI AT LEAST TO THE EXTENT THAT THEY WERE JOINTLY HELD OR POTENTIALLY JOINTLY HELD WITH MRS. TUCCI. SO MY ARGUMENT IS JUST LIKE IN BANKRUPTCY COURT, WITH THE BANKRUPTCY FILINGS STAY ANY STATUTE OF LIMITATIONS OF CREDITOR CLAIMS, I THINK THE FAMILY COURT ACTION STAYS THE ELECTIVE SHARE STATUTE OF LIMITATIONS. YES, IT'S A STATUTE OF CREATION. IT'S THE EQUIVALENT OF A STATUTE OF LIMITATIONS. IF MY CLIENT DOESN'T FILE IT WITHIN A TIMELY MANNER, IT'S BARRED,

BUT IF ANOTHER COURT HAS JURISDICTION OVER IT, I BELIEVE THAT TOLLS THE STATUTE OF LIMITATION THAT'S SET FORTH BY THE ELECTIVE SHARE. SO THE SIX MONTHS OR THE EIGHT MONTHS, I WOULD TAKE SIX MONTHS BECAUSE WE CAN'T CHANGE THE DATE OF DEATH, SIX MONTHS DIDN'T START RUNNING, IN MY OPINION, UNTIL MARCH 29TH OF 2013.

JUDGE ANDERSON: WHAT--I UNDERSTAND THE ARGUMENT AND MAYBE THAT'S GOING TO BE A GOOD ONE FOR SOMEBODY, BUT HOW IS THE CASE DISMISSED UPSTAIRS, WITH PREJUDICE?

MR. SHABEL: THE ORDER DOES NOT SAY, I DON'T BELIEVE, YOUR HONOR. IT SHALL BE DISMISSED.

MR. SHAW: IT WAS A CONSENT ORDER, YOUR HONOR, BOTH PARTIES CONSENTED TO THE DISMISSAL OF THE CASE ON MARCH 29TH 2013, AND SINCLAIR SIGNED THE ORDER.

MR. SHABEL: IT DOESN'T SAY WITH PREJUDICE AND IT DOESN'T SAY WITHOUT PREJUDICE.

JUDGE ANDERSON: OKAY.

MR. SHAW: YOUR HONOR, IF I MAY, I WOULD LIKE TO REPLY TO MR. SHABEL'S ARGUMENT.

JUDGE ANDERSON: GO AHEAD.

MR. SHAW: MR. SHABEL MAKES A VERY NOVEL ARGUMENT. ONE THAT I HAVE NEVER HEARD OF.

JUDGE ANDERSON: ACTUALLY, IT'S A PRETTY GOOD ARGUMENT. I THINK YOUR CLIENTS MAY HAVE SUCKERED THEM INTO IT.

MR. SHAW: UH---

JUDGE ANDERSON: THE ISSUE IS WHETHER IT MATTERS.

MR. SHAW: I WOULD DISAGREE, YOUR HONOR. THE COURT, THE PROBATE COURT EXERCISED JURISDICTION OVER THE DECEDENT'S ESTATE-

--

JUDGE ANDERSON: I UNDERSTAND THAT.

MR. SHAW: ---WHEN THE LETTERS OF TESTAMENTARY WERE ISSUED AND THE CERTIFICATE OF APPOINTMENT WAS ISSUED APPOINTING MY CLIENTS AS PERSONAL REPRESENTATIVES. THAT--START THAT AND THE DATE OF DEATH ARE THE TWO--THOSE ARE THE ONLY DATES THAT HAD ANY BEARING---

JUDGE ANDERSON: MY POINT IS---

MR. SHAW: SURE.

JUDGE ANDERSON: ---THAT I CAN SEE FROM MR. SHABEL'S STAND POINT, IS THEY DRUG IT ON, DRUG IT ON, DRUG IT ON, AND LET THE TIME LAPSE ON THE OTHER AND JUST UP AND QUIT.

MR. SHAW: YOUR HONOR, I DON'T THINK THAT WAS THE INTENT. I DON'T KNOW---

JUDGE ANDERSON: IT CERTAINLY WORKED THAT WAY.

MR. SHAW: I WAS NOT INVOLVED IN THE DIVORCE ACTION, OBVIOUSLY---

JUDGE ANDERSON: I UNDERSTAND.

MR. SHAW: ---BUT I THINK MR. SHABEL IS TRYING TO MAKE NEW LAW. THERE'S NO PRECEDENT FOR HIS ARGUMENT---

JUDGE ANDERSON: AND I UNDERSTAND THAT.

MR. SHAW: ---YOUR HONOR.

JUDGE ANDERSON: OKAY. ALL RIGHT. WELL, I'M GOING TO WITHHOLD JUDGMENT ON THAT, BUT I'VE--TO BE FRANK WITH YOU, MR. SHABEL, I ATTEND TO AGREE WITH MR.---

MR. SHAW: SHAW.

JUDGE ANDERSON: ---MY GOOD FRIEND, MR. WHOEVER. I JUST HAD ONE OF THOSE MOMENTS. THE QUESTION IS ONE, I THINK FROM YOUR STAND POINT YOUR ARGUMENT, IT'S AN EQUITY ARGUMENT, IT'S JUST LIKE I SAID A MOMENT AGO---

MR. SHABEL: YES, YOUR HONOR.

JUDGE ANDERSON: ---IS WHETHER THEY KIND OF SUCKERED HER INTO IT AND LET THE TIME LAPSE AND THEN QUIT, AND FRANKLY, MAYBE SHE SHOULDN'T HAVE QUIT UPSTAIRS BECAUSE SHE HAD A VALID CASE UPSTAIRS. SHE MAY NOT HAVE A VALID CASE HERE BECAUSE OF THE WAY THAT STATUTE READS AND I DON'T KNOW THAT WE HAVE THE ABILITY TO OVER-STEP THE LANGUAGE IT SAYS THAT IT'S A STATUTORY CREATURE. SO, I THINK THE ELECTIVE SHARE AND I'M NOT RULING AT THIS POINT, BUT I THINK IT'S PROBABLY DEAD DOWN HERE, AND I DON'T KNOW WHAT THE LAW IS WHEN AN ORDER OF THE FAMILY COURT SAYS DISMISSED, AS TO WHETHER IT'S DISMISSED WITH PREJUDICE OR WHETHER YOU CAN PETITION TO REOPEN IT UPSTAIRS, PURSUE THAT THERE, I FRANKLY JUST DON'T KNOW, BUT I'LL WAIT TILL I HEAR EVERYTHING AND MAKE A RULING, BUT THAT'S MY LEANING RIGHT NOW. BUT YOUR ELECTIVE SHARE, JUST FOR THE SAKE OF ARGUMENT, ARE WE IN DISAGREEMENT AS

TO WHAT THE ESTATE CONSISTS OF?

MR. SHAW: NO, SIR. NO, SIR. THE ESTATE IS VERY MODEST, YOUR HONOR. THERE'S A ONE-HALF UNDIVIDED INTEREST IN A MARITAL HOME THAT IS SUBJECT TO AN OUTSTANDING MORTGAGE.

JUDGE ANDERSON: OKAY. WHAT DO YOU THINK ALL OF THAT IS WORTH?

MR. SHAW: I THINK THE INVENTORY--PULL THE INVENTORY, HEATHER. YOUR HONOR, I'VE GOT THE INVENTORY RIGHT HERE, AND I'LL BE ABLE TO GIVE YOU THOSE FIGURES EXACTLY AND OF COURSE, THAT'S IN THE RECORD. THE INVENTORY WAS FILED, YOUR HONOR, IN DECEMBER OF 2012, THAT SHOWS THE FAIR MARKET VALUE OF THE DECEDENT'S ONE-HALF INTEREST IN THE HOUSE WAS ONE HUNDRED AND EIGHT THOUSAND SEVEN HUNDRED AND FIFTY DOLLARS (\$108,750.00).

JUDGE ANDERSON: SO, WE'RE ASSUMING IT'S A TWO HUNDRED---

MR. SHAW: TWO HUNDRED AND SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$217,500.00).

JUDGE ANDERSON: WAS IT MORE WITH THE PLOT?

MR. SHAW: EXCUSE ME. THE FAIR MARKET VALUE OF THE PROPERTY IN ITS ENTIRETY IS LISTED AS TWO SEVENTEEN FIVE (\$217,500.00). THERE IS A MORTGAGE WITH A BALANCE OWING OF A HUNDRED AND TWENTY-THREE THOUSAND (\$123,000.00). SO, WE LISTED ON THE---

JUDGE ANDERSON: WHAT IS THE CURRENT STATUS OF THIS HOUSE?

MR. SHAW: PETITIONER LIVES THERE?

JUDGE ANDERSON: IS SHE IN THE HOUSE?

MR. SHABEL: YES.

MR. SHAW: YOUR HONOR, THE OTHER ASSETS CONSIST OF AN INSURANCE REFUND OF TWO HUNDRED AND NINETY-SEVEN DOLLARS (\$297.00) AND TANGIBLE PERSONAL PROPERTY VALUED AT JUST UNDER---

JUDGE ANDERSON: I'M SORRY, HOW MUCH?

MR. SHAW: TWO HUNDRED AND NINETY-SEVEN DOLLARS (\$297.00).

JUDGE ANDERSON: OKAY.

MR. SHAW: AND THEN THE TANGIBLE PERSONAL PROPERTY WAS VALUED AT ELEVEN THOUSAND SIX HUNDRED AND FIFTY-SEVEN DOLLARS (\$11,657.00). THOSE ARE ALL THE ASSETS THAT MAKE UP THE DECEDENT'S ESTATE.

JUDGE ANDERSON: ARE WE IN AGREEMENT PRETTY MUCH ON THAT, MR. SHABEL?

MR. SHABEL: YES, YOUR HONOR, THE HOME WAS APPRAISED SHORTLY BEFORE MR. TUCCI DIED, AND WE BELIEVE THE APPRAISAL VALUE IS CONSISTENT WITH WHAT WAS DONE.

JUDGE ANDERSON: I'M GUESSING MR. TUCCI'S WILL LEFT EVERYTHING TO SOMEBODY ELSE?

MR. SHAW: THAT'S CORRECT, YOUR HONOR. AFTER THE DIVORCE WAS INITIATED, HE MADE A NEW WILL THAT LEFT HIS ENTIRE ESTATE TO HIS ONLY CHILD, APRIL TUCCI--LEFT HIS ENTIRE ESTATE TO APRIL TUCCI.

JUDGE ANDERSON: UH-HUM. (AFFIRMATIVE RESPONSE.)

MR. SHABEL: I BELIEVE THAT WAS THE WILL WAS EXECUTED NOT TOO LONG BEFORE THE DEATH.

JUDGE ANDERSON: OKAY.

MR. SHAW: JULY 10, 2012, AND THAT'S BEEN ADMITTED TO PROBATE.

JUDGE ANDERSON: OKAY. ALL RIGHT. ARE YOU READY TO PROCEED ON THE CLAIM?

MR. SHABEL: YES, YOUR HONOR, IF I MAY.

JUDGE ANDERSON: YES.

MR. SHABEL: MRS. TUCCI, IF YOU WILL TAKE THE STAND. LENORA WHITFIELD TUCCI, AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS.

MR. SHABEL: MAY I PLEASE THE COURT?

JUDGE ANDERSON: YES, SIR.

Direct examination by Mr. Shabel.

Q. Ma'am, would you state your full name for the record?

A. Lenora Whitfield Tucci.

Q. Would you spell your first name and your last name for the Court?

A. L-E-N-O-R-A. T-U-C-C-I.

Q. And do you live here in Spartanburg County?

A. Yes, I do.

Q. And are you currently married?

A. Yes. I mean I'm widowed.

Q. You're widowed. Were you married to Mr. Frank Tucci?

A. Yes.

Q. When did the two of you marry?

A. July 2, 2006.

Q. Were you in the middle of some Family Court litigation on the day that Mr. Tucci passed away?

A. I was not aware that Mr. Tucci had passed away because I was forbidden to visit him again out at the nursing home.

Q. I understand, but when he did die, were you still involved in Family Court litigation?

A. Yes.

Q. Okay. And you were legally married to him at the time of his death?

A. Yes.

Q. Okay. I'm going to show you three documents. If I could get these marked very briefly.

JUDGE ANDERSON: HAVE YOU SHOWN THESE TO---

MR. SHABEL: THEY HAVE COPIES OF ALL THESE.

JUDGE ANDERSON: DO YOU HAVE ANY OBJECTION TO ANY OF THESE?

MR. SHAW: NO OBJECTION, YOUR HONOR.

JUDGE ANDERSON: ALL RIGHT. LET'S JUST GO AHEAD AND MARK THESE.

MR. SHABEL: ONE AND TWO, PLEASE. FOR THE RECORD, YOUR

HONOR, WE'VE AGREED THAT PLAINTIFF'S EXHIBIT NUMBER ONE IS---

JUDGE ANDERSON: WELL, ACTUALLY YOU'RE GOING TO AGREE TO WHAT I'VE JUST WROTE ON IT.

MR. SHABEL: ALL RIGHT.

JUDGE ANDERSON: THE MOTION INFORMATION SHEET, THE THICKEST, IS NUMBER ONE.

MR. SHABEL: THAT'S WITH THE FILING DATE OF NOVEMBER 2011. THAT'S THE COMPLAINT THAT SET THIS IN MOTION.

JUDGE ANDERSON: OKAY. THEN, THE NEXT BIGGEST ONE---

MR. SHABEL: THAT'S THE TEMPORARY ORDER.

JUDGE ANDERSON: ---IS NUMBER TWO, AND THE ORDER IS EXHIBIT NUMBER THREE.

MR. SHABEL: PERFECT. ALL RIGHT. THANK YOU, YOUR HONOR.

Q. Okay. Now, Mrs. Tucci, for the record, you went to Court, I believe in February of 2012, for the first time in Family Court?

A. Yes.

Q. And you got temporary possession of the home you were living in?

A. Yes.

Q. What physical address is that home?

A. 206 Culdass Court, Moore, South Carolina.

Q. Okay.

A. 29369.

Q. And when did you purchase that home, approximately?

A. July 1st 2008.

Q. On July 1st of 2008, were you married to Mr. Tucci?

A. Yes.

Q. Okay. Who did the closing back in 2008?

A. David White.

Q. And at the time, did you have to get a mortgage?

A. Yes.

Q. Who's name was the mortgage in at that time?

A. Both of our names.

Q. Okay. Did you put a down payment on the house?

A. Yes.

Q. And the down payment was approximately ninety-seven thousand dollars (\$97,000.00)?

A. Yes.

Q. Tell the Court how you came to the down payment.

A. I was finishing up the Terry Program, the Retention of Retired Teachers---

Q. Okay.

A. ---down in Estill, South Carolina.

Q. Okay.

A. And I signed a contract with them for two years---

Q. Okay.

A. ---to finish up my Terry, and to do extra teaching and work in a special teaching program so that we could enhance their

test scores.

Q. Right.

A. And write their new curriculum. And I forwarded all of my monthly paychecks to Wells Fargo, my private account in Spartanburg, and I cashed in a life insurance policy for eleven thousand dollars (\$11,000.00) and so many cents---

Q. Okay.

A. ---to hold for the house. I placed it in The Palmetto Bank--

Q. Right.

A. ---where we had a joint account.

Q. Okay.

A. And I earned merit pay and I had a sign-on agreement for agreement for six thousand dollars (\$6,000.00) plus my pay to come down to this town where the school is a very needy school, and they find it hard to find experienced teachers who will stay because it's in a rural area.

Q. Did you also have a home before?

A. All right. I sold my house. I decided that I could really save money if I could have a hundred dollars (\$100.00) down payment if I sold my house in Spartanburg.

Q. Okay.

A. And we didn't even live in my home in Duncan Park because we got a duplex apartment down for the two years that we were in

Estill.

Q. All right. When did you sell your old home?

A. August of 2007.

Q. And did you put that money into an individual account that only had your name on it?

A. I did.

Q. And did that account ever co-mingle with any other assets jointly in the marriage?

A. Never.

Q. All right. Did you use a significant amount from that account to pay for the down payment?

A. I used all of it plus the C.D. that I had on record at Wells Fargo, and I was counting on all of my other funds when we had an extra heavy schedule, and then I was moved to new classes-- eight classes a day, so much that we had to contact the Department of Education to come down and make a mercy requirement of doing something about the load we carried because I taught English and Writing, and those to teach with integrity and to raise test scores require quite a bit of time.

Q. Certainly. But then, at the closing of this house in July of 2008, did you have your bank issue two checks to pay the banks off?

A. Yes.

Q. And is this a piece of paper that shows a copy of those two

checks?

A. Yes.

Q. And the top one came from the sale of your home?

A. Yes.

Q. And the middle one--the bottom came from the cashing of your insurance policy?

A. Yes.

Q. You had that insurance policy before you got married?

A. Yes.

Q. Okay. Both of these were in individual accounts?

A. They were in my--oh, yes. This was at Colonial Bank.

Q. All right.

A. And this was in a C.D. account?

Q. Right. Now, for the record, the bank that's on the top that no longer is in existence. Is that correct?

A. Right.

MR. SHABEL: YOUR HONOR, I OFFER THIS AS PLAINTIFF'S FOUR.

JUDGE ANDERSON: ANY OBJECTION?

MR. SHAW: NO OBJECTION, YOUR HONOR.

JUDGE ANDERSON: TOGETHER IS FOUR.

Q. So again, you took the money that you had before the marriage and assets you had before the marriage, and put it into this new house?

A. Yes.

Q. All right. Now, you moved in 2008 to the new house. Did you ultimately get a refinance the next year?

A. Yes, because I was looking at the payments, and all of the bills that we had to pay, and Francis and I discussed that we would--he said that he would likely pass before I did, and I said that I really have such a high monthly payment here on the mortgage that I need some room in there.

Q. Right.

A. So we refinanced at a lower interest rate.

Q. Did you make any significant money off of the refi?

A. None.

Q. Did you do any kind of situation where you took money from the refinancing and paid off other credits?

A. Oh, absolutely not. I merely just lowered the house payment, and closed with the closing cost of the money that we put down for the down payment of the home.

Q. Now, since Mr. Tucci's death, have you continued to live in that home?

A. Oh, yes.

Q. Have you obviously paid the utilities?

A. I have paid--I paid the plot bill, realtor fees.

Q. Well, I'm talking about since Mr. Tucci died.

A. ---Tucci died--oh, yes.

Q. Okay.

A. Everything.

Q. You've got those transferred solely in your name and that responsibility and that hasn't been a problem. Is that your understanding?

A. Yes.

Q. Okay. The mortgage, you've been paying the mortgage on your own since Mr. Tucci died?

A. Yes, because he only earned his Social Security, which was--

-

Q. Again, since Mr. Tucci's death?

A. I have. Yes. I paid for everything.

Q. Right. How much is the mortgage?

A. Now it's eight forty (\$840.00).

Q. Okay.

A. Fifty. Eight forty point fifty (\$840.50).

Q. Did it just go down?

A. Just a slight bit.

Q. Okay.

A. I had the insurance examined.

Q. Okay.

A. With Blue Cross--I mean Horace Mann.

Q. All right. I'm going to show you two statements, if I could. They are stapled together. This first one on the front, does that show a due date of December of 2013, oh no, excuse me,

I'm sorry. I'm looking at the wrong spot, aren't I? January 2013? Does it show there was a payment due in January of 2013?

A. Oh, yes.

Q. And principle and insurance together, how much is that in escrow?

A. Eight forty-three thirty two (\$843.32).

Q. And again, as it's now gone down, I believe it's now gone down to eight forty (\$840.00). Is that correct?

A. Yes.

MR. SHABEL: YOUR HONOR, I OFFER THIS AS PLAINTIFF'S FIVE.

JUDGE ANDERSON: ANY OBJECTION?

MR. SHAW: NO OBJECTION.

Q. Now, do you understand--actually, you know what let's get this done. Is this a copy of your deed to your home that you guys filed in July of 2008?

A. Yes.

MR. SHABEL: YOUR HONOR, I OFFER THIS AS NUMBER SIX,

MR. SHAW: NO OBJECTION.

Q. Now, Ms. Tucci, you understand that home gave you a fifty percent--that deed gives you a fifty percent interest in your home. You understand that?

A. Yes.

Q. And you understand that also gives Mr. Tucci a fifty percent interest in that home? Is that right?

A. I did it.

Q. Okay. So, since July 29th of 2012, have you been paying the mortgage consistently?

A. Oh, yes.

Q. Have you been doing that to preserve the home?

A. I have---

Q. To keep the home?

A. ---kept the home.

Q. What happens if you don't pay the mortgage?

A. Well, I would never not pay the mortgage.

Q. From your understanding, what would happen if you did stop paying it? Would you lose the home?

A. Well, I imagine they would take my--I'd lose the home.

Q. Okay. So you had to pay the mortgage to save the home.

A. Oh, yes.

Q. To preserve your asset.

A. And to live.

Q. Would it also be fair to say you're preserving Mr. Tucci's asset?

A. Sure.

Q. Are you asking the Court to grant you your claims that you filed back in May--I think you sent the claims initially in May? The disallowed in June and we filed in July. Are you asking the Court to grant you your claims?

A. Oh, yes. Oh, yes.

Q. Thank you. No further questions.

Cross-examination by Mr. Shaw.

Q. Ms. Tucci, I just have a few questions.

A. All right.

Q. In connection with the divorce proceeding, there was a Temporary Order that was signed by Judge Bridges on February 21, 2012, and I'm going to just show you this so that you can identify that as the Temporary Order in your divorce proceedings.

A. Yes.

Q. Okay. Let me direct your attention to page two of that Temporary Order and does paragraph five not say that you have exclusive use and possession of the marital home and that you were to be responsible for all mortgage payments, taxes, and insurance, and expenses related to the home?

A. Yes.

Q. Okay.

MR. SHAW: YOUR HONOR, THAT'S PART OF THE FAMILY COURT RECORD, AND IF MR. SHABEL DOESN'T HAVE ANY OBJECTION, WE'LL INTRODUCE THIS.

MR. SHABEL: IT'S THE TEMPORARY ORDER?

MR. SHAW: IT'S THE TEMPORARY ORDER.

MR. SHABEL: IT'S ALREADY BEEN ENTERED AS NUMBER TWO.

MR. SHAW: ALL RIGHT. THAT'S ALREADY ON THE RECORD, YOUR HONOR. AND THE ORDER DISMISSING THE DIVORCE ACTION WAS SIGNED ON MARCH 29, 2013. THAT'S ALREADY BEEN INTRODUCED, AN ORDER DISMISSING THE DIVORCE ACTION.

A. Well, we both called down to have a divorce.

Q. But what I'm saying, this is the order of dismissal. Is that dated March 29, 2013?

A. I'm sorry. This is a little confusing.

Q. It says order of dismissal, Frank P. Tucci, Jr., versus Lenora Whitfield Tucci, and it just says that the legal action that was pending at the time of Mr. Tucci's death is being dismissed by consent.

A. Yes.

Q. And you represented at the time by Leon Campbell.

A. Leon Campbell.

Q. Good. And that's on the record.

A. And I wasn't aware of Mr. Tucci's death until two months later.

Q. Okay.

A. When a visiting oxygen supplier told me that he had passed and had been cremated on the day that he had passed.

Q. Ms. Tucci, please refine your responses to my questions and then your attorney can ask you any follow up questions. You've

already testified that when you bought the house in 2008, you took title in both names.

A. Yes.

Q. And you agreed to that.

A. Well, I asked my realtor to put the title in my name, and he said well your husband has to have some place to live. So I put his name on there.

Q. Okay. So, both names were on---

A. And so both names were on there.

Q. And so you did that By agreement. Nobody forced you to take---

A. No.

Q. ---title in both names?

A. No.

Q. When you first borrowed money on the property in July of 2008, you got a loan from Allied Home Mortgage Capital Corporation. I'm going to ask you identify this document as the original promissory note.

A. Yes.

Q. Turn to the next page, and I will ask you, excuse me, the very last page, I will ask you if this is your signature as the borrower on that note?

A. Yes, it is.

Q. Okay. Did anybody else sign as a borrower on that

promissory note?

A. No.

Q. Okay.

MR. SHAW: WE HAVE A COPY OF THAT AND A COPY--YOUR HONOR, WE'RE GOING TO OFFER THE JULY 1, 2008, NOTE AS A RESPONDENT'S EXHIBIT.

Q. And you've just testified that you and your husband refinanced the debt with Allied Home Capital Incorporation in 2009, and in connection with that refinance, you signed a new note. And I'm going to ask you if this is the note that you signed in November of 2009. I'll ask you if that's your signature on the last page.

A. Yes, it is.

Q. Did anybody else sign that note?

A. Nobody else signed this note.

Q. All right. Thank you very much.

MR. SHABEL: NO OBJECTION.

MR. SHAW: YOUR HONOR, WE WOULD OFFER THE NOVEMBER 16, 2009, NOTE AS OUR RESPONDENT'S EXHIBIT.

Q. Mrs. Tucci, with the 2009 loan refinance, I'm going to hand you a document entitled, "non-applicant affidavit", and ask you if this is the signature of your husband, Mr. Tucci?

A. Yes, it is his signature.

Q. Okay. I'm going to direct your attention to the language,

the printed language above that and ask you to read that for me, please.

A. Aloud?

Q. Yes, ma'am.

A. The undersigned hereby acknowledges, understands, and affirms that with regard to any loan and loan related documentation that lender requires the undersigned to sign in connection or relating to the above reference loan. The undersigned as a non-applicant will sign as borrower, solely for the purpose of pledging any and all interest of the undersigned in the collateral security of the loan without personal obligation for payment of any sum secured by the security by the instrument.

Q. And Mr. Tucci signed that document.

A. Yes. That's his signature.

MR. SHABEL: NO OBJECTION.

MR. SHAW: YOUR HONOR, WE WOULD OFFER THE NON-APPLICANT AFFIDAVIT AS A RESPONDENT'S EXHIBIT.

Q. Mrs. Tucci, also in connection with the 2009 refinance, I'm going to hand you a document entitled, "Uniform Residential Loan Application", and ask you if this is your signature on page four.

A. Yes, this is my signature on page four.

Q. Okay. And did Mr. Tucci sign that loan application? Did

anybody else sign on that?

A. No.

Q. Okay.

A. He said that he did not have good credit.

Q. Okay.

A. He couldn't sign anything.

MR. SHAW: ALL RIGHT. WE WOULD OFFER THE UNIFORM--DO YOU HAVE A COPY OF THAT?

MR. SHABEL: I DO.

MR. SHAW: WE WOULD OFFER THE UNIFORM RESIDENTIAL LOAN APPLICATION SHOWING THE BORROWER IS LENORA W. TUCCI AS RESPONDENT'S EXHIBIT.

JUDGE ANDERSON: THIS IS RESPONDENT'S NUMBER FOUR.

Q. Mrs. Tucci, still concerning the refinance that occurred in 2009, I'm going to hand you a document entitled, "Borrower Certification and Authorization", and ask you if that's your signature on that document.

A. Yes, it is.

Q. Did anybody else sign on that?

A. Nobody else.

Q. Okay.

MR. SHABEL: NO OBJECTION.

MR. SHAW: YOUR HONOR, WE WOULD OFFER THE BORROWER'S CERTIFICATION AND AUTHORIZATION SIGNED BY LENORA TUCCI.

Q. Mrs. Tucci, one last question about the loan refinance in 2009. I'm going to hand you a document that's entitled, "Payment Letter to Borrower", and ask you if you can identify that as one of the documents that you signed.

A. Yes.

Q. And that's your signature at the bottom of that of that form?

A. That is my signature.

Q. And did Mr. Tucci sign that document?

A. No, he did not.

Q. Okay. And it's addressed, "Dear Borrower".

A. Uh-hum. (affirmative response.)

Q. And it's telling you what the break down of the mortgage payment is.

A. Yes.

Q. Okay.

MR. SHAW: DO YOU HAVE THAT ONE? THAT WAS PART OF THE SUBPOENAED DOCUMENTS FROM MICHAEL WARD.

MR. SHABEL: OH.

MR. SHAW: YOUR HONOR, WE WOULD OFFER PAYMENT LETTER TO BORROWER SIGNED BY LENORA TUCCI AS RESPONDENT'S EXHIBIT.

JUDGE ANDERSON: IS THERE ANY OBJECTION?

MR. SHABEL: NO OBJECTION. THANK YOU, YOUR HONOR, IF I MAY?

JUDGE ANDERSON: YOU CAN KEEP THAT.

MR. SHABEL: OKAY.

Q. All right. Mrs. Tucci, we've established that you and your husband bought this house in 2008, and that you took title to it in both names, and there's no indication that you intended that there was any intent for the house be owned other than fifty fifty. Is that correct?

A. We always had a verbal agreement that the house was mine since I made all of the payments on it, and I had sold my house.

Q. You can't testify as to any verbal agreements with the decedent.

MR. SHAW: YOUR HONOR, I WOULD MOVE TO---

JUDGE ANDERSON: WELL YOU ACTUALLY YOU ASKED THE QUESTION. I'M LETTING IT IN.

MR. SHABEL: THANK YOU, YOUR HONOR.

Q. Since the time of the Temporary Order granting you the right to exclusive use and occupancy of the home on Culdass Court, between that date and the date of Mr. Tucci's death, you were ordered to pay the mortgage payment. Is that not correct? That was the Temporary Order I showed you a few minutes ago.

A. I was ordered?

Q. Yes, ma'am.

A. Well, I suppose that goes with the loan. I paid it because I had the larger bank account.

Q. Yes, ma'am. But that was also part of the Judge's Order directing that you---

A. Well, he didn't have to order me to do it because I pay bills. I pay my bills.

Q. Since Mr. Tucci died, have you made any payments to his estate for your use of the home?

A. I merely have made house payments in order to keep my house.

Q. Right. And so when you bought the house in 2008 until the time of the death of your husband, the two of you did not attempt to ever change the deed to reflect different contributions to the purchase of the house, did you?

A. Well, you say that verbal explanations are absolutely no good.

Q. Did you and your husband, after you acquired the house, did you execute another deed that would have changed the ownership of the house?

A. We talked about it and we went to an attorney, and my husband got up and walked out of the law office.

Q. Did you and your husband ever sign---

A. We signed nothing.

Q. ---another deed to change the ownership.

A. But we talked about it. He said you know this house is yours. He said you're the boss. You earned the most money. You paid everything.

Q. I didn't ask you to say--I did not ask you to testify to anything that your husband said, Mrs. Tucci. Please try to limit your responses---

A. I'll do that.

Q. ---to my questions. Did your husband sign anything in connection with the purchase of the home in 2008 that would show there was an intent for him to repay you for any part of the down payment on the home?

A. I don't recall anything.

Q. Okay.

MR. SHAW: ONE MOMENT, YOUR HONOR. THAT'S ALL THE QUESTIONS I HAVE MRS. TUCCI.

MR. SHABEL: AND I HAVE NO RE-DIRECT. THANK YOU, YOUR HONOR.

JUDGE ANDERSON: LET ME, LET ME CLARIFY SOMETHING. THE CLAIM THAT I'M LOOKING AT IS THIRTY-ONE THREE FIFTY-EIGHT NINETEEN. THAT DOESN'T HAVE ANYTHING TO DO WITH PAYMENTS OR ANYTHING?

MR. SHABEL: NO, THAT HAS NOTHING TO DO WITH PAYMENTS.

JUDGE ANDERSON: THAT'S PURELY THE--WHAT SHE WAS CLAIMING AS THE---

MR. SHABEL: IF I MAY APPROACH, YOUR HONOR. THAT AMOUNT IS EQUAL TO ONE-HALF---

JUDGE ANDERSON: IN FAMILY COURT, IT WOULD BE CALLED HER

SPECIAL EQUITY.

MR. SHABEL: THAT IS CORRECT. WELL, IT'S ACTUALLY ONE-HALF OF HER SPECIAL EQUITY.

JUDGE ANDERSON: RIGHT.

MR. SHABEL: IT'S ONE-HALF OF TOTAL CHECKS IN FRONT OF YOU.

JUDGE ANDERSON: INCLUDING THE DOWN PAYMENT.

MR. SHABEL: CORRECT, YOUR HONOR.

JUDGE ANDERSON: JUST ONE SECOND. IT DOESN'T HAVE MUCH BEARING ON IT, BUT FOR MY CURIOSITY. BUT YOUR FIRST NOTE WAS FOR ONE TWENTY ONE, IS THAT RIGHT? EXHIBIT ONE SAYS THAT YOUR BORROWED A HUNDRED AND TWENTY-ONE THOUSAND (\$121,000.00) FROM ALLIED HOME MORTGAGE.

A. I believe so.

JUDGE ANDERSON: OKAY. AND THEN Y'ALL PAID TWO FIFTEEN FOR THE HOUSE?

A. Yes.

JUDGE ANDERSON: OKAY. AND IF I COULD ADD, WHICH I CAN'T.

MR. SHABEL: JUDGE, I HAVE IT.

JUDGE ANDERSON: THAT LEAVES AN EIGHTY-FOUR THOUSAND-DOLLAR DEFICIT AND YOU PUT IN SIXTY-TWO BY THESE TWO. SO THERE WAS ANOTHER TWENTY-TWO THOUSAND FROM SOME WHERE?

A. No.

JUDGE ANDERSON: TO GET TO THE TWO FIFTEEN IF YOU TAKE OUT THE MORTGAGE AND YOU TAKE OUT YOUR TWO CHECKS, WHERE DID THE

OTHER TWENTY-TWO THOUSAND DOLLARS COME FROM?

A. The day that we closed, I had money there to finish out the complete down payment.

JUDGE ANDERSON: UH-HUM. (AFFIRMATIVE RESPONSE.)

A. And as I got my checkbook out and I started to write, I noticed my balances, and remember, my husband had been taking care of the accounts.

JUDGE ANDERSON: UH-HUM. (AFFIRMATIVE RESPONSE.)

A. Because we moved ourselves into the new house and I was thoroughly exhausted, and I taught for forty-three years. I was literally exhausted.

JUDGE ANDERSON: WELL THE SHORT ANSWER IS, WHO'S TWENTY-TWO THOUSAND WAS THAT?

A. Where did it come from?

JUDGE ANDERSON: YEAH.

A. Well, if you want the truth, it really came out of my stocks that he blew my checks while we were down in Estill, and I have copies of those where I normally signed a few checks for him. He'd pay bills there in Estill. He didn't work.

JUDGE ANDERSON: UH-HUM. (AFFIRMATIVE RESPONSE.)

A. Sometimes, but he stayed at home, and he knew not to invest any of my money into stocks. Now, that was his game. That's what he liked to do. He liked to gamble money.

JUDGE ANDERSON: HAVE YOU GOT THAT HUD STATEMENT?

MR. SHABEL: I'M SORRY.

JUDGE ANDERSON: HAVE YOU GOT THAT HUD STATEMENT?

A. I did not know that in January and then in April and those are the times that we had come back up to Spartanburg looking for an area to buy a house, and I signed checks for him to pay light bills and so on, and he wrote a check for twenty thousand and put in a holding number on my stock trade accounts and this is born out of the copies of both the Scott Trades, his and all the ones he gave to his daughter when he left me, and I have copies of the checks and they have his handwriting filing out the amount and where they are going. I merely signed the check and I shouldn't have done that, but I trusted my husband to take care of us.

JUDGE ANDERSON: OKAY. BUT THAT STILL DOESN'T ANSWER MY QUESTION. LET ME---

A. Where the twenty-two came from?

JUDGE ANDERSON: RIGHT. IT LOOKS LIKE Y'ALL HAD PUT DOWN ABOUT TWENTY-ONE FIFTY TWO THOUSAND ONE HUNDRED AND FIFTY DOLLARS (\$2,150.00) AS THE DOWN PAYMENT. DO YOU REMEMBER THAT?

A. I don't know because---

JUDGE ANDERSON: I'M JUST--WELL I'M LOOKING AT THE HUD STATEMENT.

A. Well.

JUDGE ANDERSON: THAT---

A. I wasn't there, Your Honor.

JUDGE ANDERSON: OKAY.

A. We couldn't finish July the 1st because Francis said I need to go and have funds wired from Vancouver, Canada. Well that was Canada Day and they did not business.

JUDGE ANDERSON: UH-HUM. (AFFIRMATIVE RESPONSE.)

A. So he asked David if he could have until Monday to get the funds wired and this is the piece of paper where you see his contribution of thirty-five thousand. Well Scott Trade---

JUDGE ANDERSON: BACK UP. I HAVEN'T SEEN A CONTRIBUTION OF THIRTY-FIVE THOUSAND.

MR. SHABEL: I'VE GOT THAT.

A. I don't know where you're getting the twenty-two. See, I didn't know what the closing was. I didn't care what it was at that time.

JUDGE ANDERSON; WELL, IT'S OFF--WELL TWENTY-TWO WAS SIMPLISTIC NUMBER NOT TAKING INTO ACCOUNT THE FACT THAT YOU HAD ABOUT SIXTY-FOUR HUNDRED DOLLARS (\$6,400.00) IN CLOSING COSTS, BUT THIS WIRE TRANSFER FROM WHERE EVER---

A. That came--by then--that came out of his---

JUDGE ANDERSON: OKAY. AND--I TELL YOU WHAT, LET'S DO THIS. LET ME TALK AND THEN YOU ANSWER. BUT THERE IS A WIRE TRANSFER FROM SONOVAS WIRE DEPARTMENT SOMETHING LIKE YOU SAY OF THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00). THAT WAS YOUR

HUSBAND'S MONEY? IT LOOKS LIKE IT CAME FROM SCOTT TRADE OR SOMETHING?

A. Yes. That came out of his account.

JUDGE ANDERSON: OKAY. THAT'S ALL I WANTED.

A. But to get his account, it came out of mine.

JUDGE ANDERSON: OKAY.

A. And I have his complete stock reports to show that.

JUDGE ANDERSON: OKAY. ALL RIGHT. LIKE I SAID, IT'S MORE MY CURIOSITY THAN ANYTHING ELSE, BUT I DON'T THINK IT HAS ANY BEARING ON WHAT I'M DEALING WITH.

A. Oh, I think it does.

JUDGE ANDERSON: WELL, UNFORTUNATELY THAT WOULD HAVE BEEN SOMETHING YOU COULD HAVE DONE IN FAMILY COURT.

MR. SHAW: YOUR HONOR, MAY I ASK A FOLLOW-UP QUESTION TO MRS. TUCCI---

JUDGE ANDERSON: YES.

MR. SHAW: ---BASED ON YOUR QUESTIONS.

JUDGE ANDERSON: SURE.

Recross-examination by Mr. Shaw.

Q. Mrs. Tucci, you just testified that your husband transferred assets out of a Scott Trade Account that was in your name against your will and transferred those assets into his name. Is that your testimony?

A. I explained that in Family Court to my attorney.

Q. Yes, ma'am. I was not at the Family Court hearing. So I'm going to ask you to explain that to us.

A. No. Explain that to you. While we were in this long, long Family Court business, I had not looked at my Scott Trade Account, and I called the night office in St. Louis and told them what I had just learned, and that was within my time with Mr. Campbell.

Q. Okay. I'm going to show you a document and ask you if this is your signature.

A. Yes.

Q. Does that relate to a Scott Trade Account?

A. Yes, but I don't know which one that is.

Q. Okay. And at the very top, does it say Letter of Authorization to Transfer Cash Securities? And it looks like the account transfer is from an account in your name to an account in Mr. Tucci's name.

A. Yes.

Q. And you signed that?

A. I signed at 8:30. I can't remember what---

Q. Okay. That was August 30, 2008.

MR. SHAW: I'D OFFER THIS. YOUR HONOR, I DON'T HAVE ANOTHER COPY OF THAT.

A. But Francis first transferred it to the holding account at

Scott Trade and only in---

Q. You can--Ma'am, I'm finished with my questioning. If Mr. Shabel wants to ask you any follow-up questions, you can respond to his follow-up questions.

MR. SHAW: YOUR HONOR, WE WOULD OFFER THIS LETTER OF AUTHORIZATION TO TRANSFER CASH SECURITIES SIGNED BY LENORA W. TUCCI ON AUGUST 30, 2008, RELATING TO A SCOTT TRADE ACCOUNT.

JUDGE ANDERSON: ALL RIGHT.

A. I do not remember.

JUDGE ANDERSON: AND THIS TELLS ME WHAT?

MR. SHAW: THAT'S REFLECTING, YOUR HONOR, THAT MRS. TUCCI CONSENTED TO HAVE ASSETS TRANSFERRED IN AN ACCOUNT FROM HER NAME INTO AN ACCOUNT IN MR. TUCCI'S NAME. SHE HAD PREVIOUSLY TESTIFIED THAT HE HAD BEEN INVOLVED IN TRANSFERRING ASSETS OUT OF HER SCOTT TRADE ACCOUNT WITHOUT HER CONSENT.

MR. SHABEL: I THINK THAT WAS MORE RELATED TO THE CLOSING OF A HOUSE WHICH OCCURRED A MONTH OR ALMOST TWO MONTHS BEFORE THIS DOCUMENT, SO I DON'T SEE THE RELEVANCE OF THIS DOCUMENT.

MR. SHAW: YOUR HONOR, THIS DOCUMENT SHOWS THAT WHATEVER THIS TRANSFER---

JUDGE ANDERSON: I DON'T--OKAY. I'M GOING TO LET HIM INTRODUCE IT, BUT I REALLY DON'T THINK ANY OF THIS HAS ANYTHING TO DO WITH ANYTHING I'M DECIDING.

MR. SHABEL: THANK YOU, YOUR HONOR.

MR. SHAW: I HAVE NO FURTHER QUESTIONS.

JUDGE ANDERSON: ANYTHING FURTHER, MR. SHABEL?

MR. SHABEL: NOT FOR THIS WITNESS.

JUDGE ANDERSON: WELL, IT'S KIND OF AN EMPTY ROOM. YOU GOT SOME OTHER WITNESSES?

MR. SHABEL: I GOT ONE MORE.

JUDGE ANDERSON: YOU CAN STEP DOWN, MA'AM.

MR. SHABEL: I CALL APRIL TUCCI.

APRIL TUCCI, AFTER FIRST HAVING BEEN DULY SWORN TESTIFIED AS FOLLOWS:

Direct examination by Mr. Shabel.

MR. SHABEL: MAY IT PLEASE THE COURT?

JUDGE ANDERSON: SURE.

Q. Ma'am, would you state your name for the record, please?

A. Yes. It's April Ann Tucci.

Q. Do you live here in Spartanburg County?

A. No. I do not.

Q. Do you live in the state of South Carolina?

A. No. I do not.

JUDGE ANDERSON: YOU NEED TO SPEAK UP, MA'AM. SHE'S GOT TO BE ABLE TO HEAR YOU OVER THERE.

MS. TUCCI: YES, SIR.

JUDGE ANDERSON: YOU NEED TO SPEAK UP MORE THAN THAT. I

CAN BARELY HEAR YOU AND I'VE TO RUN THE FAN SO I DON'T ROAST UP
HERE, SO YOU NEED TO SPEAK CLEAR.

Q. And you are the daughter of Mr. Frank Tucci?

A. Yes. I am.

Q. And he passed away on July the 29th of 2012.

A. He did.

Q. On that particular day, was there active Family Court
litigation going on involving Mr. Tucci and Mrs. Tucci?

A. Not active, no.

Q. Okay. But the case was still on-going?

A. Yes.

Q. All right. Did you engage with the Cate Law Firm to
continue work on that Family Court case after father passed
away?

A. Yes.

Q. Did you appear at at least two different hearings after you
father's death in the Family Court case?

A. Yes.

Q. Did you appear---

JUDGE ANDERSON: IS THAT A "YES"?

MS. TUCCI: YES, SIR.

Q. Did you appear at a mediation in December of 2012 for the
Family Court mediation?

A. I did.

Q. So, but the case never went to trial during this period. Is that correct?

A. Correct.

Q. Ultimately, did you ask your attorney to dismiss the Family Court case?

A. Yes.

Q. And did your attorney write a letter on your behalf as well as your co-personal representative's behalf to my client's attorney asking that it be dismissed?

A. She did.

Q. Is this the letter that your lawyer wrote on behalf of you and your co-personal representative?

A. I have not seen this letter.

Q. You've not seen that letter. Okay. Thank you. I'm not going to ask you to testify to what you haven't seen. But you did ask her to get the case dismissed?

A. Yes.

Q. All right. Since your father passed away, Ms. Tucci, first of all, you were appointed as personal representative on September 21, 2012. Is that correct?

A. That's correct.

Q. On behalf of the estate of your father, have you made any financial contributions to preserve the home that my client is currently living in?

A. No.

Q. Have you made any mortgage payments on behalf of the estate for that home?

A. No.

Q. Have you made any of the utility payments?

A. No.

Q. Okay. That's all I have for the witness.

MR. SHAW: JUST A COUPLE OF QUESTIONS, YOUR HONOR.

Cross-examination by Mr. Shaw.

Q. Ms. Tucci, isn't it correct that Mrs. Tucci, the petitioner, in this action has had the sole use and occupancy of the house since the divorce action was initiated by your father?

A. Yes, sir.

Q. And at no time after that date did your father ever live in the house, did he?

A. He did not.

Q. And did you or Robert Ganyard--have you or either Mr. Ganyard, the co-personal representative, have either of you had any use or benefit from the house since your father's death?

A. No, sir.

MR. SHAW: THAT'S ALL I HAVE, YOUR HONOR.

JUDGE ANDERSON: ANYTHING ELSE?

MR. SHABEL: NO QUESTIONS, YOUR HONOR.

JUDGE ANDERSON: YOU CAN STEP DOWN.

MR. SHABEL: THAT'S OUR SHOWING.

MR. SHAW: YOUR HONOR, IF I MAY, I'D LIKE TO MAKE A CLOSING STATEMENT, IF YOU'LL PERMIT ME.

JUDGE ANDERSON: SURE, I WILL.

MR. SHABEL: ASSUMING YOU'RE NOT GOING TO CALL A WITNESS.

MR. SHAW: NO, I'M NOT GOING TO CALL ANY. OUR CASE IS CONCLUDED. YOUR HONOR, WITH RESPECT TO THE TWO CLAIMS THAT MRS. LENORA TUCCI HAS FILED AGAINST THE ESTATE, ONE IS FOR REIMBURSEMENT OF MORTGAGE PAYMENTS MADE AFTER MR. TUCCI'S DEATH.

JUDGE ANDERSON: BACK UP.

MR. SHAW: OKAY.

JUDGE ANDERSON: TWO CLAIMS?

MR. SHAW: SHE'S FILED TWO CLAIMS---

JUDGE ANDERSON: I ASKED THAT QUESTION A WHILE AGO, AND THE FIRST CLAIM IS FOR THIRTY-ONE THOUSAND WAS THAT I'M LOOKING AT THE TOP OF MY STACK IS THE SPECIAL EQUITY CONCEPT. SO, THERE'S ANOTHER CLAIM IN HERE?

MR. SHABEL: YES, YOUR HONOR, THE SUMMONS AND PETITION FOR ALLOWANCE OF CLAIM---

JUDGE ANDERSON: OKAY. FORTY-TWO HUNDRED.

MR. SHABEL: YES. IT'S FOUR THOUSAND TWO HUNDRED AND THREE DOLLARS AND TEN CENTS (\$4,243.10) PLUS FOUR TWENTY THIRTY-ONE PER MONTH BEGINNING JUNE 1ST 2013. IT'S AN ONGOING CLAIM TO

CONTINUE MORTGAGE PAYMENTS.

JUDGE ANDERSON: JUST A SECOND.

MR. SHAW: YES, SIR.

JUDGE ANDERSON: OKAY. NOW THAT'S FOR HALF OF THE MORTGAGE PAYMENT FROM WHAT, DATE OF DEATH?

MR. SHABEL: YES, YOUR HONOR.

JUDGE ANDERSON: ALL RIGHT. GO AHEAD MR. SHAW.

MR. SHAW: YOUR HONOR, OUR POSITION ON THE CLAIM RELATING THE REIMBURSEMENT OF ONE-HALF OF THE MORTGAGE PAYMENTS IS THAT THE DECEDENT WAS NEVER AN OBLIGOR ON ANY OF THE PROMISSORY NOTES RELATING TO THE PURCHASE OF THE HOUSE. THE LOAN CLOSING DOCUMENTS THAT HAVE BEEN ADMITTED INTO EVIDENCE CLEARLY SHOW THAT MRS. TUCCI WAS THE BORROWER AND BOTH OF THOSE TRANSACTIONS MR. TUCCI SIGNED THE MORTGAGE BECAUSE THAT WAS A LEGAL REQUIREMENT IN ORDER FOR THE LENDER TO HAVE A VALID FIRST MORTGAGE ON THE HOUSE. HE WAS ALSO UNDER A TEMPORARY ORDER FROM THE TIME OF--FROM JULY--EXCUSE ME FROM FEBRUARY 21, 2012, TO THE TIME OF HIS DEATH, SHE WAS UNDER ORDER OF THE FAMILY COURT TO MAKE THOSE PAYMENTS, BUT MY POINT IS THAT MR. TUCCI NEVER HAD ANY LEGAL OBLIGATION TO MAKE THOSE PAYMENTS. WITH RESPECT TO HER REQUEST FOR THE CLAIM FOR THIRTY-ONE THOUSAND THREE HUNDRED FIFTY-EIGHT DOLLARS AND NINETEEN CENTS (\$31,358.19), WHICH SHE CLAIMS TO BE MARITAL FUNDS THAT SHE APPLIED FOR THE DOWN PAYMENT OF THE HOUSE, YOUR HONOR, OUR POSITION IS THAT WOULD BE PRESUMED

UNDER SOUTH CAROLINA LAW TO BE A LOAN. A LOAN FROM ONE SPOUSE TO, EXCUSE ME,

JUDGE ANDERSON: YOU REALLY DIDN'T WANT TO SAY THAT DID YOU?

MR. SHAW: NO, I DIDN'T MEAN THAT.

JUDGE ANDERSON: I DIDN'T THINK SO.

MR. SHAW: NO. THAT WOULD BE A GIFT, YOUR HONOR, UNDER SOUTH CAROLINA LAW THE PRESUMPTION IS THAT ANY FUNDS THAT TRANSFER BETWEEN SPOUSES WITHOUT DOCUMENTATION TO SHOW OTHERWISE IS A GIFT AND NOT A LOAN, AND THERE HAS BEEN NO WRITTEN DOCUMENTARY EVIDENCE THAT WOULD REFLECT ANY LEGAL OBLIGATION OF MR. TUCCI TO REIMBURSE OR REPAY MRS. TUCCI FOR ANY AMOUNTS THAT SHE APPLIED TOWARD THE DOWN PAYMENT OF THE HOUSE. THEY TOOK TITLE TO THE HOUSE IN BOTH OF THEIR NAMES AS TENANTS IN COMMON IN 2008 AND THE DEED CLEARLY REFLECTS THEIR INTENT TO OWN THE PROPERTY AS FIFTY FIFTY TENANTS IN COMMON, AND THERE'S NO EVIDENCE TO THE CONTRARY, YOUR HONOR. SO WE WOULD ASK THAT BOTH OF THESE CLAIMS BE DISMISSED.

MR. SHABEL: IF I MAY RESPOND. YOUR HONOR, AS TO THE THIRTY-ONE THOUSAND DOLLAR CLAIM, I BELIEVE, IN TECHNICAL TERMS, YOU KIND OF HINTED AT IT EARLIER AS SPECIAL EQUITY. SHE TOOK HER NON-MARITAL OR PRE-MARITAL ASSETS AND PUT IT INTO THIS HOME. I BELIEVE THAT'S DIFFERENT FROM TRANSMUTATION. IT'S DIFFERENT FROM DECLARING A MARITAL HOME OR MARITAL PROPERTY VERSUS HER OWN

SPECIAL EQUITY IN THE HOME. YOUR HONOR, AS TO THE MORTGAGE PAYMENTS, IT'S NOT REALLY ABOUT FOR PURPOSES FOR THE PROBATE COURT WHO'S LEGALLY RESPONSIBLE. IT'S WHAT THE MONEY'S GOING FOR. THIS IS AN ASSET OF THE ESTATE OR AT LEAST FIFTY PERCENT OF IT IS AN ASSET OF THE ESTATE. MY CLIENT FROM HER OWN MONEY, IS PRESERVING WITHOUT ASSISTANCE FROM THE ESTATE, THE SIXTY-THREE THOUSAND, I BELIEVE WHAT'S LISTED ON THE INVENTORY AND APPRAISAL, IF I GET THE NUMBER A LITTLE WRONG, I APOLOGIZE. IT'S LISTED AS THE DECEASED INTEREST IN THE HOME THAT'S BEING PRESERVED; BEING KEPT BY MY CLIENT ON BEHALF OF THE ESTATE WHETHER SHE'S TECHNICALLY THE PERSONAL REPRESENTATIVE OR NOT DOESN'T REALLY MATTER. SHE'S PRESERVING AN ASSET OF THE ESTATE, WHICH IS TRADITIONALLY A VALID CLAIM IN AN ESTATE. IT DOESN'T MATTER THE FACT THAT SHE'S THE LEGAL OBLIGOR ON THE MORTGAGE. SHE COULD STOP MAKING THE MORTGAGE PAYMENTS. THAT'S HER PRIVILEGE, I GUESS IF SHE LEAVES THE HOME. IT'S SOME OF THE ESTATE, AND THE ESTATE WOULD WANT TO STEP IN AT THAT POINT AND SAY WELL WE NEED TO KEEP THIS ASSET SO WE NEED TO PAY THE MONEY. SHE'S SAVING THE ESTATE MONEY BY MAKING THESE PAYMENTS ON BEHALF OF THE ESTATE. SHE'S ENTITLED TO REIMBURSEMENT FOR PRESERVATION OF ESTATE PROPERTY.

MR. SHAW: YOUR HONOR, IF I MAY. JUST A BRIEF RESPONSE TO MR. SHABEL'S LAST REMARK. MRS. TUCCI HAS BENEFITED FROM THE USE, THE CONTINUED USE, AND ENJOYMENT, THE SOLE POSSESSION OF

THE HOUSE SINCE MR. TUCCI'S DEATH. SO TO SAY THAT SHE'S NOT GETTING ANY BENEFIT FROM MAKING THE MORTGAGE PAYMENTS IS UNFOUNDED. SHE DOES NOT HAVE TO MAKE THE PAYMENTS IF SHE DOESN'T WISH TO. SHE'S UNDER NO CONTINUING OBLIGATION OTHER THAN THE FACT THAT SHE IS THE OBLIGOR ON THE PROMISSORY NOTE, AND THAT IS CERTAINLY ONE OF HER OPTIONS IF SHE WANTS TO CEASE MAKING THE MORTGAGE PAYMENTS, BUT SHE'LL HAVE TO FIND ANOTHER PLACE TO LIVE. SO SHE IS GETTING A PERSONAL, DERIVING A PERSONAL BENEFIT FROM CONTINUING TO MAKE THE MORTGAGE PAYMENTS BECAUSE OF HER PERSONAL USE AND ENJOYMENT OF THE PROPERTY.

MR. SHABEL: I DON'T DISAGREE THAT SHE'S GETTING THAT BENEFIT, YOUR HONOR, BUT SO IS THE ESTATE, AND THE ESTATE IS BENEFITING FROM MY CLIENT PAYING THE MORTGAGE, AND I GUARANTEE IF MY CLIENT STOPPED PAYING THE MORTGAGE, AND THAT HOME WENT INTO FORECLOSURE, WE'D GET A LAWSUIT FROM THE ESTATE SAYING WE ARE DAMAGING THEIR INTEREST IN THE PROPERTY. I DON'T THINK THE ESTATE CAN HAVE IT BOTH WAYS.

MR. SHAW: YOUR HONOR, THAT'S NOT THE ESTATE'S POSITION.

JUDGE ANDERSON: ANYTHING ELSE, GENTLEMEN?

MR. SHAW: NOTHING FURTHER, YOUR HONOR.

JUDGE ANDERSON: ALL RIGHT. I'M GOING TO TAKE IT UNDER ADVISEMENT AND I'LL LET YOU KNOW IN A DAY OR SO, BUT I CAN TELL YOU WHERE MY LEANINGS ARE RIGHT NOW. THEY MAY CHANGE. IS I THINK THIS TO BE FRANK WITH YOU, MR. SHABEL, IS YOUR CLIENT AND

YOU WEREN'T THE LAWYER AT THAT TIME, PROBABLY WOULD HAVE BEEN BETTER SERVED STAYING IN FAMILY COURT. I DON'T KNOW OF ANY LAW AND YOU CAN LET ME KNOW IF YOU KNOW OF ANY, THAT ALLOWS A PROBATE COURT TO ASSIGN SPECIAL EQUITY IN AN ASSET OF THE ESTATE DEPENDING UPON HOW IT'S TITLED, BUT I MEAN, THAT'S SOMETHING FAMILY COURT DOES, AND WITH THE SUBSTANTIAL PAYMENT AND ARGUMENT ABOUT WHO'S MONEY ACTUALLY CAME FROM CANADA, THAT'S SOMETHING THAT COULD HAVE BEEN LITIGATED THERE, BUT I'M NOT SURE THAT PART CAN BE LITIGATED HERE. SO I GOT A FEELING THAT THE ONLY THING I'M PROBABLY LOOKING AT IS GOING TO BE THOSE MORTGAGE PAYMENTS SINCE DATE OF DEATH. YOU KNOW, I MAY HAVE A REVELATION, AND IF YOU SEE ANY LAW IN THE NEXT DAY OR SO, LET ME KNOW.

MR. SHABEL: CAN I HAVE ABOUT FORTY-EIGHT HOURS TO RESEARCH IT?

JUDGE ANDERSON: SURE. THAT'S FINE. PROBLEM IS--MY ATTENTION SPAN IS ABOUT SEVENTY-TWO HOURS. SO BY FRIDAY, I WILL HAVE FORGOTTEN EVERYTHING I'M THINKING RIGHT NOW. SO I WOULD GET IT QUICKLY.

MR. SHABEL: YES, SIR.

JUDGE ANDERSON: SAME THING FOR YOU, MR. SHAW, IF THERE'S ANYTHING YOU WANT TO SUBMIT.

END OF TRANSCRIPT.

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE FAMILY COURT
SEVENTH JUDICIAL CIRCUIT

FRANK P. TUCCI, JR.)
☒ Plaintiff)
v.)
LENORA WHITFIELD TUCCI,)
☐ Defendant.)

MOTION INFORMATION FORM
AND COVER SHEET

2011-DR-42-

3324

Name, SC Bar #, and address of Plaintiff's Attorney RUTH L. CATE SC BAR #292 383 South Pine Street OFFICE: 864-585-4226 Spartanburg, SC 29302 FAX: 864-585-4221 Email: <u>Ruth@Ruthcatelaw.com</u>		Name, SC Bar #, and address of DEFENDANT'S ATTY 	
☒ MOTION HEARING REQUESTED - attach written motion and complete SECTIONS I and III ☐ FORM MOTION, NO HEARING REQUESTED - complete SECTIONS II and III			
SECTION I: Hearing Information			
Nature of Motion: Estimated Time Needed:		Court Reporter Needed:	
SECTION II: Motion Type			
☒ Written motion attached Motion For Temporary Relief, Summons & Complaint ☐ Form Motion			
/s/ <u><i>Ruth L. Cate</i></u> Signature of Attorney		Date Submitted: November 29th 2011	
SECTION III: Motion Fee			
☒ PAID - amount: \$175.00 ☐ EXEMPT : (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status State Agency v. Indigent Person ☐ Sexually Violent Predator Act Post-conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION		JUDGE:	
☐ Motion Fee to be paid upon filing of the attached order ☐ Other:		CODE: DATE:	
CLERK'S VERIFICATION			
Collected by: _____ (print name)		<u>DATE FILED</u>	
☐ MOTION FEE COLLECTED: _____			
☐ CONTESTED - AMOUNT DUE: _____			

FEE PAID

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) IN THE FAMILY COURT
SEVENTH JUDICIAL CIRCUIT

FRANK P. TUCCI, JR.,)

Plaintiff,)

vs.)

LENORA WHITFIELD TUCCI,)

Defendant.)

MOTION FOR TEMPORARY RELIEF

2011-DR-42- 3324

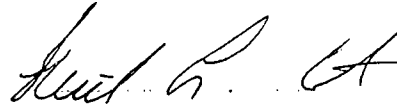
TO: LENORA WHITFIELD TUCCI, DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Plaintiffs will move before the Presiding Judge of the Family Court for the Seventh Judicial Circuit at the Spartanburg County Courthouse on 30 day of January 2012 at 2:00 AM / PM or as soon thereafter as counsel may be heard, for an Order of the Court:

- a. Granting Defendant temporary exclusive use and possession of the marital home, her car and to be responsible for all expenses related to same;
- b. Granting Plaintiff permission to obtain his personal belongings as well as a reasonable share of the household furnishings and his vehicle;
- c. Requiring Defendant to continue the Plaintiff's Medicare supplement health insurance and to assist with Plaintiff's uncovered medical and related expenses;
- d. Granting Plaintiff a restraining order restraining the Defendant from bothering or harassing him in any manner whatsoever, from disposing, encumbering or selling any assets and/or creating any marital debt;
- e. Requiring Defendant to provide an accounting as to all funds she has had access to in the month preceding their separation and since the date of separation;

- f. Requiring Defendant to pay a reasonable amount of temporary attorney fees and costs;
- g. Granting discovery pursuant to the South Carolina Rules of Civil Procedures.
- h. For such other and further relief the Court may deem just and proper.

THE CATE LAW FIRM, PA



RUTH L. CATE

Attorney for Plaintiff

383 S. Pine St.

Spartanburg, SC 29302

Office 864-585-4226

Fax 864-585-4221

ruth@ruthcatelaw.com

November 29th 2011

CASE WILL REMAIN ACTIVE

UNTIL 12-1-12

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

FRANK P. TUCCI, JR.,)

Plaintiff,)

vs.)

LENORA WHITFIELD TUCCI,)

Defendant.)

IN THE FAMILY COURT
SEVENTH JUDICIAL CIRCUIT

SUMMONS

2011-DR-42-

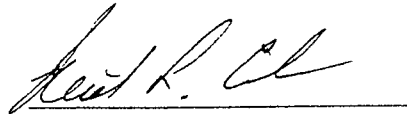
3324

2011 NOV 30 PM 4:04

TO: THE DEFENDANT ABOVE-NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your ANSWER to the said Complaint on the Plaintiff or his attorney, Ruth L. Cate, at 383 South Pine Street, Spartanburg, South Carolina, 29302, within thirty (30) days after the service thereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief sought in the Complaint.

THE CATE LAW FIRM, PA



RUTH L. CATE

Attorney for Plaintiff

383 S. Pine St.

Spartanburg, SC 29302

Office: 864-585-4226

Fax: 864-585-4221

ruth@ruthcatelaw.com

November 29th 2011

STATE OF SOUTH CAROLINA	)	
	)	IN THE FAMILY COURT
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
FRANK P. TUCCI, JR.,	)	
Plaintiff,	)	
	)	
vs.	)	COMPLAINT
	)	2011-DR-42- <u>3334</u>
LENORA WHITFIELD TUCCI,	)	
Defendant.	)	

The Plaintiff complaining of the Defendant would respectfully show unto the Court:

1. The parties are residents of the State of South Carolina, County of Spartanburg and have been for the statutory period.
2. The parties were married in July of 2006. No children were born of this marriage and none are expected.
3. The parties separated November 6th 2011 when the Plaintiff was taken to the hospital via ambulance after being injured and Defendant continuing in her pattern of refusal to assist him, provide or give him access to medical care and general mistreatment and abuse such that he was in fear for his safety or life. The parties have lived separate and apart since that time.
4. The Plaintiff is informed and believes he is entitled to a divorce on the grounds of physical cruelty or in the alternative a Decree of Separate Maintenance.
5. The Plaintiff is informed and believes Defendant should have temporary use and possession of the marital home, her car and she should be responsible for all expenses related to same until the Court can determine if it should be sold or if Wife should purchase his interest in the house.
6. The Plaintiff is informed and believes he is entitled to his personal belongings along with a reasonable share of the household furnishings and his vehicle.

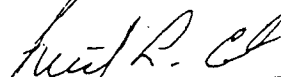
7. The Plaintiff is informed and believes that both parties have certain income and can support themselves and alimony should be waived and barred permanently other than she should continue to provide his Medicare supplemental health insurance and assist with any uncovered medical and related expenses.
8. The Plaintiff is informed and believes he is entitled to an equitable division of the marital assets and for the Court to determine the non-marital status of certain assets and debts.
9. The Plaintiff is informed and believes he is entitled to a restraining order restraining the Defendant from bothering or harassing him in any manner whatsoever.
10. The Plaintiff is informed and believes he is entitled to a restraining order restraining the Defendant from disposing, encumbering or selling any assets and/or creating any marital debt.
11. The Plaintiff is informed and believes he is entitled to an accounting, from the Defendant, as to all funds she has had access to in the months preceding their separation and since the date of separation.
12. The Plaintiff is informed and believes he is entitled to attorney fees and costs for the prosecution of this action.
13. The Plaintiff is informed and believes he is entitled to discovery rights in the prosecution of this action pursuant to the South Carolina Rules of Civil Procedures.

WHEREFORE, the Plaintiff prays:

1. For a Divorce on the grounds of physical cruelty or in the alternative a Decree of Separate Maintenance;

2. For Defendant to have temporary use and possession of the marital home, her car and to be responsible for all expenses related to same until the Court can determine if it should be sold or if Wife should purchase his interest in the house;
3. For his personal belongings along with a reasonable share of the household furnishings and his vehicle;
4. For alimony to be waived and barred permanently other than Defendant to continue to provide his Medicare supplemental health insurance and assist with any uncovered medical and related expenses;
5. For an equitable division of the marital assets and for the Court to determine the non-marital status of certain assets and debts;
6. For a restraining order restraining the Defendant from bothering or harassing him in any manner whatsoever;
7. For a restraining order restraining the Defendant from disposing, encumbering or selling any assets and/or creating any marital debt;
8. For an accounting, from the Defendant, as to all funds she has had access to in the month preceding their separation and since the date of separation;
9. For attorney fees and costs;
10. For discovery pursuant to the S.C.R.C.P.:
11. For such other and further relief as the Court may deem just and proper.

THE CATE LAW FIRM P.A.


RUTH L. CATE
Attorney for Plaintiff
383 South Pine Street
Spartanburg, SC 29302
Phone: 864-585-4226
Fax: 864-585-4221
ruth@ruthcatelaw.com

November 29th 2011

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG) IN THE FAMILY COURT
SEVENTH JUDICIAL CIRCUIT

FRANK P. TUCCI, JR.,)
Plaintiff,)
vs.) **Temporary Order**
2011-DR-42-3324
LENORA WHITFIELD TUCCI,)
Defendant.)

Date of Hearing: January 30th 2012
Attorney for Plaintiff: Ruth L. Cate
Attorney for Defendant: Leon L. Campbell
Judge: Usha J. Bridges
Court Reporter: Julie Ashbrook

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 FEB 21 PM 2:42
M. HOPE BLACKLEY

This matter is before the Court upon a Motion filed by the Plaintiff seeking temporary restraining order including Defendant to have temporary exclusive use and possession of the marital home, her car and to be responsible for all expenses related to same, Plaintiff to have permission to obtain his personal belongings as well as a reasonable share of the household furnishings and his vehicle, Defendant to continue the Plaintiff's Medicare supplemental health insurance and to assist with Plaintiff's uncovered medical and related expenses, restraining order against Defendant from bothering or harassing him in any manner whatsoever, from disposing, encumbering or selling any assets and/or creating any marital debt, Defendant to provide an accounting as to all funds she has had access to in the month preceding their separation and since the date of separation, temporary attorney fees and costs, and discovery.

Both parties were present in the Courtroom. Based on the pleadings, affidavits and financial declarations and statements of counsel, I make the following Findings:

1. The parties are citizens and residents of the State of South Carolina, County of Spartanburg and have been so far more than one (1) year prior to the commencement of this action.
2. The parties were married in July 2006. No children were born of this marriage and none are expected.
3. The parties separated on November 6th 2011. The parties have lived separate and apart since that time.
4. The Court finds that Defendant's financial declaration was not complete nor was it the correct form. Defendant will file and complete financial declaration on the correct form and provide a copy to Plaintiff's counsel within ten (10) days from this hearing.

5. The parties reach an agreement on a temporary basis and the agreement is as follows:
- a. Defendant will have exclusive use and possession of her car and of the marital home and be responsible for all mortgage payments, taxes, insurance, along with any other expenses related to same, including upkeep. In no way is the value of the marital home to diminish due to her actions or failure to act;
 - b. Wife will provide and be responsible for the supplemental insurance on the Husband;
 - c. The issue of Plaintiff's outstanding medical and related expenses will be held in abeyance pending a final hearing;
 - d. Defendant will return the following items to Plaintiff via counsel if she can locate them:
 1. His current and valid passport;
 2. His current and valid BC/BS Insurance Card;
 3. The original keys to his Toyota Tacoma truck;
 4. His Masonic 18th Degree 14k gold ring;
 5. His Masonic 32nd Degree 14k gold ring.
 6. His Masonic Hat;
 7. Masonic Apron;
 8. Masonic Patent
 9. Shriner's Hat
 10. 14k gold horn
 - e. Both parties are mutually restrained from bothering or harassing the other in any manner whatsoever;
 - f. The parties are mutually restrained from creating any marital debt, changing the beneficiary on any retirement plans, pension plans, life insurance policies, etc.;
 - g. The parties will provide each other, via counsel, an accounting as to all funds they have had access to in the month preceding their separation and since the date of separation within a reasonable period from the filing of this order;
 - h. Attorney fees will be held in abeyance pending a final hearing;
 - i. The parties will have mutual discovery rights.
6. The Court inquired of the parties as to their understanding of the agreement. Both parties testified that this was their agreement, they are aware of each other's financial affairs, that they entered into this agreement freely and voluntarily without duress of any nature or description, they were not under the influence of any drugs or intoxicants that would affect their judgment, and both felt under the circumstances it was in the best interest of all concerned and they desire to make it an Order of the Court. Further, both parties were satisfied with their attorneys.

7. The Court finds this agreement to be in the best interest of all concerned, that it was entered into freely and voluntarily without duress of any nature or description, they were not under the influence of any drugs or intoxicants that would affect their judgment, and it shall become an Order of this Court and it is so ordered. Competent counsel with whom they were satisfied represented both parties.
8. The Court denies the Plaintiff's requested relief that the Defendant assist with Plaintiff's uncovered medical and related expenses on a temporary basis.

THEREFORE, IT IS,

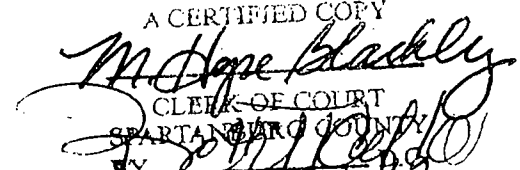
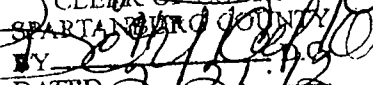
ORDERED, ADJUDGED AND DECREED that the agreement in paragraph 5 a. – i. shall be incorporated and made a part of this Order; it is, further,

ORDERED, ADJUDGED AND DECREED that Plaintiff's request for Defendant's assistance with uncovered medical and related expenses on a temporary basis is denied;

IT IS SO ORDERED.


JUDGE USHA J. BRIDGES

February 21 2012

A CERTIFIED COPY

CLERK OF COURT
SPARTANBURG COUNTY
BY 
DATED 2/21/12

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE FAMILY COURT
SEVENTH JUDICIAL CIRCUIT

FRANK P. TUCCI, JR.,)
Plaintiff,)

VS.)

LENORA WHITFIELD TUCCI,)
Defendant.)

ORDER OF DISMISSAL
2011-DR-42-3324

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAR 29 AM 10:52
M. HOPE BLACKLEY

Attorney for Plaintiff: Ruth L. Cate
Attorney for Defendant: Leon L. Campbell

The above-captioned matter is scheduled for a two-day Trial May 15th and May 16th 2013 beginning at 9:00AM both days.

The Plaintiff originally filed this action November 30th 2011. However, on July 29th 2012 the Plaintiff passed away. The Plaintiff's daughter, April Tucci and Robert Ganyard, were named Personal Representatives of his estate and now wish to dismiss this action in full.

Upon the motion of Ruth L. Cate, Attorney for Plaintiff and Plaintiff's Personal Representatives, April Tucci and Robert Ganyard, and with the consent of Leon L. Campbell, Attorney for Defendant, and Defendant, this case shall be dismissed.

THEREFORE, IT IS,

ORDERED, ADJUDGED AND DECREED that the above-captioned matter be dismissed.

IT IS SO ORDERED

Phillip K. Sinclair
JUDGE, FAMILY COURT

March 29th 2013

I so Move:

Chel A. Bragh for Ruth L. Cate
Ruth L. Cate, Attorney for Plaintiff

April Tucci
April Tucci, Personal Representative
Robert Ganyard
Robert Ganyard, Personal Representative

Consent:

Leon L. Campbell, Attorney for Defendant

Lenora Whitfield Tucci, Defendant

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE FAMILY COURT
SEVENTH JUDICIAL CIRCUIT

FRANK P. TUCCI, JR.,)
Plaintiff,)

vs.)

LENORA WHITFIELD TUCCI,)
Defendant.)

ORDER OF DISMISSAL
2011-DR-42-3324

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 MAR 29 AM 10:53
M. HOPE BLACKLEY

Attorney for Plaintiff: Ruth L. Cate

Attorney for Defendant: Leon L. Campbell

The above-captioned matter is scheduled for a two-day Trial May 15th and May 16th 2013 beginning at 9:00AM both days.

The Plaintiff originally filed this action November 30th 2011. However, on July 29th 2012 the Plaintiff passed away. The Plaintiff's daughter, April Tucci and Robert Ganyard, were named Personal Representatives of his estate and now wish to dismiss this action in full.

Upon the motion of Ruth L. Cate, Attorney for Plaintiff and Plaintiff's Personal Representatives, April Tucci and Robert Ganyard, and with the consent of Leon L. Campbell, Attorney for Defendant, and Defendant, this case shall be dismissed.

THEREFORE, IT IS,

ORDERED, ADJUDGED AND DECREED that the above-captioned matter be dismissed.

IT IS SO ORDERED

JUDGE, FAMILY COURT

Date:

I so Move:

Ruth L. Cate, Attorney for Plaintiff

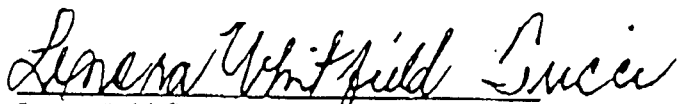
April Tucci, Personal Representative

I Consent:



Leon L. Campbell, Attorney for Defendant

Robert Ganyard, Personal Representative



Lenora Whitfield Tucci, Defendant

DEED 91 -- 0 P 6 0 9 2

Recorded by and to be
returned to:

DEE-2008-33074
Recorded 3 Pages on 7/10/2008 10:21:27 AM
Recording Fee: \$10.00 Documentary Stamps: \$795.50
Office of Register of Deeds, Spartanburg, S.C.
Stephen Ford, Register

File No.



STATE OF SOUTH CAROLINA	)	TITLE TO REAL ESTATE
	)	Limited Title Warranty
COUNTY OF SPARTANBURG	)	By Corporation

KNOW ALL MEN BY THESE PRESENTS, that SIRVA RELOCATION CREDIT, LLC, A Delaware Limited Liability Company, in the State aforesaid, for and in consideration of the sum of TWO HUNDRED FIFTEEN DOLLARS AND 00/100 (\$215,000.00), unto it in hand paid at and before the sealing of these presents by FRANK TUCCI AND LENORA W. TUCCI, in the State aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell, and release unto the said FRANK TUCCI AND LENORA W. TUCCI, its successors and assigns forever, in fee simple, together with every contingent remainder and right of reversion, the following described property, to wit:

All that certain piece, parcel, or lot of land, together with improvements thereon, situate, lying and being in the County of Spartanburg, State of South Carolina, being shown and designated as the major portion of Lot 298 on a plat of a Revision of Lots 295 - 304, Londonderry Residential Community, Being a Portion of the Same Property as shown on a plat for Londonderry, Phase 2, dated December 14, 1988, prepared by Neil R. Philips & Company, Inc., dated September 25, 1992, and recorded in the office of the Register of Deeds for Spartanburg County in Plat Book 118 at page 167. Being further shown and delineated on a plat prepared for John S. Dicranian and Melissa C. Dicranian by Jonathan R. Smith, PLS, dated March 16, 1999, revised March 22, 1999, and recorded in Plat Book 144 at page 182. Reference to said plat is made for a more complete and accurate description. Be all measurements a little more or less.

This being the same property conveyed unto Sirva Relocation Credit, LLC. by deed of Deana G. Romero and John A. Romero dated November 2, 2007, to be recorded simultaneously herewith.

29505-A

DEED 91 - 000093

TMS#: 6-24-14-106.00
Property Address: 206 Culdass Court, Moore, SC 29369
Grantee(s) Address: 206 Culdass Court, Moore, SC 29369

This conveyance is made subject to easements and restrictions of record and otherwise affecting the property.

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

TO HAVE AND TO HOLD, all and singular, the said premises before mentioned unto the said FRANK TUCCI AND LENORA W. TUCCI, its successors and assigns forever.

AND Grantor does hereby bind its itself, and its successors and assigns, to warrant and forever defend, all and singular, the said premises unto the said FRANK TUCCI AND LENORA W. TUCCI, its successors and assigns, against the Grantor and Grantor's successors and all persons whomsoever lawfully claiming, or to claim, the same or any part thereof.

DEEC 91 -- UPG 094

WITNESS our Hands and Seals this 24th day of June, 2008.

Signed, Sealed And Delivered
In The Presence Of:

Sirva Relocation Credit, LLC, A Delaware Limited
Liability Company

By: [Signature]

Witness #1

Witness #2

STATE OF

COUNTY OF

PROBATE

PERSONALLY APPEARED BEFORE ME, the undersigned witness, and made oath that
he/she saw the within named Sirva Relocation Credit, LLC, A Delaware Limited Liability
Company, by its authorized agent, Sign, Seal and as its Act and Deed deliver the within written
Deed; and that he/she with the other witness subscribed above witnessed the execution thereof.

Sworn to before me this

day of

2008.

Witness #1

Witness #2/Notary Public for

My commission expires:

NOTARY PUBLIC
State of Ohio
Cuyahoga County
PRISCILLA L. BAILEY
Expiration Sept. 14, 2011

MIN: 100053908070083744

NOTE

Loan Number: 27250117

JULY 1, 2008
[Date]

SPARTANBURG
[City]

SOUTH CAROLINA
[State]

206 CULDASS COURT, MOORE, SOUTH CAROLINA 29369
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 121,000.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is ALLIED HOME MORTGAGE CAPITAL CORPORATION

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.375 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on SEPTEMBER 1, 2008. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on AUGUST 1, 2038, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 6110 PINEMONT DRIVE, SUITE 215, HOUSTON, TEXAS 77092

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 754.88

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so.

I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit;

and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

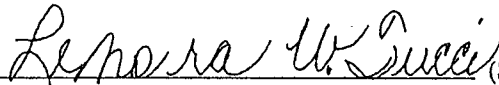
This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep

the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

 (Seal)
LENORA W TUCCI -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

[Sign Original Only]

EXHIBIT A

NOTE

MIN: 100053909110139454

NOVEMBER 16, 2009

[Date]

Loan Number: 28510074

BOILING SPRINGS

[City]

SOUTH CAROLINA

[State]

206 CULDASS COURT, MOORE, SOUTH CAROLINA 29369

[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$ 127,500.00 (this amount is called "Principal"), plus interest, to the order of the Lender. The Lender is ALLIED HOME MORTGAGE CAPITAL CORPORATION, A TEXAS CORPORATION

I will make all payments under this Note in the form of cash, check or money order.

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 4.750 %.

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making a payment every month.

I will make my monthly payment on the 1st day of each month beginning on JANUARY 1, 2010. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on DECEMBER 1, 2039, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 6110 PINEMONT DRIVE, SUITE 215, HOUSTON, TEXAS 77092

or at a different place if required by the Note Holder.

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$ 665.10

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the Note Holder in writing that I am doing so. I may not designate a payment as a Prepayment if I have not made all the monthly payments due under the Note.

I may make a full Prepayment or partial Prepayments without paying a Prepayment charge. The Note Holder will use my Prepayments to reduce the amount of Principal that I owe under this Note. However, the Note Holder may apply my Prepayment to the accrued and unpaid interest on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of the Note. If I make a partial Prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit;

and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial Prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 5.000 % of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of Principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is mailed to me or delivered by other means.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by delivering it or by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of Dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust, or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep

the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Lenora W. Tucci (Seal)
LENORA W. TUCCI -Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

____ (Seal)
-Borrower

[Sign Original Only]

NON-APPLICANT AFFIDAVIT

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

) ss:

Loan Number: 28510074

Lender: ALLIED HOME MORTGAGE CAPITAL CORPORATION

Property: 206 CULDASS COURT
MOORE, SOUTH CAROLINA 29369

The undersigned hereby acknowledges, understands and affirms that with regard to any loan (and loan-related) documentation that Lender requires the undersigned to sign in connection with, or relating to, the above-referenced loan, the undersigned, as a non-applicant, will sign as "Borrower" solely for the purpose of pledging any and all interest of the undersigned in the collateral securing the loan, without personal obligation for payment of any sums secured by the Security Instrument.

Dated: 11/16/09

Frank Tucci
Borrower, as Non-Applicant
FRANK TUCCI

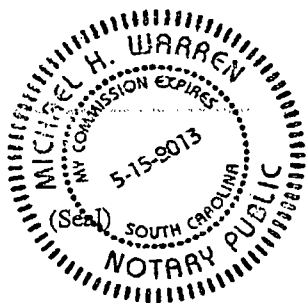
On 11/16/09
personally appeared

before me, Michael H. Warren

Frank Tucci

known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Michael H. Warren
Notary Public

Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower", as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when ☐ the income or assets of a person other than the "Borrower" (including the Borrower's spouse) will be used as a basis for loan qualification or ☐ the income or assets of the Borrower's spouse or other person who has community property rights pursuant to state law will not be used as a basis for loan qualification, but his or her liabilities must be considered because the spouse or other person has community property rights pursuant to applicable law and Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

If this is an application for joint credit, Borrower and Co-Borrower each agree that we intend to apply for joint credit (sign below):

Lenora W. Tucci

Borrower		Co-Borrower	
I. TYPE OF MORTGAGE AND TERMS OF LOAN			
Mortgage Applied for:	☐ VA ☐ FHA	☒ Conventional ☐ USDA/Rural Housing Service	Other (explain):
Agency Case Number		Lender Case Number	
		28510074	
Amount \$	Interest Rate	No. of Months	Amortization Type:
127,500	4.750%	360/360	☒ Fixed Rate ☐ GPM ☐ Other (explain): ☐ ARM (type):
II. PROPERTY INFORMATION AND PURPOSE OF LOAN			
Subject Property Address (street, city, state, & ZIP)			No. of Units
206 Culdass Court, Moore, SC 29369 County: Spartanburg			1
Legal Description of Subject Property (attach description if necessary)			Year Built
see Deed			2000
Purpose of Loan		Property will be:	
☐ Purchase ☒ Refinance ☐ Construction ☐ Construction-Permanent ☐ Other (explain):		☒ Primary Residence ☐ Secondary Residence ☐ Investment	
Complete this line if construction or construction-permanent loan.			
Year Lot Acquired	Original Cost	Amount Existing Liens	(a) Present Value of Lot
	\$	\$	\$
		(b) Cost of Improvements	Total (a+b)
		\$	\$
Complete this line if this is a refinance loan.			
Year Acquired	Original Cost	Amount Existing Liens	Purpose of Refinance
	\$	\$	
		Describe Improvements	☐ made ☐ to be made
		Cost: \$	
Title will be held in what Name(s)		Manner in which Title will be held	Estate will be held in.
Lenora W Tucci Frank Tucci		Joint tenants	☒ Fee Simple ☐ Leasehold (show expiration date)
Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain)			

Borrower		Co-Borrower	
III. BORROWER INFORMATION			
Borrower's Name (include Jr. or Sr. if applicable)		Co-Borrower's Name (include Jr. or Sr. if applicable)	
Lenora W Tucci			
Social Security Number	Home Phone (incl. area code)	DOB (mm/dd/yyyy)	Yrs. School
[REDACTED]	864-327-9254	[REDACTED] 1938	16
☒ Married (includes registered domestic partners)	Dependents (not listed by Co-Borrower)		☐ Married (includes registered domestic partners)
☐ Unmarried (includes single, divorced, widowed)	No. 0		☐ Unmarried (includes single, divorced, widowed)
☐ Separated	Ages N/A		☐ Separated
Present Address (street, city, state, ZIP/ country)		Present Address (street, city, state, ZIP/ country)	
☒ Own ☐ Rent 1.2 No. Yrs.		☐ Own ☐ Rent ___ No. Yrs.	
206 Culdass Court		/ United States	
Moore, SC 29369 / United States			
Mailing Address, if different from Present Address		Mailing Address, if different from Present Address	
If residing at present address for less than two years, complete the following:			
Former Address (street, city, state, ZIP)		Former Address (street, city, state, ZIP)	
☐ Own ☒ Rent 2 No. Yrs.		☐ Own ☐ Rent ___ No. Yrs.	
323 Second Street			
Estill, SC 29918			
Former Address (street, city, state, ZIP)		Former Address (street, city, state, ZIP)	
☐ Own ☐ Rent ___ No. Yrs.		☐ Own ☐ Rent ___ No. Yrs.	

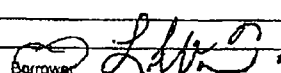
Borrower		IV. EMPLOYMENT INFORMATION		Co-Borrower	
Name & Address of Employer	☐ Self Employed	Yrs. on this job	Name & Address of Employer	☐ Self Employed	Yrs. on this job
		Yrs. employed in this line of work/profession			Yrs. employed in this line of work/profession
Position/Title/Type of Business		Business Phone (incl. area code)	Position/Title/Type of Business		Business Phone (incl. area code)
<i>If employed in current position for less than two years or if currently employed in more than one position, complete the following:</i>					
Name & Address of Employer	☐ Self Employed	Dates (from-to)	Name & Address of Employer	☐ Self Employed	Dates (from-to)
Hampton County Schools		08/01/2006 - 08/01/2008			
P.O. Box 1028		Monthly Income			Monthly Income
Estill, SC 29918		\$ 4,654.00			\$
Position/Title/Type of Business		Business Phone (incl. area code)	Position/Title/Type of Business		Business Phone (incl. area code)
Teacher					
Name & Address of Employer	☐ Self Employed	Dates (from-to)	Name & Address of Employer	☐ Self Employed	Dates (from-to)
		Monthly Income			Monthly Income
		\$			\$
Position/Title/Type of Business		Business Phone (incl. area code)	Position/Title/Type of Business		Business Phone (incl. area code)
Name & Address of Employer	☐ Self Employed	Dates (from-to)	Name & Address of Employer	☐ Self Employed	Dates (from-to)
		Monthly Income			Monthly Income
		\$			\$
Position/Title/Type of Business		Business Phone (incl. area code)	Position/Title/Type of Business		Business Phone (incl. area code)
Name & Address of Employer	☐ Self Employed	Dates (from-to)	Name & Address of Employer	☐ Self Employed	Dates (from-to)
		Monthly Income			Monthly Income
		\$			\$
Position/Title/Type of Business		Business Phone (incl. area code)	Position/Title/Type of Business		Business Phone (incl. area code)
Name & Address of Employer	☐ Self Employed	Dates (from-to)	Name & Address of Employer	☐ Self Employed	Dates (from-to)
		Monthly Income			Monthly Income
		\$			\$
Position/Title/Type of Business		Business Phone (incl. area code)	Position/Title/Type of Business		Business Phone (incl. area code)

V. MONTHLY INCOME AND COMBINED HOUSING EXPENSE INFORMATION						
Gross Monthly Income	Borrower	Co-Borrower	Total	Combined Monthly Housing Expense	Present	Proposed
Base Empl. Income ¹	\$	\$	\$	Rent	\$	
Overtime				First Mortgage (P&I)	920.00	\$ 665.10
Bonuses				Other Financing (P&I)		
Commissions				Hazard Insurance		68.83
Dividends/Interest				Real Estate Taxes		85.82
Net Rental Income				Mortgage Insurance		
Other (before completing see the notice in "describe other income" below)				Homeowner Assn. Dues		
	3,578.75		3,578.75	Other		
Total	\$ 3,578.75	\$	\$ 3,578.75	Total	\$ 920.00	\$ 819.75

* Self Employed Borrower(s) may be required to provide additional documentation such as tax returns and financial statements.

Describe Other Income *Notice:* Alimony, child support, or separate maintenance income need not be revealed if the Borrower (B) or Co-Borrower (C) does not choose to have it considered for repaying this loan.

B/C	Monthly Amount
B Pension/Retirement Income	\$ 1,535.00
B Social Security/Disability Income	2,043.75

Borrower 
Co-Borrower _____

VI. ASSETS AND LIABILITIES

This Statement and any applicable supporting schedules may be completed jointly by both married and unmarried Co-borrowers if their assets and liabilities are sufficiently joined so that the Statement can be meaningfully and fairly presented on a combined basis; otherwise, separate Statements and Schedules are required. If the Co-Borrower section was completed about a non-applicant spouse or other person, this Statement and supporting schedules must be completed by that spouse or other person.

Consolidated ☐ Jointly ☐ Not jointly ☐

Completed ☐ Jointly ☒ Not jointly

Schedule of Real Estate Owned (If additional properties are owned, use continuation sheet)							Insurance.	
Property Address (enter S if sold, PS if pending sale or R if rental being held for income)	Type of Property	Present Market Value	Amount of Mortgages & Liens	Gross Rental Income	Mortgage Payments	Maintenance, Taxes & Misc.	Net Rental Income	
206 Cudass Court Moore, SC 29369	SFR	\$ 250,000	\$ 119,495	\$	\$ 920	\$	\$	
	Totals	\$ 250,000	\$ 119,495	\$	\$ 920	\$	\$	

List any additional names under which credit has previously been received and indicate appropriate creditor name(s) and account number(s):					
Alternate Name	Creditor Name	Account Number	Date Received	Amount Received	Source of Funds

VII. DETAILS OF TRANSACTION		VIII. DECLARATIONS				
a. Purchase price	\$	If you answer "Yes" to any questions a through i, please use continuation sheet for explanation. a. Are there any outstanding judgments against you? b. Have you been declared bankrupt within the past 7 years? c. Have you had property foreclosed upon or given title or deed in lieu thereof in the last 7 years? d. Are you a party to a lawsuit? e. Have you directly or indirectly been obligated on any loan which resulted in foreclosure, transfer of title in lieu of foreclosure, or judgment? (This would include such loans as home mortgage loans, SBA loans, home improvement loans, educational loans, manufactured (mobile) home loans, any mortgage, financial obligation, bond, or loan guarantee. If "Yes," provide details, including date, name and address of lender, FHA or VA case number, if any, and reasons for the action.) f. Are you presently delinquent or in default on any Federal debt or any other loan, mortgage, financial obligation, bond, or loan guarantee? If "Yes," give details as described in the preceding question. g. Are you obligated to pay alimony, child support, or separate maintenance? h. Is any part of the down payment borrowed? i. Are you a co-maker or endorser on a note? j. Are you a U. S. citizen? k. Are you a permanent resident alien? l. Do you intend to occupy the property as your primary residence? If "Yes," complete question m below. m. Have you had an ownership interest in a property in the last three years? (1) What type of property did you own: principal residence (PR), second home (SH), or investment property (IP)? (2) How did you hold title to the home: solely by yourself (S), jointly with your spouse (SP), or jointly with another person (O)?	Borrower	Co-Borrower		
b. Alterations, improvements, repairs			Yes	No	Yes	No
c. Land (If acquired separately)			☐	☒	☐	☐
d. Refinance (incl. debts to be paid off)	120,275.00		☐	☒	☐	☐
e. Estimated prepaid items	1,649.06		☐	☒	☐	☐
f. Estimated closing costs	4,227.30		☐	☒	☐	☐
g. PMI, MIP, Funding Fee			☐	☒	☐	☐
h. Discount (If Borrower will pay)	1,721.25		☐	☒	☐	☐
i. Total costs (add items a. through h.)	127,772.61		☐	☒	☐	☐
j. Subordinate financing			☐	☒	☐	☐
k. Borrower's closing costs paid by Seller			☐	☒	☐	☐
l. Other Credits (explain)			☐	☒	☐	☐
m. Loan amount (exclude PMI, MIP, Funding Fee financed)	127,500.00		☐	☒	☐	☐
n. PMI, MIP, Funding Fee financed		☐	☒	☐	☐	
o. Loan amount (add m & n)	127,500.00	☐	☒	☐	☐	
p. Cash from/to Borrower (subtract j, k, l & o from i)	-152.39	☐	☒	☐	☐	

IX. ACKNOWLEDGEMENT AND AGREEMENT

Each of the undersigned specifically represents to Lender and to Lender's actual or potential agents, brokers, processors, attorneys, insurers, servicers, successors and assigns and agrees and acknowledges that: (1) the information provided in this application is true and correct as of the date set forth opposite my signature and that any intentional or negligent misrepresentation of this information contained in this application may result in civil liability, including monetary damages, to any person who may suffer any loss due to reliance upon any misrepresentation that I have made on this application, and/or in criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Sec. 1001, et seq.; (2) the loan requested pursuant to this application (the "Loan") will be secured by a mortgage or deed of trust on the property described in this application; (3) the property will not be used for any illegal or prohibited purpose or use; (4) all statements made in this application are made for the purpose of obtaining a residential mortgage loan; (5) the property will be occupied as indicated in this application; (6) the Lender, its servicers, successors or assigns may retain the original and/or an electronic record of this application, whether or not the loan is approved; (7) the Lender and its agents, brokers, insurers, servicers, successors and assigns may continuously rely on the information contained in the application, and I am obligated to amend and/or supplement the information provided in this application if any of the material facts that I have represented herein should change prior to closing of the Loan; (8) in the event that my payments on the Loan become delinquent, the Lender, its servicers, successors, or assigns may, in addition to any other rights and remedies that it may have relating to such delinquency, report my name and account information to one or more consumer credit reporting agencies; (9) ownership of the Loan and/or administration of the Loan account may be transferred with such notice as may be required by law; (10) neither Lender nor its agents, brokers, insurers, servicers, successors or assigns has made any representation or warranty, express or implied, to me regarding the property or the condition or value of the property; and (11) my transmission of this application as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or my facsimile transmission of this application containing a facsimile of my signature, shall be as effective, enforceable and valid as if a paper version of this application were delivered containing my original written signature.

Acknowledgement. Each of the undersigned hereby acknowledges that any owner of the Loan, its servicers, successors and assigns, may verify or reverify any information contained in this application or obtain any information or data relating to the Loan, for any legitimate purpose through any source, including a source named in this application or a consumer reporting agency.

Borrower's Signature <i>Demetra W. Succi</i>	Date 02/16/09	Co-Borrower's Signature <i>[Signature]</i>	Date 02/16/09
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X. INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the Federal Government for certain types of loans related to a dwelling in order to monitor the lender's compliance with equal credit opportunity, fair housing and home mortgage disclosure laws. You are not required to furnish this information, but are encouraged to do so. The law provides that a Lender may not discriminate either on the basis of this information, or on whether you choose to furnish it. If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, under Federal regulations, this lender is required to note the information on the basis of visual observation and surname if you have made this application in person. If you do not wish to furnish the information, please check the box below. (Lender must review the above material to assure that the disclosures satisfy all requirements to which the lender is subject under applicable state law for the particular type of loan applied for.)

BORROWER ☐ I do not wish to furnish this information Ethnicity: ☐ Hispanic or Latino ☒ Not Hispanic or Latino Race: ☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☒ White Sex: ☒ Female ☐ Male To be Completed by Interviewer: This application was taken by: ☐ Face-to-face interview ☐ Mail ☒ Telephone ☐ Internet Interviewer's Name (print or type) John Price Interviewer's Signature _____ Date 04/06/2005 Interviewer's Phone Number (incl. area code) 864-681-4445	CO-BORROWER ☐ I do not wish to furnish this information Ethnicity: ☐ Hispanic or Latino ☐ Not Hispanic or Latino Race: ☐ American Indian or Alaska Native ☐ Asian ☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander ☐ White Sex: ☐ Female ☐ Male Name and Address of Interviewer's Employer Allied Home Mortgage Capital Corp. 239 West Laurens Street Laurens, SC 29360 (P) 864-681-4445 (F) 864-681-4451
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Continuation Sheet/Residential Loan Application

Use this continuation sheet if you need more space to complete the Residential Loan Application. Mark B for Borrower or C for Co-Borrower

Borrower:
Lenora W Tucci
Co-Borrower:

Agency Case Number:

Lender Case Number:

VI ASSETS AND LIABILITIES

ASSETS	Cash or Market Value	LIABILITIES	Monthly Payment & Months Left to Pay	Unpaid Balance
Name and address of Bank, S&L, or Credit Union		Name and address of Company CREDIT MANAGEMENT LP 4200 INTERNATIONAL PKWY CARROLLTON, TX 75007	\$ Payt./Mos.	\$
Acct. no.	\$	Acct. No. [REDACTED]	0	70
Name and address of Bank, S&L, or Credit Union		Name and address of Company CREDIT PROTECTION ASSO 13355 NOEL RD STE 2100 DALLAS, TX 75240	\$ Payt./Mos.	\$
Acct. no.	\$	Acct. No. [REDACTED]		70
Name and address of Bank, S&L, or Credit Union		Name and address of Company CHASE- TJX PO BOX 15298 WILMINGTON, DE 19850	\$ Payt./Mos.	\$
Acct. no.	\$	Acct. No. [REDACTED]	1	1
Name and address of Bank, S&L, or Credit Union		Name and address of Company	\$ Payt./Mos.	\$
Acct. no.	\$	Acct. No.		
Name and address of Bank, S&L, or Credit Union		Name and address of Company	\$ Payt./Mos.	\$
Acct. no.	\$	Acct. No.		
Name and address of Bank, S&L, or Credit Union		Name and address of Company	\$ Payt./Mos.	\$
Acct. no.	\$	Acct. No.		
Name and address of Bank, S&L, or Credit Union		Name and address of Company	\$ Payt./Mos.	\$
Acct. no.	\$	Acct. No.		

We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements concerning any of the above facts as applicable under the provisions of Title 18, United States Code, Section 1001, et seq.

Borrower's Signature:

Date

Co-Borrower's Signature:

Date

Fannie Mae Form 1003 07/05
CALYX Form 1003 Lnap5est.frm 0/05

Page 5 of 5

Freddie Mac Form 65 07/05

BORROWER'S CERTIFICATION & AUTHORIZATION**Certification**

The undersigned certify the following:

1. I/We have applied for a mortgage loan from ALLIED HOME MORTGAGE CAPITAL CORPORATION ("Lender").
In applying for the loan, I/we completed a loan application containing various information on the purpose of the loan, the amount and source of the downpayment, employment and income information, and assets and liabilities. I/We certify that all of the information is true and complete. I/We made no misrepresentations in the loan application or other documents, nor did I/we omit any pertinent information.
2. I/We understand and agree that Lender reserves the right to change the mortgage loan review process to a full documentation program. This may include verifying the information provided on the application with the employer and/or the financial institution.
3. I/We fully understand that it is a Federal crime punishable by fine or imprisonment, or both, to knowingly make any false statements when applying for this mortgage, as applicable under the provisions of Title 18, United States Code, Section 1014.

Authorization to Release Information

To Whom It May Concern:

1. I/We have applied for a mortgage loan from Lender. As part of the application process, Lender and the mortgage guaranty insurer (if any), may verify information contained in my/our loan application and in other documents required in connection with the loan, either before the loan is closed or as part of its quality control program.
2. I/We authorize you to provide to Lender and to any investor to whom you may sell my mortgage, and to the mortgage guaranty insurer (if any), any and all information and documentation that they request. Such information includes, but is not limited to, employment history and income; bank, money market, and similar account balances; credit history; and copies of income tax returns.
3. Lender or any investor that purchases the mortgage, or the mortgage guaranty insurer (if any), may address this authorization to any party named in the loan application.
4. A copy of this authorization may be accepted as an original.
5. Your prompt reply to Lender, the investor that purchased the mortgage, or the mortgage guaranty insurer (if any) is appreciated.
6. Mortgage guaranty insurer (if any):
N/A

Right of Financial Privacy Act of 1978 Notice- The Department of Housing and Urban Development (HUD) and the Department of Veterans Affairs (VA) have the right to access financial information held by a financial institution in determining whether to qualify a prospective applicant under their respective loan programs. If you are applying for HUD or VA loan, your financial records will be made available to the requesting government agency without further notice to or authorization from you; such financial information will not be disclosed or released outside the requesting agency except as required or permitted by law. Prior to the time that your financial records are disclosed, you may revoke this authorization at any time; however, your refusal to provide the information may cause your application to be delayed or rejected. If you believe that your financial records have been disclosed improperly, you may have legal rights under the Right to Financial Privacy Act of 1978 (12 USC 3400 et seq.).

Lenora W. Tucci 11/16/02
Borrower LENORA W. TUCCI Date Social Security Number

Borrower Date Social Security Number

Borrower Date Social Security Number

Borrower Date Social Security Number

Borrower Date Social Security Number

Borrower Date Social Security Number

PAYMENT LETTER TO BORROWER

FROM: ALLIED HOME MORTGAGE CAPITAL CORPORATION
6110 PINEMONT DRIVE, SUITE 215
HOUSTON, TEXAS 77092

RE: Loan Number: 28510074
Property Address: 206 CULDASS COURT, MOORE, SOUTH CAROLINA 29369

TO: LENORA W. TUCCI
206 CULDASS COURT
MOORE, SOUTH CAROLINA 29369

Dear Borrower:

The monthly payments on the above referred to loan are to begin on JANUARY 1, 2010, and will continue monthly until DECEMBER 1, 2039.

Your monthly payment will consist of the following:

PRINCIPAL AND INTEREST
MMI/PMI INSURANCE
RESERVE FOR TAXES
RESERVE FOR INSURANCE
RESERVE FOR FLOOD INSURANCE

\$ 665.10

85.82

79.00

\$ 829.92

TOTAL MONTHLY PAYMENTS

You are to make your payments to:

ALLIED HOME MORTGAGE CAPITAL CORPORATION
6110 PINEMONT DRIVE, SUITE 215
HOUSTON, TEXAS 77092

Any correspondence, or calls, in reference to your loan, please refer to the above loan number.

Copy received and acknowledged.

Date:

November 16, 2009

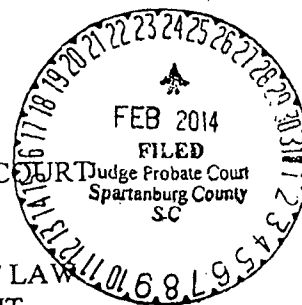
Lenora W. Tucci
LENORA W. TUCCI

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
LENORA WHITFIELD TUCCI,)
Petitioner,)
vs.)
APRIL TUCCI and ROBERT D.)
GANYARD, Personal Representatives)
of the Estate of Francis Paul Tucci, Jr.)
Respondent.)

IN THE PROBATE COURT

MEMORANDUM OF LAW
OF RESPONDENT

CASE NUMBER 2012ES42-01144



Statement of Facts

Francis Paul Tucci, Jr. ("Decedent") died testate on July 29, 2012, leaving a Last Will and Testament dated July 10, 2012 ("the Will"), which was filed in the Spartanburg County Probate Court on August 13, 2012. April A. Tucci and Robert D. Ganyard were duly appointed as Co-Personal Representatives of the Decedent's Estate on September 21, 2013.

The Decedent and Lenora Whitfield Tucci ("Mrs. Tucci") separated on November 6, 2011, and divorce proceedings were pending at the time of the Decedent's death. The divorce proceedings were dismissed on March 29, 2013.

The first Notice to Creditors was published in The Boiling Springs Sentry, The Inman Times, The Middle Tyger Times and The Woodruff News in Spartanburg County, The Blacksburg Times in Cherokee County, and The Whitmire News in Newberry County on October 3, 2012. The creditor's claim period ended on June 3, 2013.

Decedent's Will devises all of Decedent's assets to his daughter, April A. Tucci. The Inventory and Appraisement lists a one-half (½) undivided interest in real property located at 206 Culdass Court, Moore, South Carolina. The value of Decedent's interest in this property is shown as \$108,750, with the property in its entirety being valued at \$217,500. The other one-half (½)

12-1144

undivided interest in this property is owned by Mrs. Tucci. This property is encumbered by a mortgage with a date of death balance of approximately \$123,000. The other probate assets of Decedent's estate include a Horace Mann Insurance refund in the amount of \$297, and tangible personal property, valued at \$11,657.

On May 28, 2013, Mrs. Tucci filed: (i) an Elective Share claim pursuant to South Carolina Code § 62-2-201, *et seq.*; (ii) a Creditor's Claim in the amount of \$4,203.10 for mortgage payments made by claimant on the marital home subsequent to Decedent's death; and (iii) a Creditor's Claim in the amount of \$31,358.19 for one-half (½) of funds which Mrs. Tucci maintains were her separate funds which were used to purchase the home.

On June 13, 2013, the Co-Personal Representatives, on behalf of the Estate, filed Notices of Disallowance as to the elective share claim and the creditor's claims. The Estate also filed a Motion to Dismiss the elective share claim on June 12, 2013. On July 9, 2013, Mrs. Tucci filed a Petition for Allowance of Claims as to her two creditor's claims, and the Co-Personal Representatives timely filed an Answer on August 2, 2013, denying said Creditor's Claims.

Elective Share

South Carolina Code § 62-2-205(a) states that a claim for elective share must be made within *the later of* (i) eight (8) months after the decedent's date of death, or (ii) six (6) months after probate of a decedent's will. Decedent died on July 29, 2012. Therefore, the "eight months after death" time period expired on March 29, 2013. Decedent's will was admitted to probate on September 21, 2012 (the date the Co-Personal Representatives were appointed) and the "six months after probate of will" time period expired on March 21, 2013. Mrs. Tucci made her claim for Elective Share on May 28, 2013. Since the elective share claim was not filed on or before March 29, 2013, the Elective Share

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claim of Mrs. Tucci is time-barred pursuant to *South Carolina Code* § 62-2-205(a). The elective share statute "is a statute of creation, and . . . strict compliance with its terms is mandatory in order to exercise the right to an elective share." *Simpson v. Sanders*, 445 S.E.2d, 93, 94 (S.C. 1994). Because Mrs. Tucci did not timely file her elective share claim within the statutorily mandated time period, she forfeited her right to an elective share, and her elective share claim should be dismissed.

Claim for Mortgage Payments

Mrs. Tucci filed a Creditor's Claim for mortgage payments which she made on the marital home subsequent to the Decedent's death, which claim was timely filed on May 28, 2013. Mrs. Tucci claims that she is entitled to repayment of one-half (½) of the mortgage payments made by her since the Decedent's death, and that such claim will increase by \$420.31 per month each month the claim goes unsatisfied. The Respondent timely filed a Notice of Disallowance of Claim on June 12, 2013. Mrs. Tucci filed a Petition for Allowance of Claim on July 9, 2013. The Respondent timely filed an Answer to the Petition for Allowance of Claims on August 2, 2013.

Decedent and Mrs. Tucci purchased the subject property, located at 206 Culdass Court, Moore, Spartanburg County Tax Map Number 6-24-14-106.00, on June 24, 2008, as evidenced by deed recorded in the Spartanburg County Register of Deeds Office in Deed Book 91-U at page 92. The parties executed a mortgage ("the 2008 mortgage"), recorded in said Register of Deeds Office in Book 4108, at page 932. The promissory note secured by said mortgage ("the 2008 note") was executed by Mrs. Tucci only. The mortgage was thereafter refinanced on November 19, 2009, as evidenced by mortgage recorded in said Register of Deeds Office in REM Book 4302, at page 345 ("the 2009 mortgage"). The promissory note dated November 19, 2009 secured by said mortgage refinance was executed by Mrs. Tucci only ("the 2009 note").

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The "Borrower", on page 1 of the 2009 mortgage is shown as "Lenora W. Tucci and Frank Tucci, wife and husband." Paragraph 13, on page 9 of the mortgage, states that "[A]ny Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; [and] (b) *is not personally obligated to pay the sums secured by this Security Instrument . . .*" (emphasis added). Thus, because Decedent did not sign the 2009 promissory note, he was not legally obligated to repay the Note, and his estate is not liable on the Note.

At the loan closing on November 16, 2009, the Decedent executed a "Non-Applicant Affidavit" which states, in part, "the undersigned, as a non-applicant, will sign as "Borrower" solely for the purpose of pledging any and all interest of the undersigned in the collateral securing the loan, *without personal obligation for payment of any sums secured by the Security Instrument.*" (emphasis added). Mrs. Tucci signed and received a copy of a "Borrower's Certification & Authorization" and a "Uniform Residential Loan Application" both of which reflect that Mrs. Tucci applied for the loan and was the sole borrower, and she alone was legally obligated to repay the loan evidenced by the promissory note. Mrs. Tucci also signed and received a "Payment Letter to Borrower" which shows Mrs. Tucci as the sole borrower and indicates the amount of monthly mortgage payments due. All of these documents were signed at the mortgage refinance closing and they unequivocally reflect that the Decedent was not a borrower and had no legal obligation on the Note.

Mrs. Tucci has been the sole occupant of the home since Decedent's death. She has not paid rent to the Estate since Decedent's death. If the Court should allow Mrs. Tucci's claim for one-half of mortgage payments on the home since Decedent's death, the Estate submits that her claim should

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be reduced by one-half of the fair market rental value of the home for the period since Decedent's death.

Claim for Down Payment

Mrs. Tucci filed a Creditor's Claim for repayment of one-half ($\frac{1}{2}$) of monies which she maintains was her separate property, which she alleges was used in purchasing the marital home located at 206 Culdass Court, Moore. Mrs. Tucci claims she is entitled to reimbursement in the amount of \$31,358.19. The Respondent timely filed a Notice of Disallowance of Claim on June 12, 2013. Mrs. Tucci filed a Petition for Allowance of Claim on July 9, 2013. Respondent timely filed an Answer to the Petition for Allowance of Claims on August 2, 2013.

The real estate is titled in the names of "Frank Tucci and Lenora W. Tucci, as tenants in common", as evidenced by the deed recorded in the Spartanburg County Register of Deeds Office in Deed Book 91-U at page 92. When Mrs. Tucci used funds to make a down payment on the home, she in effect made a gift to her husband of one-half ($\frac{1}{2}$) of these funds, since title was taken on both names. If it was Mrs. Tucci's intention to be repaid or receive some reimbursement from her husband, such intent should have been evidenced by a promissory note, loan, or other such document. Because no such document was executed, and there is no evidence to suggest her contribution to the down payment was intended to be a loan, the funds which Mrs. Tucci claims to have applied toward the purchase of the home were a gift to the Decedent. The burden is on Mrs. Tucci to rebut the presumption that the funds were a gift. Further, if Mrs. Tucci did not intend this to be a gift, then the deed should have reflected different ownership percentages. Because the property is owned equally as tenants in common, there is no evidence to suggest that it was the intent of either party that the real estate be owned in any other manner except as equal owners.

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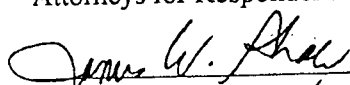
Pre-marital property "may be transmuted into marital property during the marriage . . . if the property is utilized in support of the marriage, becomes so co-mingled as to be untraceable, or is utilized in such a manner as to evidence an intent to make it marital property." *Roberts v. Roberts*, 2009-UP-190, S.C. App. 2009. "Evidence of intent to transmute nonmarital property may include placing the property in joint names, transferring the property to the other spouse as a gift, [or] using the property exclusively for marital purposes . . ." *Id.* Here, the "pre-marital money" which Mrs. Tucci claims to have paid toward the purchase of the marital home was transmuted into marital property because it was used in support of the marriage, title to the property was taken in joint names such that the ownership is equal, and the property was used exclusively for marital purposes. Mrs. Tucci is not entitled to be reimbursed from the Decedent's Estate because the funds were not a loan but were rather a gift of assets to acquire property intended to be used for marital purposes and in support of the marriage.

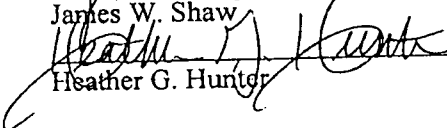
Conclusion

The elective share claim filed by Mrs. Tucci should be denied because it was not timely filed. The creditor's claims of Mrs. Tucci should likewise be disallowed because: (i) the Decedent was not legally obligated on the promissory note which was secured by the 2009 mortgage; and (ii) any amounts paid by Mrs. Tucci toward the purchase price of the home constituted a gift to the Decedent.

Respectfully submitted,

DENNIS, SHAW & DRENNAN, LLC
Attorneys for Respondent

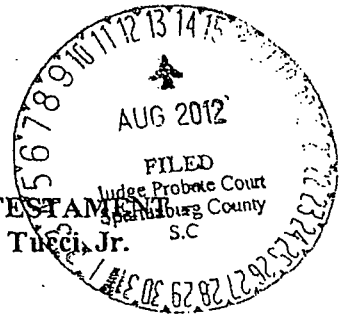

James W. Shaw


Heather G. Hunter

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

LAST WILL AND TESTAMENT
Francis Paul Tucci, Jr.



I, **Francis Paul Tucci, Jr.**, a resident of and domiciled in the County of Spartanburg, State of South Carolina, do hereby make, publish and declare this to be my Last Will and Testament hereby revoking all Wills and Codicils at any time heretofore made by me.

ITEM I

I direct that all my debts and funeral expenses be paid as soon after my death as may be practicable; however, I direct that my Personal Representative may cause any debt to be carried, renewed and refinanced from time to time upon such terms and with such securities for its repayment as my Personal Representative may deem advisable taking into consideration the best interest of the beneficiaries hereunder.

ITEM II

I give and bequeath all my personal and household effects of every kind including but not limited to furniture, appliances, pictures, silverware, china, glass, books, jewelry, wearing apparel, boat, automobiles, and other vehicles, and all policies of fire, burglary, property damage, and other insurance on or in connection with the use of this property, as follows:

(1) I may leave written memoranda disposing of certain items of my tangible personal property. Any such item of tangible personal property shall pass according to the terms of such memoranda in existence at the time of my death. If no such written memoranda are found or identified by my Personal Representative within ninety (90) days after my Personal Representative's qualification, it shall be conclusively presumed that there are no such memoranda and any subsequent discovered memoranda shall be ineffective. Any property given and devised to a beneficiary who is not living at the time of my death shall pass according to the provisions of the following paragraph, and not pursuant to any anti-lapse statute.

(2) In default of such memorandum, or to the extent such memoranda do not completely or effectively dispose of such property, I give and bequeath the rest of my personal and household effects of every kind to my daughter, **April Tucci**.

ITEM III

All the rest, residue and remainder of my estate, both real and personal, of every kind and nature, and wherever situated, of which I may die seized or possessed, or of which I may be entitled to dispose of at the time of my death, I give, devise and bequeath to my daughter, **April Tucci**, in fee simple in the event she survives me.

ITEM IV

I hereby nominate, constitute and appoint my daughter, **April Tucci**, as Personal Representative of this my Last Will and Testament and direct that said Personal Representative shall serve without bond.

ITEM V

By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to Personal Representative generally, my Personal Representative is specifically authorized and empowered with respect to any property, real or personal, at any time held under any provision of this my Will: to allot, allocate between principal and income, assign, borrow money with or without security, buy, sell at public or private sale, care for, collect, compromise claims, contract with respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate

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any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, to make distribution or division in cash or in kind or partly in each without regard to the income tax basis of such asset, and in general, to exercise all of the powers in the management of my Estate which any individual could exercise in the management of similar property owned in his own right, upon such terms and conditions as to my Personal Representative may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative may deem proper or necessary to carry out the purposes of this my Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

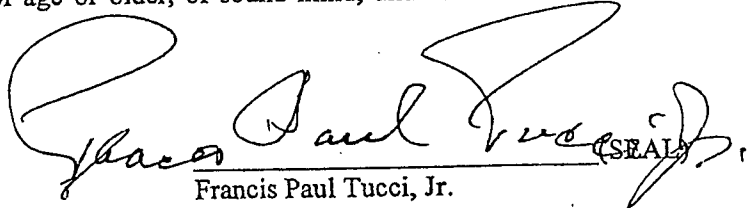
ITEM VI

Whenever the word "Personal Representative" or any modifying or substituted pronoun is used in this my Will, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative named herein and to any successor or substitute Personal Representative acting hereunder, and such successor or substitute Personal Representative shall possess all the rights, powers and duties, authority and responsibility conferred upon the Personal Representative originally named herein.

ITEM VII

If any beneficiary and I should die under such circumstances as would render it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this my Will that said beneficiary predeceased me.

I, **Francis Paul Tucci, Jr.**, the Testator, sign my name this 10th day of July, 2012, to this instrument consisting of three (3) type-written pages, with all pages bearing my signature and, being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.


Francis Paul Tucci, Jr.

We Shirley B. Fine and Sandy Leneer Green the witnesses, sign our names to this instrument, and at least one of us being first duly sworn, and do hereby declare to the undersigned authority that the Testator, **Francis Paul Tucci, Jr.** signs and executes this instrument as, his Last Will and Testament and that, she signs it willingly, and that each of us, in the presence and hearing of the Testator, **Francis Paul Tucci, Jr.**, and in the presence of each other hereby signs this instrument as witnesses to the signing of the Testator, **Francis Paul Tucci, Jr.**, and that to the best of our knowledge, the Testator, is eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

Shirley B. Fine of Spokane, WA
Sandy Leneer Green of Spokane, WA

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
In the Court of Common Pleas

The Honorable J. Derham Cole, Circuit Court Judge

Case No. 2014-CP-42-1081
Appellate Case No. 2014-002726

RECEIVED
JUN 05 2015
SC Court of Appeals

Lenora Whitfield Tucci,

Appellant,

v.

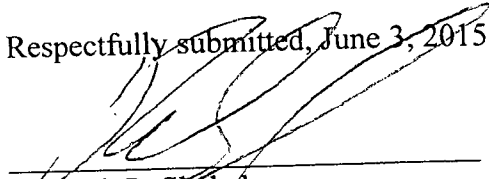
April Tucci and Robert D.
Ganyard, Personal
Representatives of the Estate
of Francis Paul Tucci, Jr.

Respondents.

CERTIFICATE OF COUNSEL

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

Respectfully submitted, June 3, 2015


Kenneth P. Shabel
Campbell & Shabel, Attorneys at Law
175 Magnolia Street, Suite 201
Spartanburg, SC 29306
(864) 583-0001
Attorney for Appellant

STATE OF SOUTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF SPARTANBURG

Subscribed, sworn to and acknowledged before me by, **Francis Paul Tucci, Jr.**, the Testator, and
subscribed and sworn to before me by Shelley B. Fire, witness this 10th day of July, 2012.

David L. Cat
Notary Public for South Carolina

My commission expires: 2/17/15

I do hereby certify that the foregoing is a
true and correct copy of the original on file in
this office. Given under my hand and seal of
office this Aug. 13th, 2012

Panda A. Caldore
Judge Probate Court
Spartanburg County, S.C.

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THE STATE OF SOUTH CAROLINA
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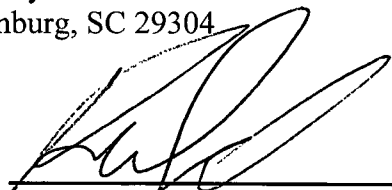
Respondents.

PROOF OF SERVICE -

I certified that I have served the Record on Appeal by hand delivering said documents directly to the offices of the Respondent's attorney of Record as set forth below:

James W. Shaw, Esq.
Heather Gwinn, Attorney
Dennis, Shaw & Drennan, LLC
103 Lafayette Street
Spartanburg, SC 29304

June 3, 2015


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