

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Pamela Richey

vs.

Shirley W. Booth, Thomas J. Booth and
Estate of Lee C. Williams,

RECEIVED
JAN 11 2016
SC Court of Appeals
Appellant

Respondents.

APPELATE CASE NO. 2015-001056

**DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL**

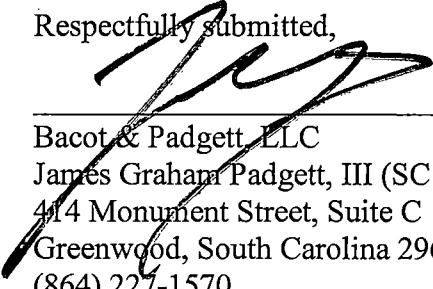
Respondent Estate of Lee C. Williams proposes the following to be included in the Record on Appeal:

- (1) Motion for Summary Judgment Exhibit Record, Estate Defendant's Exhibits:
 - a. Index Page;
 - b. 2006-ES-01-169 Summons and Petition;
 - c. 2007-CP-01-188 Amended Answer and Counterclaim;
 - d. 2013-CP-01-284 Complaint;
 - e. Mutual Release and Settlement Agreement;
 - f. Stipulation of Dismissal, with prejudice;
 - g. pleading comparison master matrix;
 - h. matrix of admission of prior suits;
 - i. matrix of admission of prior suit settled;
 - j. matrix of allegations Williams took money intended for Richey;
 - k. matrix of admission of prior stipulation of dismissal;
 - l. matrix of admission for mutual release and settlement agreement;
 - m. Richey's response to Estate's request to admit;
- (2) Order Granting Summary Judgment;

- (3) Return of Sam Jeanes, Personal Representative for the Estate of Lee C. Williams to Plaintiff's Motion to Alter or Amend;
- (4) Form 4 Order Denying Richey's 59e Motion.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

Respectfully submitted,



Bacot & Padgett, LLC
James Graham Padgett, III (SC Bar #69354)
414 Monument Street, Suite C
Greenwood, South Carolina 29646
(864) 227-1570

Attorneys for the Respondent Sam Jeanes, as Personal Representative of the Estate of Lee C. Williams

at Greenwood, South Carolina
January 5, 2016

COURT OF COMMON PLEAS
EXHIBIT RECORD AND RECEIPT FORM
 Pamela Richey -vs- Shirley W. Booth (2013CP0100284)

PLAINTIFF'S/ EXHIBITS

NO	DESCRIPTION	ID	EV
P-1	Handwritten affidavit of Lee C. Williams	x	x
P-2	Typewritten affidavit of Billy L. Garrett, Jr.	x	x
P-3	Typewritten affidavit of Lee C. Williams	x	x

DEFENDANT'S EXHIBITS

D-1	Various documents submitted by Defendants	x	x
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COURT'S EXHIBITS

	(NONE)		
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[Signature] 2-5-15
 COURT REPORTER DATE

[Signature] 2-5-15
 CLERK OF COURT DATE

1

2006-ES-01-1609
Probate

2

2007-CP-01-188
Common Pleas

3

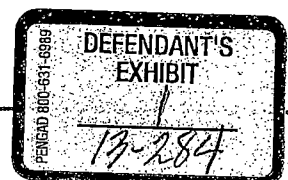
2013-CP-01-284
Common Pleas

4

Mutual Release + Settlement
Agreement and Plaintiff
Request to Admit
2007-CP-01-188

5

Stipulation of Dismissal
with Prejudice
2007-CP-01-188



STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
)
COUNTY OF ABBEVILLE)

IN RE: ESTATE OF HUGH A. WILLIAMS
CASE NUMBER: 2006-ES-01-00169

PAMELA P. RICHEY,)
)
Petitioner,)
)
v.)
)
LEE C. WILLIAMS,)
)
Respondent.)
_____)


STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
OCT 12 2007
JUDGE OF PROBATE

SUMMONS

TO: THE RESPONDENT LEE C. WILLIAMS:

This SUMMONS requires you to answer the attached Petition and to serve a copy of your Answer on the subscribers at their office, 109 Oak Avenue, Greenwood, S.C. 29646, within THIRTY(30) DAYS after service thereof, exclusive of the day of such service, and if you fail to answer the said Petition within that time, judgment by default will be rendered against you for the relief demanded in the Petition.

THE GARRETT LAW FIRM, P.C.
Attorney for the Petitioner

By: 
Billy J. Garrett, Jr.
109 Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Fax: (864) 229-8001

Greenwood, South Carolina

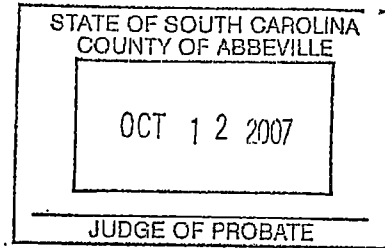
October 8th, 2007

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
)
COUNTY OF ABBEVILLE)

IN RE: ESTATE OF HUGH A. WILLIAMS
CASE NUMBER: 2006-ES-01-00169

PAMELA P. RICHEY,)
)
Petitioner,)
)
v.)
)
LEE C. WILLIAMS,)
)
Respondent.)
_____)

PETITION



The Petitioner, while reserving motions filed and to be filed, would respectfully allege and show unto the Court as follows:

JURISDICTION AND VENUE

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1. The Petitioner is a citizen and resident of Abbeville County, South Carolina.
2. The Respondent is a citizen and resident of Abbeville County, South Carolina.
3. The Petitioner is the Decedent's daughter, and the Respondent is the Decedent's brother.
4. The Decedent's estate is currently being probated in Abbeville County, South Carolina.
5. This Court has personal jurisdiction over the parties and subject matter jurisdiction over the issues raised herein, and venue is proper in Abbeville County, South Carolina.

GENERAL ALLEGATIONS

6. Upon information and belief, the Respondent has taken, secreted, and converted

\$628,000.00 in cash, more or less, which belonged to the Decedent and which was devised to the Petitioner in the Decedent's will.

7. Upon information and belief, the Respondent used the Decedent's money to open two (2) \$100,000.00 certificates of deposit for the Petitioner at Abbeville Savings & Loan.

8. Upon information and belief, the Respondent used the Decedent's money to buy two (2) vehicles for the Petitioner, and upon information and belief there is money left over.

9. Upon information and belief, the Respondent has original documents evidencing where the Decedent loaned money to the Respondent.

FOR A FIRST CAUSE OF ACTION

(Assets to Be Included in Decedent's Estate)

10. The Petitioner hereby incorporates the relevant portions of Paragraphs 1 to 9 into this her First Cause of Action as if fully set forth herein verbatim.

11. The Petitioner is informed and believes that the Court should issue an order requiring the Respondent to return \$628,000.00 in cash, more or less, to the estate and that the money should be distributed according to the Decedent's will.

12. The Petitioner is informed and believes that the Court should issue an order finding that the two (2) vehicles are estate assets and that the vehicles should be distributed according to the Decedent's will.

13. The Petitioner is informed and believes that the Court should issue an order finding that any money of the Decedent's not used to purchase the two (2) vehicles is an estate asset and should be distributed according to the Decedent's will.

14. The Petitioner is informed and believes that the Court should issue an order requiring

COUNTY OF ABBEVILLE

OCT 12 2007

JUDGE OF PROBATE

the Respondent to produce all original documents evidencing where the Decedent loaned money to the Respondent.

FOR A SECOND CAUSE OF ACTION

(Accounting)

15. The Petitioner hereby incorporates the relevant portions of Paragraphs 1 to 14 into this her Second Cause of Action as if fully set forth herein verbatim.

16. The Petitioner is informed and believes that the Respondent should be required to provide an in-depth accounting of all monies and all other property taken from the Decedent prior to and after the Decedent's death.

17. The Petitioner is informed and believes that the Respondent should be required to produce all original documents evidencing where the Decedent loaned money to the Respondent.

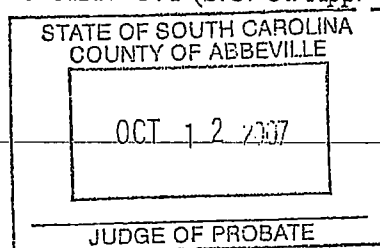
FOR A THIRD CAUSE OF ACTION

(Breach of Fiduciary Duties)

18. The Petitioner hereby incorporates the relevant portions of Paragraphs 1 to 17 into this her Third Cause of Action as if fully set forth herein verbatim.

19. Upon information and belief, the Respondent took advantage of the Decedent's trust in the Respondent and the Respondent's poor physical and mental health when he took, secreted, and converted \$628,000.00 in cash, more or less, from the Decedent and which was devised to the Petitioner in the Decedent's will. As the Decedent's brother and confidant, the Respondent had a fiduciary duty to the Decedent by virtue of his special control over and relationship with the Decedent. See Macaulay v. Wachovia Bank of South Carolina, 569 S.E.2d 371 (S.C. Ct. App. 2002).

#3
[Handwritten initials]



20. The existence of the Respondent's fiduciary relationship with the Decedent creates a presumption that the Respondent exercised undue influence over the Decedent.

21. The Respondent breached his fiduciary duties to the Decedent while alive and to his estate since his death.

22. The Petitioner is informed and believes that the Court should find that the Respondent breached his fiduciary duties to the Decedent and that the Respondent should be required to account for all estate assets, including but not limited to original loan documents, and to return the same to the estate.

FOR A FOURTH CAUSE OF ACTION

(Attorney Fees and Costs)

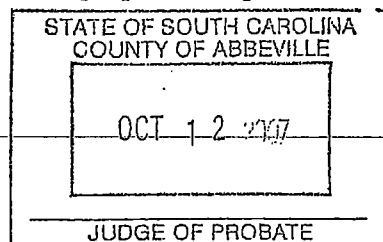
23. The Petitioner hereby incorporates the relevant portions of Paragraphs 1 to 22 into this her Fourth Cause of Action as if fully set forth herein verbatim.

24. The Petitioner is informed and believes that the Respondent should be responsible for her reasonable attorney fees and costs because the Respondent's conduct necessitated that the Petitioner hire an attorney to correct the inequities.

PRAYER

WHEREFORE, the Petitioner prays:

1. For judgment against the Respondent upon one or more causes of action.
2. For an accounting.
3. For attorney fees and costs.
4. For such other and further relief as this Court deems just, proper, and equitable.



THE GARRETT LAW FIRM, P.C.
Attorney for the Petitioner

By: Billy J. Garrett, Jr.
Billy J. Garrett, Jr.
109 Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Facsimile: (864) 229-8001

Greenwood, South Carolina

October 8, 2007

(Handwritten initials)

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
OCT 12 2007
JUDGE OF PROBATE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ABBEVILLE)
)
 LEE C. WILLIAMS,)
)
 Plaintiff,)
)
 v.)
)
 PAMELA P. RICHEY,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT
 AMENDED ANSWER AND
 COUNTERCLAIM
 C/A No.: 2007-CP-01-188
 (JURY TRIAL DEMANDED)

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 2008 FEB 18 AM 9 20
 EMILY Y MCMAHAN
 CLERK OF COURT

The Defendant, while reserving any motions filed or to be filed, and while amending her answer to the Plaintiff's Complaint and counterclaiming against the Plaintiff, would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE
 (General Denial)

TRUE COPY
[Signature]
 ABBEVILLE COUNTY CLERK OF COURT

#1
 1882

1. The Defendant denies all allegations in the Plaintiff's Complaint except those allegations which are specifically admitted, explained, or modified.

FOR A SECOND DEFENSE
 (Specific Denial)

2. The Defendant hereby incorporates the relevant portions of Paragraph 1 into this her Second Defense as if fully set forth herein verbatim.

- 3. Admits Paragraph 1.
- 4. Paragraph 2 was omitted from the Plaintiff's Complaint.
- 5. Admits Paragraph 3.

2

6. Admits Paragraph 4.


7. Admits Paragraph 5.

8. Denies Paragraph 6 and demands strict proof thereof.

9. Denies Paragraph 7 and demands strict proof thereof.

10. Admits that portion of Paragraph 8 which alleges that the vehicles were purchased with checks written from the Plaintiff's checking account. However, this money belonged to the late Hugh A. Williams (hereinafter the "Decedent"), who is the Plaintiff's brother and the Defendant's father. Denies the remainder of Paragraph 8 and demands strict proof thereof. The Plaintiff purchased the vehicles without asking the Defendant's permission.

11. Denies Paragraph 9 and demands strict proof thereof.

 12. Admits the first sentence of Paragraph 10. Denies the second sentence of Paragraph 10 and demands strict proof thereof. The vehicles were purchased with money that belonged to the Decedent.

13. Admits Paragraph 11.

14. Admits Paragraph 12. The Defendant did so for good reason.

15. Denies Paragraph 13 and demands strict proof thereof. The vehicles were purchased with money that belonged to the Decedent.

16. Paragraph 14 does not require a response from the Defendant.

17. Denies Paragraph 15 and demands strict proof thereof.

18. Denies Paragraph 16 and demands strict proof thereof.

19. Denies Paragraph 17 and demands strict proof thereof.

20. Denies Paragraph 18 and demands strict proof thereof.

21. Denies Paragraph 19 and demands strict proof thereof.
22. Paragraph 20 does not require a response from the Defendant.
23. Denies Paragraph 21 and demands strict proof thereof.
24. Denies Paragraph 22 and demands strict proof thereof.
25. Denies Paragraph 23 and demands strict proof thereof.
26. Paragraph 24 does not require a response from the Defendant.
27. Denies Paragraph 25 and demands strict proof thereof.
28. Denies Paragraph 26 and demands strict proof thereof.
29. Denies Paragraph 27 and demands strict proof thereof.
30. Denies Paragraph 28 and demands strict proof thereof.
31. Paragraph 29 does not require a response from the Defendant.
32. Denies Paragraph 30 and demands strict proof thereof.
33. Denies Paragraph 31 and demands strict proof thereof.
34. Denies Paragraph 32 and demands strict proof thereof.
35. Denies Paragraph 33 and demands strict proof thereof.
36. Denies Paragraph 34 and demands strict proof thereof.
37. Paragraph 35 does not require a response from the Defendant.
38. Denies Paragraph 36 and all subparts and demands strict proof thereof.
39. Paragraph 37 does not require a response from the Defendant.
40. Denies Paragraph 38 and demands strict proof thereof.
41. Denies Paragraph 39 and demands strict proof thereof.
42. Denies Paragraph 40 and demands strict proof thereof.

43. Denies Paragraph 41 and demands strict proof thereof.
44. Denies Paragraph 42 and demands strict proof thereof.
45. Paragraph 43 does not require a response from the Defendant.
46. Denies Paragraph 44 and demands strict proof thereof.
47. Paragraph 45 does not require a response from the Defendant.
48. Denies Paragraph 46 and all subparts and demands strict proof thereof.
49. Denies Paragraph 47 and demands strict proof thereof.
50. Denies the relief sought in the Prayer and demands strict proof thereof.

FOR A THIRD DEFENSE

(Failure to State Facts Sufficient to Constitute a Cause of Action)

51. The Defendant hereby incorporates the relevant portions of Paragraphs 1 through 50 into this her Third Defense as if set out herein verbatim.

52. The Plaintiff's Complaint should be dismissed pursuant to SCRCivP 12(b)(6) because it fails to state facts sufficient to constitute a cause of action.

FOR A FOURTH DEFENSE

(Unconstitutionality of Punitive Damages)

53. The Defendant hereby incorporates the relevant portions of Paragraphs 1 through 52 into this her Fourth Defense as if set out herein verbatim.

54. Any imposition of punitive damages against the Defendant would violate the United States and South Carolina constitutions.

GENERAL ALLEGATIONS REGARDING DEFENDANT'S COUNTERCLAIM

55. The Defendant hereby incorporates the relevant portions of Paragraphs 1 through 54

into these her General Allegations as if set out herein verbatim.

56. Upon information and belief, the Plaintiff has taken, secreted, and converted \$628,000.00 in cash, more or less, which belonged to the Decedent and which was devised to the Defendant in the Decedent's will.

57. Upon information and belief, the Plaintiff used the Decedent's money to open two (2) \$100,000.00 certificates of deposit for the Defendant at Abbeville Savings & Loan.

58. Upon information and belief, the Plaintiff used the Decedent's money to buy two (2) vehicles for the Defendant, and upon information and belief there is money left over.

59. Upon information and belief, the Plaintiff has original documents evidencing where the Decedent loaned money to the Plaintiff.

FOR A FIRST CAUSE OF ACTION

(Assets to Be Included in Decedent's Estate)

60. The Defendant hereby incorporates the relevant portions of Paragraphs 1 through 59 into this her First Cause of Action as if fully set forth herein verbatim.

61. The Defendant is informed and believes that the Court and jury should require the Plaintiff to return \$628,000.00 in cash, more or less, to the Decedent's estate and that the money should be distributed according to the Decedent's will.

62. The Defendant is informed and believes that the Court and jury should find that the two (2) vehicles are estate assets and that the vehicles should be distributed according to the Decedent's will.

63. The Defendant is informed and believes that the Court and jury should find that any money of the Decedent's not used to purchase the two (2) vehicles is an estate asset and should be

distributed according to the Decedent's will.

64. The Defendant is informed and believes that the Court and jury should require the Plaintiff to produce all original documents evidencing where the Decedent loaned money to the Plaintiff.

FOR A SECOND CAUSE OF ACTION

(Accounting)

65. The Defendant hereby incorporates the relevant portions of Paragraphs 1 through 64 into this her Second Cause of Action as if fully set forth herein verbatim.

66. The Defendant is informed and believes that the Plaintiff should be required to provide an in-depth accounting of all monies and all other property taken from the Decedent prior to and after the Decedent's death.

67. The Defendant is informed and believes that the Plaintiff should be required to produce all original documents evidencing where the Decedent loaned money to the Plaintiff.

FOR A THIRD CAUSE OF ACTION

(Breach of Fiduciary Duties)

68. The Defendant hereby incorporates the relevant portions of Paragraphs 1 through 67 into this her Third Cause of Action as if fully set forth herein verbatim.

69. Upon information and belief, the Plaintiff took advantage of the Decedent's trust in the Plaintiff and the Decedent's poor physical and mental health when he took, secreted, and converted \$628,000.00 in cash, more or less, from the Decedent and which was devised to the Defendant in the Decedent's will. As the Decedent's brother and confidant, the Plaintiff had a fiduciary duty to the Decedent by virtue of his special control over and relationship with the

Decedent. See Macaulay v. Wachovia Bank of South Carolina, 569 S.E.2d 371 (S.C. Ct. App. 2002).

70. The existence of the Plaintiff's fiduciary relationship with the Decedent creates a presumption that the Plaintiff exercised undue influence over the Decedent.

71. The Plaintiff breached his fiduciary duties to the Decedent while alive and to his estate since his death.

72. The Defendant is informed and believes that the Court and jury should find that the Plaintiff breached his fiduciary duties to the Decedent and that the Plaintiff should be required to account for all estate assets, including but not limited to original loan documents, and to return the same to the estate.

FOR A FOURTH CAUSE OF ACTION

(Attorney Fees and Costs)

73. The Defendant hereby incorporates the relevant portions of Paragraphs 1 through 72 into this her Fourth Cause of Action as if fully set forth herein verbatim.

74. The Defendant is informed and believes that the Plaintiff should be responsible for her reasonable attorney fees and costs because the Plaintiff's conduct necessitated that the Defendant hire an attorney to correct the inequities.

PRAYER

WHEREFORE, the Defendant prays:

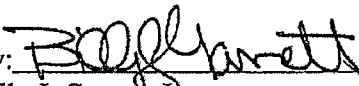
1. That this Court dismiss the Plaintiff's claims with prejudice.
2. For judgment against the Plaintiff upon one or more causes of action.
3. For an accounting by the Plaintiff.

4. For reasonable attorney fees and costs as permitted by case law and statutes such as she can prove at trial.

5. For a trial by jury.

6. For such other and further relief as this Court deems just, proper, and equitable.

THE GARRETT LAW FIRM, P.C.
Attorney for the Defendant

By: 
Billy J. Garrett, Jr.
109 Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Facsimile: (864) 229-8001

Greenwood, South Carolina

February 15, 2008

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ABBEVILLE)
)
 Pamela Richey,)
)
 Plaintiff,)
)
 vs.)
)
 Shirley W. Booth, Thomas J. Booth, Estate)
 of Lee C. Williams,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 EIGHTH JUDICIAL CIRCUIT
 Case No. 2013-CP-01-284
COMPLAINT
(JURY TRIAL DEMANDED)

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 2013 SEP 23 PM 4: 57
 EMILY Y McCAHAN
 CLERK OF COURT

The Plaintiff would respectfully allege and show unto the Court the following:

PARTIES, JURISDICTION, AND VENUE

1. The Plaintiff is a citizen and resident of Abbeville County, South Carolina.
2. Upon information and belief, Defendants Shirley W. Booth and Thomas J. Booth are citizens and residents of Greenwood County, South Carolina.
3. Upon information and belief, Defendant Estate of Lee C. Williams is a duly opened estate in Abbeville County, South Carolina with Case No. 2013-ES-01-00171.
4. This Court has jurisdiction over all parties and subject matter raised herein, and venue is proper in Abbeville County.

FACTUAL ALLEGATIONS

5. The Plaintiff filed a lawsuit against her uncle Lee C. Williams ("Lee") that alleged he took \$400,000.00 from the Plaintiff's father and Lee's brother, Hugh A. Williams ("Hugh"), at the time of Hugh's death that was intended for the Plaintiff. This litigation occurred in Case Nos. 2006-ES-01-00169 and 2007-CP-01-188.

6. Lee denied taking the money, and the parties settled the case without Lee admitting to taking the money.

7. Prior to his death, Lee signed a sworn affidavit admitting that he did take the \$400,000.00 from Hugh, and Hugh intended for Lee to keep one-third (1/3) of the money to care for himself and his wife with the remaining two-thirds (2/3) of the money to be given to the Plaintiff upon Lee's death.

8. During the aforementioned litigation, Lee's daughter and son-in-law, Defendants Shirley W. Booth and Thomas J. Booth, wrongfully took the boxes of money from Lee's house without permission during October 2010 in the presence of witnesses.

9. Defendants Shirley W. Booth and Thomas J. Booth refused to return the money to Lee when he demanded that they do so.

**FIRST CAUSE OF ACTION – AGAINST DEFENDANT ESTATE OF LEE C.
WILLIAMS
(Conversion)**

10. The Plaintiff reiterates and realleges Paragraphs 1-9 as though set forth herein verbatim.

11. The decedent, Lee, took actions that constituted an unauthorized assumption and exercise of the right of ownership over the two-thirds (2/3) share of the money the Plaintiff was entitled to, to the exclusion of the Plaintiff.

12. Lee wrongfully detained the Plaintiff's two-thirds (2/3) share of the money without justification or excuse by refusing to surrender possession of the Plaintiff's share or promising to secure it on the Plaintiff's behalf until his death after the Plaintiff demanded possession of her share.

13. Lee willfully, intentionally, and recklessly converted the Plaintiff's share of the money with knowledge of and conscious indifference to the Plaintiff's lawful and absolute ownership right to that share.

**SECOND CAUSE OF ACTION – AGAINST DEFENDANTS SHIRLEY W. BOOTH AND
THOMAS J. BOOTH
(Conversion)**

14. The Plaintiff reiterates and realleges Paragraphs 1-13 as though set forth herein verbatim.

15. Defendants Booths took actions that constituted an unauthorized assumption and exercise of the right of ownership over the money, two-thirds (2/3) of which the Plaintiff was entitled to, to the exclusion of the Plaintiff when they took the money they had no right to.

16. Defendants Booths wrongfully detained the money without justification or excuse by refusing to surrender possession of the money to Lee or the Plaintiff after Lee demanded possession of the money.

17. Defendants Booths willfully, intentionally, and recklessly converted the money, two-thirds (2/3) of which belonged to the Plaintiff, with knowledge of and conscious indifference to the Plaintiff's lawful and absolute ownership right to her share of the money.

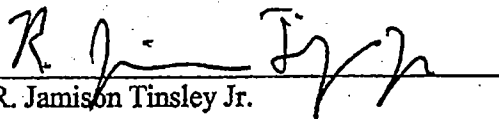
18. Lee attempted to get law enforcement to force Defendants Booths to return the money to no avail.

WHEREFORE, the Plaintiff prays:

1. For actual, incidental, consequential, punitive, and special damages such as should be awarded by a jury at the trial of this case;
2. For a trial by jury;
3. For costs and legal fees; and

4. For such other and further relief as the Court deems just, equitable, and proper.

TINSLEY & TINSLEY, P.C.
Attorney for Plaintiff


R. Jamison Tinsley Jr.
212 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Fax: (864)229-8001

Greenwood, South Carolina

September 18, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

Pamela Richey,)

Plaintiff,)

vs.)

Shirley W. Booth, Thomas J. Booth, Estate)
of Lee C. Williams,)

Defendants.)

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No. 2013-CP-01- 284

SUMMONS

EMILY Y MCGRAHAM
CLERK OF COURT

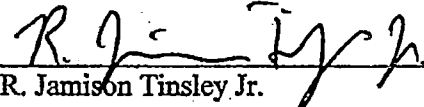
2013 SEP 23 PM 4: 57

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

TO: THE DEFENDANT AND/OR THE DEFENDANT'S ATTORNEY

This **SUMMONS** requires you to answer the attached Complaint and to serve a copy of your Answer on the subscribers at their office, 212 Oak Avenue, Greenwood, S.C. 29646, within **THIRTY (30) DAYS** after service thereof, exclusive of the day of such service, and if you fail to answer the said Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Complaint.

TINSLEY & TINSLEY, P.C.
Attorney for Plaintiff


R. Jamison Tinsley Jr.
212 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Fax: (864)229-8001

Greenwood, South Carolina

September 18, 2013

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

PAMELA RICHEY

Plaintiff(s)

vs.

SHIRLEY W. BOOTH, THOMAS J. BOOTH, AND ESTATE OF LEE C. WILLIAMS

Defendant(s)

Submitted By: R. JAMISON TINSLEY JR. Address: 212 OAK AVE., GREENWOOD, SC 29646

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 01- 384

SC Bar #: 79903 Telephone #: (864)223-0770 Fax #: Other: E-mail: TINSLERJ@GMAIL.COM

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint. This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20-CP- , Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature:

[Handwritten Signature]

Date: SEPTEMBER 18, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Lee C. Williams,

Plaintiff,

v.

Pamela P. Richey,

Defendant.

MUTUAL RELEASE
AND
SETTLEMENT AGREEMENT

C/A No 2007-CP-01-00169

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2011 NOV 10 PM 1:57
EMILY Y. JOHNSON
CLERK OF COURT

This Mutual Release, executed on May 11, 2011, by Lee C. Williams and Pamela P. Richey, is intended to effect the extinguishment of all remedies sought as set forth in the pleadings or remedies that could have been pled. In consideration of:

- 1) THIRTY-TWO THOUSAND FIVE HUNDRED AND NO/100 (\$32,500.00) DOLLARS to be paid by Lee C. Williams to Pamela P. Richey on or before May 24, 2011;
- 2) Relinquishment by Lee C. Williams of all right, title and interest in certain motor vehicles, described with specificity in the complaint, in favor of Pamela P. Richey;
- 3) Lee C. Williams resigning as the Co-Personal Representative of the Estate of Hugh Williams; and
- 4) Release of that certain lien on a Volvo motor vehicle owned by Sandra PETTERO;

Each party shall execute a stipulation of dismissal of the above-captioned action, with prejudice.

Disputes and differences have arisen between the parties with respect to the events described in the pleadings in the above-captioned action, the contents of which are incorporated herein by reference. In consideration described above, the Plaintiff and Defendant have agreed to execute this Mutual Release in settlement of all claims, disputes and differences from the beginning of time to the present relating to or arising out of the allegations and causes of action more specifically described in the pleadings. Accordingly, the Plaintiff and Defendant, for themselves, and their heirs, legal representatives, successors, and assigns, expressly releases, acquits and forever discharges the other party and their heirs, legal representatives, successors, and assigns from all liability for claims, demands and causes of action, known or unknown, heretofore existing, relating to or arising out of the allegations and causes of action more specifically described in the pleadings.

L.C.W. PWR

4

It is understood and agreed that this Mutual Release is not to be construed as an admission of liability on the part of any party. This Release is intended merely to avoid the costs, expenses, and uncertainty of litigation.

The undersigned further declares and represents that this Release has been read and fully understood the contents and effect hereof and does, by the execution hereof, fully commit and bind the undersigned, their heirs, legal representatives, successors and assigns to the terms and conditions of this Mutual Release, and that no promise, inducement or agreement not herein expressed has been made and that this Mutual Release contains the entire agreement between the parties, and that the terms of this Mutual Release are contractual and not a mere recital. Each party is satisfied with the services of their respective attorney.

To the greatest extent possible, this Mutual Release shall remain confidential.

IN WITNESS WHEREOF, the Plaintiff has executed this Release on the day and year first above written.

Lee C. Williams

Lee C. Williams

Pamela P. Richey

Pamela P. Richey

STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)
)
Lee C. Williams,)
)
Plaintiff,)
)
v.)
)
Pamela P. Richey,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
STIPULATION OF DISMISSAL
Civil Case No: 2007-CP-⁰¹⁻⁰⁰¹⁸⁸~~24-00169~~

WHEREAS, the Plaintiff, Lee C. Williams, and Defendant, Pamela P. Richey, have agreed that the above-entitled action be dismissed with prejudice;

NOW, THEREFORE, pursuant to Rule 41 of the South Carolina Rules of Civil Procedure, the parties hereby stipulate and agree that this action be dismissed with prejudice.

This 27 day of May, 2011.

Lee C. Williams, South Carolina

TRUE COPY
Emily Y. McMahahan
ABBEVILLE COUNTY CLERK OF COURT

I SO MOVE:

James Graham Padgett, III
James Graham Padgett, III
Attorney for Plaintiff

I SO CONSENT:

Billy J. Garrett
Billy J. Garrett
Attorney for the Defendant

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2011 JUN 2 AM 9 32
EMILY Y MCMAHAN
CLERK OF COURT

5

Pleading File Date	October 11, 2007	February 18, 2008	September 23, 2013
Case Number	2006-ES-01-169	2007-CP-01-188	2013-CP-01-284
Parties/Court	Pamela P. Richey v. Lee C. Williams (<i>Abbeville Probate</i>)	Lee Williams v. Pamela P. Richey (see counterclaim allegations) (<i>Abbeville CP</i>)	Pamela Richey v. Shirley W. Booth, Thomas J. Booth, Estate of Lee C. Williams (<i>Abbeville CP</i>)
Brief factual summary	claim for \$628,000 plus	action to recover vehicles/counterclaim for \$628,000	claim for a portion of \$628,000 plus
	Pleading Paragraph	Pleading Paragraph	Pleading Paragraph
Admission of prior suits	n/a	n/a	5
Admission prior suits settled	n/a	n/a	6
Allegation Williams took money intended for Penny Richey	6, 11, 19	56, 61, 69	11, 12, 13
Stipulation of Dismissal	No (consolidated into 2007-CP-01-188)	Yes, with prejudice	pending
Mutual Release and Settlement Agreement	No (consolidated into 2007-CP-01-188)	Yes -Admitted as genuine in RTA 8/19/14-	pending

Pleading File Date	October 11, 2007	February 18, 2008	September 23, 2013
Case Number	2006-ES-01-169	2007-CP-01-188	2013-CP-01-284
Parties/Court	Pamela P. Richey v. Lee C. Williams (<i>Abbeville Probate</i>)	Lee Williams v. Pamela P. Richey (see counterclaim allegations) (<i>Abbeville CP</i>)	Pamela Richey v. Shirley W. Booth, Thomas J. Booth, Estate of Lee C. Williams (<i>Abbeville CP</i>)
Admission of prior suits	n/a	n/a	5

5. The Plaintiff filed a lawsuit against her uncle Lee C. Williams ("Lee") that alleged he took \$400,000.00 from the Plaintiff's father and Lee's brother, Hugh A. Williams ("Hugh"), at the time of Hugh's death that was intended for the Plaintiff. This litigation occurred in Case Nos. 2006-ES-01-00169 and 2007-CP-01-188.

Pleading File Date	October 11, 2007	February 18, 2008	September 23, 2013
Case Number	2006-ES-01-169	2007-CP-01-188	2013-CP-01-284
Parties/Court	Pamela P. Richey v. Lee C. Williams (<i>Abbeville Probate</i>)	Lee Williams v. Pamela P. Richey (see counterclaim allegations) (<i>Abbeville CP</i>)	Pamela Richey v. Shirley W. Booth, Thomas J. Booth, Estate of Lee C. Williams (<i>Abbeville CP</i>)
Admission prior suits settled	n/a	n/a	6

6. Lee denied taking the money, and the parties settled the case without Lee admitting to taking the money.

Pleading File Date	October 11, 2007	February 18, 2008	September 23, 2013
Case Number	2006-ES-01-169	2007-CP-01-188	2013-CP-01-284
Parties/Court	Pamela P. Richey v. Lee C. Williams (<i>Abbeville Probate</i>)	Lee Williams v. Pamela P. Richey (see counterclaim allegations) (<i>Abbeville CP</i>)	Pamela Richey v. Shirley W. Booth, Thomas J. Booth, Estate of Lee C. Williams (<i>Abbeville CP</i>)
Allegation Williams took money intended for Penny Richey	6, 11, 19	56, 61, 69	11, 12, 13

6. Upon information and belief, the Respondent has taken, secreted, and converted \$628,000.00 in cash, more or less, which belonged to the Decedent and which was devised to the Petitioner in the Decedent's will.

11. The Petitioner is informed and believes that the Court should issue an order requiring the Respondent to return \$628,000.00 in cash, more or less, to the estate and that the money should be distributed according to the Decedent's will.

19. Upon information and belief, the Respondent took advantage of the Decedent's trust in the Respondent and the Respondent's poor physical and mental health when he took, secreted, and converted \$628,000.00 in cash, more or less, from the Decedent and which was devised to the Petitioner in the Decedent's will. As the Decedent's brother and confidant, the Respondent had a fiduciary duty to the Decedent by virtue of his special control over and relationship with the Decedent. See Macaulay v. Wachovia Bank of South Carolina, 569 S.E.2d 371 (S.C. Ct. App. 2002).

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

56. Upon information and belief, the Plaintiff has taken, secreted, and converted \$628,000.00 in cash, more or less, which belonged to the Decedent and which was devised to the Defendant in the Decedent's will.

61. The Defendant is informed and believes that the Court and jury should require the Plaintiff to return \$628,000.00 in cash, more or less, to the Decedent's estate and that the money should be distributed according to the Decedent's will.

69. Upon information and belief, the Plaintiff took advantage of the Decedent's trust in the Plaintiff and the Decedent's poor physical and mental health when he took, secreted, and converted \$628,000.00 in cash, more or less, from the Decedent and which was devised to the Defendant in the Decedent's will. As the Decedent's brother and confidant, the Plaintiff had a fiduciary duty to the Decedent by virtue of his special control over and relationship with the Decedent. See Macaulay v. Wachovia Bank of South Carolina, 569 S.E.2d 371 (S.C. Ct. App. 2002).

(11) The decedent, Lee, took actions that constituted an unauthorized assumption and exercise of the right of ownership over the two-thirds (2/3) share of the money the Plaintiff was entitled to, to the exclusion of the Plaintiff.

(12) Lee wrongfully detained the Plaintiff's two-thirds (2/3) share of the money without justification or excuse by refusing to surrender possession of the Plaintiff's share or promising to secure it on the Plaintiff's behalf until his death after the Plaintiff demanded possession of her share.

(13) Lee willfully, intentionally, and recklessly converted the Plaintiff's share of the money with knowledge of and conscious indifference to the Plaintiff's lawful and absolute ownership right to that share.

Pleading File Date	October 11, 2007	February 18, 2008	September 23, 2013
Case Number	2006-ES-01-169	2007-CP-01-188	2013-CP-01-284
Parties/Court	Pamela P. Richey v. Lee C. Williams (Abbeville Probate)	Lee Williams v. Pamela P. Richey (see counterclaim allegations) (Abbeville CP)	Pamela Richey v. Shirley W. Booth, Thomas J. Booth, Estate of Lee C. Williams (Abbeville CP)
Mutual Release and Settlement Agreement	No (consolidated into 2007-CP-01-188)	Yes	pending

STATE OF SOUTH CAROLINA }
COUNTY OF ABBEVILLE }

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Lee C. Williams,
Plaintiff,
v.
Pamela P. Richey,
Defendant.

MUTUAL RELEASE
AND
SETTLEMENT AGREEMENT

CVA No 2007-CP-01-09189

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
JUN 18 10 11 AM '13
CLERK OF COURT

This Mutual Release, executed on May 11, 2011, by Lee C. Williams and Pamela P. Richey, is intended to effect the extinguishment of all remedies sought as set forth in the pleadings or remedies that could have been pled. In consideration of:

- 1) THIRTY-TWO THOUSAND FIVE HUNDRED AND NO/100 (\$32,500.00) DOLLARS to be paid by Lee C. Williams to Pamela P. Richey on or before May 24, 2011;
- 2) Relinquishment by Lee C. Williams of all right, title and interest in certain motor vehicle, described with specificity in the complaint, in favor of Pamela P. Richey;
- 3) Lee C. Williams resigning as the Co-Personal Representative of the Estate of Hugh Williams; and
- 4) Release of that certain lien on a Volvo motor vehicle owned by Smith
CELESTE.

Each party shall execute a stipulation of dismissal of the above-captioned action, with prejudice.

Disputes and differences have arisen between the parties with respect to the events described in the pleadings to the above-captioned action, the extent of which are incorporated herein by reference. In consideration described above, the Plaintiff and Defendant have agreed to execute this Mutual Release in settlement of all claims, disputes and differences from the beginning of time to the present relating to or arising out of the allegations and causes of action more specifically described in the pleadings. Accordingly, the Plaintiff and Defendant, for themselves and their heirs, legal representatives, successors, and assigns, expressly releases, acquits and forever discharges the other party and their heirs, legal representatives, successors, and assigns from all liability for claims, demands and causes of action, known or unknown, heretofore existing, relating to or arising out of the allegations and causes of action more specifically described in the pleadings.

It is understood and agreed that this Mutual Release is not to be construed as an admission of liability on the part of any party. This Release is intended merely to avoid the costs, expenses, and uncertainty of litigation.

The undersigned further declares and represents that this Release has been read and fully understood the contents and effect hereof and does, by the execution hereof, fully commit and bind the undersigned, their heirs, legal representatives, successors and assigns to the terms and conditions of this Mutual Release, and that no promise, inducement or agreement not herein expressed has been made and that this Mutual Release contains the entire agreement between the parties, and that the terms of this Mutual Release are contractual and not a mere recital. Each party is satisfied with the services of their respective attorney.

To the greatest extent possible, this Mutual Release shall remain confidential.

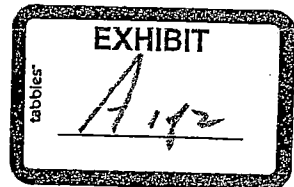
IN WITNESS WHEREOF, the Plaintiff has executed this Release on the day and year first above written.

Lee C. Williams

Lee C. Williams

Pamela P. Richey

Pamela P. Richey



STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Lee C. Williams,

Plaintiff,

v.

Pamela P. Richey,

Defendant.

MUTUAL RELEASE
AND
SETTLEMENT AGREEMENT

C/A No 2007-CP-01-00169

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2014 NOV 10 PM 1:57
EMILY Y. JONAS
CLERK OF COURT

This Mutual Release, executed on May 11, 2011, by Lee C. Williams and Pamela P. Richey, is intended to effect the extinguishment of all remedies sought as set forth in the pleadings or remedies that could have been pled. In consideration of:

- 1) THIRTY-TWO THOUSAND FIVE HUNDRED AND NO/100 (\$32,500.00) DOLLARS to be paid by Lee C. Williams to Pamela P. Richey on or before May 24, 2011;
- 2) Relinquishment by Lee C. Williams of all right, title and interest in certain motor vehicles, described with specificity in the complaint, in favor of Pamela P. Richey;
- 3) Lee C. Williams resigning as the Co-Personal Representative of the Estate of Hugh Williams; and
- 4) Release of that certain lien on a Volvo motor vehicle owned by Sandra PETTIGRO;

Each party shall execute a stipulation of dismissal of the above-captioned action, with prejudice.

Disputes and differences have arisen between the parties with respect to the events described in the pleadings in the above-captioned action, the contents of which are incorporated herein by reference. In consideration described above, the Plaintiff and Defendant have agreed to execute this Mutual Release in settlement of all claims, disputes and differences from the beginning of time to the present relating to or arising out of the allegations and causes of action more specifically described in the pleadings. Accordingly, the Plaintiff and Defendant, for themselves, and their heirs, legal representatives, successors, and assigns, expressly releases, acquits and forever discharges the other party and their heirs, legal representatives, successors, and assigns from all liability for claims, demands and causes of action, known or unknown, heretofore existing, relating to or arising out of the allegations and causes of action more specifically described in the pleadings.

S. R. V. Puk

It is understood and agreed that this Mutual Release is not to be construed as an admission of liability on the part of any party. This Release is intended merely to avoid the costs, expenses, and uncertainty of litigation.

The undersigned further declares and represents that this Release has been read and fully understood the contents and effect hereof and does, by the execution hereof, fully commit and bind the undersigned, their heirs, legal representatives, successors and assigns to the terms and conditions of this Mutual Release, and that no promise, inducement or agreement not herein expressed has been made and that this Mutual Release contains the entire agreement between the parties, and that the terms of this Mutual Release are contractual and not a mere recital. Each party is satisfied with the services of their respective attorney.

To the greatest extent possible, this Mutual Release shall remain confidential.

IN WITNESS WHEREOF, the Plaintiff has executed this Release on the day and year first above written.

Lee C. Williams

Lee C. Williams

Pamela P. Richey

Pamela P. Richey

STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)
)
Pamela Richey,)
)
Plaintiff,)
)
vs.)
)
Shirley W. Booth, Thomas J. Booth, Estate)
of Lee C. Williams,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
Case No. 2013-CP-01-284
**PLAINTIFF'S RESPONSES TO
DEFENDANT ESTATE OF LEE C.
WILLIAMS' REQUEST TO ADMIT**

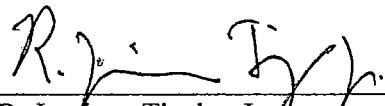
TO: JAMES GRAHAM PADGETT, III, ATTORNEY FOR SAM JEANES, PERSONAL REPRESENTATIVE FOR THE ESTATE OF LEE C. WILLIAMS

1. The genuineness of the Mutual Release and Settlement Agreement executed on May 11, 2011, by Lee C. Williams and Pamela P. Richey.

RESPONSE:

Admit.

TINSLEY & TINSLEY, P.C.
Attorney for Plaintiff



R. Jamison Tinsley Jr.
212 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Fax: (864) 377-8278

Greenwood, South Carolina
August 19, 2014

TRUE COPY
BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)
Pamela Richey,)
Plaintiff,)
v.)
Shirley W. Booth, Thomas J. Booth,)
Estate of Lee C. Williams,)
Defendants.)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

ORDER

C.A. #2013-CP-01-284

EMILY MCGILL
CLERK OF COURT

2015 FEB 24 AM 9:09

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

This matter came before me upon separate motions of the Defendants Estate ("Lee") and Booth for summary judgment in the above-captioned action. I heard the motions on February 5, 2015, in Abbeville, South Carolina.

Based on the parties' arguments and the record before the Court, the Court grants summary judgment as to the Defendant Estate, with leave to file a claim against Lee's Estate, if available, and denies the motion for summary judgment as to the Defendants Booth, without prejudice and with leave to refile. *upon on-going discovery. (RLW)*

FACTUAL AND PROCEDURAL HISTORY

Plaintiff Pamela Richey ("Penny") and Lee have a history of litigation regarding allegations Lee took an amount of cash money, up to \$628,000, from Penny's father (also Lee's brother). This former litigation took place in the Probate Court for Abbeville County (2006-ES-01-169) and Common Pleas for Abbeville County (2007-CP-01-188¹). In both sets of pleadings, Penny alleged

¹Penny's allegations in probate court pleadings were consolidated into the 2007 common pleas case by way of counterclaim.

Lee took the cash from Penny's father and that Penny is the rightful owner of the cash money.

Penny and Lee actually litigated the 2007 Common Pleas case and participated in active discovery, including depositions of Lee and Defendant Shirley Booth, among others. Penny and Lee resolved the 2007 Common Pleas case by filing a stipulation of dismissal with prejudice, as well as, executing a mutual release and statement agreement. In exchange for Lee paying Penny \$32,500, and other consideration, Penny and Lee signed a:

“Mutual Release in settlement of all claims, disputes and differences from the beginning of time to the present relating to or arising out of the allegations and causes of action more specifically described in the pleadings [2007-CP-01-188]. Accordingly, [Lee] and [Penny], for themselves, and their heirs, legal representatives, successors, and assigns, expressly releases, acquits and forever discharges the other party and their heirs, legal representatives, successors, and assigns from all liability for claims, demands and causes of action, known or unknown, heretofore existing, relating to or arising out of the allegations and causes of action more specifically described in the pleadings [2007-CP-01-188].”

The case currently before the Court (“2013 Common Pleas case”) concerns the same money in controversy as was litigated in the 2007 Common Pleas case. This 2013 Common Pleas case adds Defendants Booth (Lee's daughter and son-in-law) alleging that they took the same cash money from Lee that Lee allegedly took from Penny's father.

In response to Defendants' motions, Penny responded with an affidavit of Billy Garrett, Esq. (Penny's counsel in the 2007 Common Pleas case) outlining what Lee said to him after the resolution of the 2007 Common Pleas case and Mr. Garrett's opinion on the matter; as well as, two affidavits from Lee alleging that Lee did take the money and that the Defendants Booth then took the money from Lee.

ISSUES

- 1) Does the filed Stipulation of Dismissal with prejudice, and the Mutual Release and Settlement Agreement² in the 2007 Common Pleas case bar Plaintiff's 2013 Common Pleas case as to all Defendants?
- 2) Is Plaintiff's 2013 Common Pleas case barred under collateral estoppel as to all Defendants because the issues are the same as in the 2007 Common Pleas case?
- 3) Is Plaintiff's 2013 Common Pleas case barred under res judicata as to all Defendants because the claims are the same as in the 2007 Common Pleas case?
- 4) Is Plaintiff's 2013 Common Pleas case barred under Rule 60(b), SCRCP, as to all Defendants because the motion was not made within a reasonable period of time not to exceeding a year?

SUMMARY JUDGMENT STANDARD

Summary judgment should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. E.g., Shelton v. LS&K, Inc., 374 S.C. 294, 297, 648 S.E.2d 307 (Ct. App. 2007). In reviewing the record, the Court views all the properly cognizable evidence in the light most favorable to the nonmoving party. Dawkins v. Fields, 354 S.C. 58, 67-68, 580 S.E.2d 433 (2003); Shelton, 374 S.C. at 297.

²Admitted by Plaintiff as a genuine document under SCRCP 36, dated August 19, 2014.

When a summary judgment motion is made and supported by factual material, the opposing party may not rest upon the allegations of his pleading but must put forth specific facts demonstrating a genuine factual issue for trial. Rule 56(e), SCRPC. Where the nonmoving party bears the burden of proof on a claim in the case, it must provide the Court with evidence showing that there is a genuine issue of material fact with regard to each of the elements of its claim. Hansson v. Scalise Builders of S.C., 374 S.C. 352, 358, 650 S.E.2d 68 (2007). Rule 56, SCRPC, “mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof.” Id. at 357 (internal quotation marks omitted, ellipsis in original). It is not enough for the party with the burden of proof to make a factual showing as to some, but not all, of the elements of its claims; rather, to deny summary judgment, “the court must determine that a genuine issue of material fact exists for each essential element[.]” Id. at 358. “[A] complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” Baughman v. AT&T, 306 S.C. 101, 116, 410 S.E.2d 537, 546 (1991). “Summary judgment speaks in terms of “genuine issue of fact” [. . .].” Saluda Motor Lines, Inc. v. Crouch, 300 S.C. 43, 45, 386 S.E.2d 290, 291-292 (Ct. App. 1989). “It is not sufficient that a mere inference be created as relates to [the summary judgment] motion.” Id. “The issue as relates to a summary judgment must be genuine [. . .]. Id. “It is not sufficient that evidence create a far fetched inference.” Id.

RULES OF APPLICABLE LAW AND APPLICATION TO THE FACTS

1. Rule 41 (SCRPC) and the Principle of Contract

The Court dismissed the 2007 Common Pleas case upon agreement of the parties, with prejudice. A dismissal with prejudice is a final adjudication of the case. Freeman v. McBee, 280 S.C. 490, 493, 313 S.E.2d 325, 327 (Ct. App. 1984) (“Here, the complaint was dismissed *with* prejudice. In that situation, the dismissal operates as an adjudication on the merits terminating the action and concluding the rights of the parties.” (Citation omitted)).

The document entitled “Mutual Release and Settlement Agreement” is a release. See Bowers v. Dep’t of Transp., 360 S.C. 149, 153-54, 600 S.E.2d 543, 545 (Ct. App. 2004) (“The Release is a contract. See Hyman v. Ford Motor Co., 142 F.Supp.2d 735 (D.S.C.2001) (applying South Carolina law, contract principles invoked to determine validity of a release); Lowery v. Callahan, 210 S.C. 300, 300, 42 S.E.2d 457, 458 (1947) (noting that the “same principles of adequacy of consideration which apply to other contracts, govern as to releases”); 18 S.C. Jur. Release § 2 (2003) (“Because a release is a contract, principles of law applicable to contracts generally are also applicable to releases.”). “In construing terms in contracts, this Court must first look at the language of the contract to determine the intentions of the parties.” C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Fin. Comm’n, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988).

Penny was a party to previous actions seeking to recover the same money from Lee she seeks to recover in the 2013 Common Pleas case. Penny authorized the filing of a stipulation of dismissal with prejudice of the 2007 Common Pleas case, voluntarily settled the 2007 Common Pleas case releasing Lee, and accepted \$32,500 from Lee, as well as other consideration, in exchange for the release of all claims, known and unknown arising out of the same facts and

circumstances alleged in the 2013 Common Pleas case. I find the filing of the stipulation of dismissal pursuant to Rule 41, SCRCP, is a final adjudication.

I find the terms of the release are clear and unambiguous. Since the Release unambiguously sets forth the contracting parties' intent, this Court is bound by that clearly expressed intent without resort to extrinsic evidence. "Extrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible." C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Fin. Comm'n 373 S.E.2d at 586. Plaintiff admitted in her requests to admit that the release was genuine. She alleged no ambiguity in any pleading or affidavit. Accordingly, summary judgment is appropriate in favor of Defendant Estate of Lee Williams.

Conversely, I do not find summary judgment is appropriate in favor of the Defendants Booth. Despite the explicit language that the release applies to Lee and Penny and "their heirs, legal representatives, successors and assigns," the Defendants Booth were not parties to the 2007 Common Pleas case, nor to the Release. I deny the motion for summary judgment as to the Defendants Booth on this ground, without prejudice with leave to refile. *based upon on going discovery. (RLN)*

2. Collateral Estoppel and Res Judicata

Collateral estoppel, also known as issue preclusion, prevents a party from re-litigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. Judy v. Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct.App.2009). The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was:

- (1) actually litigated in the prior action;
 - (2) directly determined in the prior action; and
 - (3) necessary to support the prior judgment.
- Beall v. Doe, 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 189-90 n. 1 (Ct.App.1984).

However, the doctrine of collateral estoppel should not be rigidly or mechanically applied. Carrigg v. Cannon, 347 S.C. 75, 81, 552 S.E.2d 767, 770 (Ct.App.2001). Thus, even if all the elements for collateral estoppel are met, when unfairness or injustice results or public policy requires it, courts may refuse to apply it. State v. Bacote, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998).

“The doctrine of collateral estoppel [. . .] rests generally on equitable principles.” S. Carolina Pub. Interest Found. v. Greenville Cnty., 401 S.C. 377, 386@87, 737 S.E.2d 502, 507 (Ct. App. 2013), reh'g denied (Jan. 23, 2013), cert. denied (May 7, 2014) (citations omitted). In Watson v. Goldsmith, 205 S.C. 215, 31 S.E.2d 317 (1944), our supreme court contrasted the origin of the doctrine of collateral estoppel with the origin of res judicata:

Estoppel rests generally on equitable principles, which res judicata does not, but upon the two maxims which were its foundation in the Roman law, *nemo debet bis vexari pro eadem causa* (no one ought to be twice sued for the same cause of action) and *interest reipublicae ut sit finis litium* (it is the interest of the state that there should be an end of litigation [])[.] ... Res judicata is rather a principle of public policy than the result of equitable considerations, which [the] latter estoppel is.

“Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.” Judy v. Judy, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011) (citation omitted). “Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.” Id. (citation and quotation marks omitted).

“Res judicata bars re-litigation of the same cause of action while collateral estoppel bars

re-litigation of the same facts or issues necessarily determined in the former proceeding.” Pye v. Aycock, 325 S.C. 426, 436, 480 S.E.2d 455, 460 (Ct.App.1997). In Beall v. Doe, this court distinguished the two concepts as follows:

“The doctrines of res judicata and collateral estoppel are, of course, two different concepts. A final judgment on the merits in a prior action will conclude the parties and their privies under the doctrine of res judicata in a second action based on the same claim as to issues actually litigated and as to issues which might have been litigated in the first action. Under the doctrine of collateral estoppel, on the other hand, the second action is based upon a different claim and the judgment in the first action precludes relitigation of only those issues actually and necessarily litigated and determined in the first suit. 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 190 n. 1 (Ct.App.1984) (citations and quotation marks omitted).”

Penny and Lee litigated the identical issues in the 2007 Common Pleas case as are set forth in the 2013 Common Pleas case. Essentially, Penny sued Lee again over the same money in the case at bar. Penny’s counsel conceded to the Court at oral argument both cases involved the same money.

I find the issues and claims, as to Lee, between the two cases are identical. The 2013 Common Pleas case is barred under both collateral estoppel and res judicata. Accordingly, summary judgment is appropriate in favor of Defendant Estate of Lee Williams.

As I found collateral estoppel and res judicata properly applied to Lee, I do not find these doctrines apply to bar the 2013 Common Pleas case against the Defendants Booth. I find this an appropriate circumstance not to apply collateral estoppel. Collateral estoppel is an equitable doctrine, and since information about the Booths alleged activity was not known by Penny until March 6, 2012, an injustice may occur if the allegations are not further reinvestigated. The

doctrine of collateral estoppel should not be rigidly or mechanically applied. Carrigg v. Cannon, 552 S.E.2d at 770. Thus, even if all the elements for collateral estoppel are met, when unfairness or injustice results or public policy requires it, courts may refuse to apply it. State v. Bacote, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998). I chose not to apply collateral estoppel under these circumstances.

I further conclude the doctrine of res judicata does not apply here because the Booths were not parties to the 2007 Common Pleas case. See Judy v. Judy, 712 S.E.2d at 414 (“Res judicata bars subsequent actions **by the same parties** when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.”) (Emphasis added.) Accordingly, I deny the motion for summary judgment as to the Defendants Booth on these grounds, without prejudice with leave to refile.

3. Rule 60(b), SCRCF

Rule 60, SCRCF is as follows:

“On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
(1) mistake, inadvertence, surprise, or excusable neglect;
(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
(3) fraud, misrepresentation, or other misconduct of an adverse party;
(4) the judgment is void;
(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.
The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality

of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. [. . .]”

The burden of proof under Rule 60(b), SCRCPP, is clear and convincing evidence. Gainey v. Gainey, 382 S.C. 414, 427, 675 S.E.2d 792, 799 (Ct. App. 2009) (When a party asserts grounds for relief because of fraud, misrepresentation, or other misconduct of an adverse party under Rule 60(b)(3), SCRCPP, the movant must prove her entitlement by clear and convincing evidence.”) (citation omitted).

In Chewning v. Ford Motor Company, 354 S.C. 72, 80, 579 S.E.2d 605, 610 (2003), the South Carolina Supreme Court discussed the rule that extrinsic fraud is necessary to set aside a judgment based on fraud under Rule 60(b), SCRCPP. The court explained the difference between intrinsic and extrinsic fraud:

“Extrinsic fraud is ‘fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action.’

Intrinsic fraud, on the other hand, is fraud which was presented and considered in the trial. It is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud.”

Id. at 81, 579 S.E.2d 605, 579 S.E.2d at 610 (quoting Hilton Head Ctr. of S.C. v. Pub. Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). Perjury by a party or a witness, use of forged documents, or failure to disclose documents by a party or witness are examples of intrinsic fraud.

Id.; Raby Constr., L.L.P. v. Orr, 358 S.C. 10, 21 n. 5, 594 S.E.2d 478, 483 n. 5 (2004). However, the subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud amounting to fraud on the court. Chewning, 354 S.C. at 82–84, 579 S.E.2d at 610–11. Any claim of fraud on the court must be accompanied by particularized allegations. Id. at 86, 579 S.E.2d 605, 579 S.E.2d at 613.

Penny filed the 2013 Common Pleas case after a year of “newly discovered evidence” and alleged no fraud upon the court. Actual discovery occurred and depositions were taken of Lee and Defendant Shirley Booth. Penny did not make her motion in a reasonable amount of time as to Lee. Rule 60(b), SCRCP. Therefore, Penny may not pursue the 2013 Common Pleas Case as her 60(b) motion should have been brought to relieve her from 2007 Common Pleas case adjudication. Accordingly, summary judgment is appropriate in favor of Defendant Estate of Lee Williams.

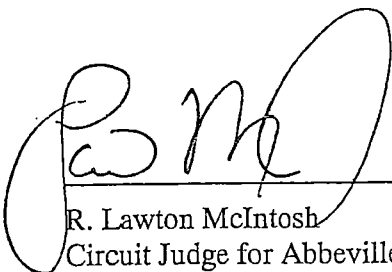
As I found Rule 60(b) properly applied to Lee as an additional sustaining ground to prevent Penny’s case against him, I do not find this rule limits Penny’s case against the Defendants Booth at this time. Rule 60(b) is a permissive rule. See Rule 60(b), SCRCP (“On motion and upon such terms as are just, the court **may** [. . .]”) (emphasis added). Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the trial court. Se. Hous. Found. v. Smith, 380 S.C. 621, 636, 670 S.E.2d 680, 688 (Ct. App. 2008) (citation omitted). There is simply no previous judgment or adjudication involving the Defendants Booth that this Court can grant relief from. I deny the motion for summary judgment as to the Defendants Booth on this ground, without prejudice with leave to refile.

CONCLUSION

Because of Penny's stipulation of dismissal with prejudice, an enforceable release signed by her, the doctrine of collateral estoppel and res judicata, as well as Rule 60(b), SCRCF, the motion for summary judgment of Defendant Estate of Lee Williams must be granted. The Defendants Booth are in a slightly different position. At this time, I find the current state of the issues warrant that I deny the motion for summary judgment of the Defendants Booth.

It is therefore hereby ORDERED that the Defendant Estate of Lee Williams motion for summary judgment is granted, with leave to file a claim against Lee's Estate, if available, and the motion for summary judgment of the Defendants Booth is denied, without prejudice with leave to refile.

And IT IS SO ORDERED.



R. Lawton McIntosh
Circuit Judge for Abbeville County

Andrus, South Carolina
February 20, 2015.

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2013- CP-01-284

PAMELA RICHEY

SHIRLEY W. BOOTH, THOMAS J. BOOTH AND ESTATE
OF LEE C. WILLIAMS

PLAINTIFF(S)

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:

TRUE COPY
BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT

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.

[Signature]
R. Lawton McIntosh, Presiding Judge
SCRPC Form 4C (03/2013)

2155
Judge Code

Feb. 5, 2015
Date

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of February, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of February, 2015 to attorneys of record or to parties (when appearing pro se) as follows:

R. Jamison Tinsley

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jane H. Merrill (Booth)
James Graham Padgett, III (Estate of Williams)

ATTORNEY(S) FOR THE DEFENDANT(S)
EMILY Y. MCMAHAN
CLERK OF COURT

Court Reporter: S. Danette Hanks

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.

Summary Judgment granted as to the estate
& denied as to Defendant Booths;
Mr. Padgett to prepare a form order

STATE OF SOUTH CAROLINA,)
)
COUNTY OF ABBEVILLE.)

IN THE COURT OF COMMON PLEAS.

PAMELA RICHEY,)
)
Plaintiff,)

v.)

SHIRLEY W. BOOTH, THOMAS J. BOOTH,)
ESTATE OF LEE C. WILLIAMS,)
)
Defendants.)

CERTIFICATE OF SERVICE

2013-CP-01-284


The undersigned, an employee of the Office of the Clerk of Court for Abbeville County, does hereby certify that service of a copy of Order of the Hon. R. Lawton McIntosh, dated February 20, 2015, in the above-referenced case, was made upon the following attorneys by placing same in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this 24th day of February, 2015:

R. Jamison Tinsley, Esq.
P. O. Box 49145
Greenwood, SC 29649

Jane Hawthorne Merrill, Esq.
410 Main Street
Greenwood, SC 29646

J. Graham Padgett, III, Esq.
414 Monument St., Ste. C
Greenwood, SC 29646

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2015 MAR 23 AM 8:34
EMILY V. MCCORMAN
CLERK OF COURT


Peggy A. Payne, Common Pleas Clerk

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

Pamela Richey,

Plaintiff,

v.

Shirley W. Booth, Thomas J. Booth,
Estate of Lee C. Williams,

Defendants.

) IN THE COURT OF COMMON PLEAS
)
)

) EIGHTH JUDICIAL CIRCUIT
)
)

) **RETURN OF**
) **SAM JEANES, PERSONAL**
) **REPRESENTATIVE OF THE ESTATE OF**
) **LEE C. WILLIAMS TO**
) **PLAINTIFF'S MOTION TO ALTER OR**
) **AMEND**

) C.A. #2013-CP-01-284
)

TO: R. JAMISON TINSLEY, JR., ATTORNEY FOR PLAINTIFF PAMELA RICHEY:

The undersigned, as attorney for Sam Jeanes, Personal Representative of the Defendant Estate of Lee C. Williams, makes this return to the Plaintiff's Motion to reconsider the judgment filed February 24, 2015, with the Clerk of Court for Abbeville County¹. Plaintiff's motion should be dismissed. Plaintiff motion raises new evidence, causes of action and requests for relief not before the Court at the hearing, although they that could have been. This is not permitted.

Plaintiff seeks new relief using the Last Will and two new causes of action: 1) a declaratory judgment and 2) a theory of third party beneficiary. A Rule 59, SCRCP, motion is not the place for new information. The Last Will was not an exhibit in evidence before the Court at the hearing, and allegations concerning the Last Will are not even in Plaintiff's Complaint.

A party cannot use Rule 59(e) [SCRCP] to present to the court an issue the party could have raised prior to judgment but did not. See Hickman v. Hickman, 301 S.C. 455, 456-57, 392 S.E.2d 481, 482 (Ct. App. 1990), citing Natural Resources Defense Council v. U.S. E.P.A., 705 F.Supp. 698, 701 (D.D.C.1989), vacated on other grounds, 707 F.Supp. 3 (D.D.C.1989) ("Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced

¹ Copy of filed Order attached.

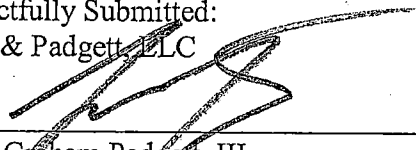
S.E.2d 481, 482 (Ct. App. 1990), citing Natural Resources Defense Council v. U.S. E.P.A., 705 F.Supp. 698, 701 (D.D.C.1989), vacated on other grounds, 707 F.Supp. 3 (D.D.C.1989) (“Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier.”); Smith v. Stoner, 594 F.Supp. 1091, 1118 (N.D.Ind.1984) (“Issues which could have been presented to the court for consideration previously, but which were not, are not the proper subject of Rule 59(e) relief; the issues are waived.”); Johnson v. City of Richmond, 102 F.R.D. 623, 623 (E.D.Va.1984) (“I do not conceive of Fed.R.Civ.P. 59(e) as serving the office of providing a disappointed suitor with a post-judgment opportunity to argue that which could have been argued pre-judgment.”); see also Rule 59, SCRCV, comments (This rule 59 is substantially the Federal Rule.) Plaintiff waived any issues concerning the Last Will because she could have brought it before the Court, but did not.

Plaintiff admits she cannot proceed with her case in her motion when she says, “[. . .] the dispute between Plaintiff and Lee C. Williams [Defendant Estate] is res judicata and [subject to] collateral estoppel.” She is now asking the Court to declare the Defendant Estate continue in the litigation against the Defendants Booth. This request for a declaratory judgment “that the Estate must pursue these funds” is raised in Plaintiff’s motion for the first time, as well as, in a Petition in Probate Court dated 13 days (copy unfiled) after the Court issued its Order granting summary judgment to the Defendant Estate. This is beyond the scope of the pleadings, Estate’s motion for summary judgment and Order of February 24, 2105. Plaintiff could have sought this course of action in its Complaint or in Probate Court before the hearing. See Stevens & Wilkinson of S. Carolina, Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) (a party cannot use a Rule 59(e) motion to advance an issue the party could have raised to

the circuit court prior to judgment, but did not. (internal citations omitted.) Plaintiff chose not to.

Lastly, Plaintiff alleges in the second to last paragraph that the “assets [money] rightfully belong to the estate.” This is the ultimate question for a finder of fact, if the law allows such. It does not. Pursuant to the reasons set forth this Court’s previous Order filed February 24, 2015, this may be a matter for the Probate Court; however, Plaintiff’s motion to reconsider in the court of common pleas should be dismissed.

Respectfully Submitted:
Bacot & Padgett, LLC

By: 
James Graham Padgett, III
Attorney for the Plaintiff
(SC Bar# 65,354)
414 Monument Street, Suite C
Greenwood, South Carolina 29646
(864) 227-1570; padgett@bacotlawfirm.com

at Greenwood, South Carolina
17 March, 2015.

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2015 MAR 23 AM 8:34
EMILY Y. MORGAN
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)
)
Pamela Richey,)
)
Plaintiff,)
v.)
)
Shirley W. Booth, Thomas J. Booth)
and Estate of Lee C. Williams,)
)
Defendants.)

IN THE COURT OF
COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CERTIFICATE OF SERVICE

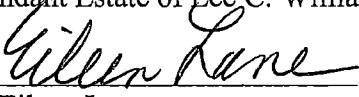
¹³
~~14~~-CP-01-284

The undersigned of the law firm of Bacot & Padgett, LLC, does hereby certify that on the 18th day of March, 2015, she served the Return of Sam Jeanes, Personal Representative of the Estate of Lee C. Williams to Plaintiff's Motion to Alter or Amend via First Class U. S. Mail to:

SERVED: R. Jamison Tinsley
212 Oak Avenue
Greenwood, South Carolina 29646

Jane H. Merrill
410 Main Street
Greenwood, South Carolina 29646

BACOT & PADGETT, LLC
Attorneys for the Personal Representative for the
Defendant Estate of Lee C. Williams


BY: Eileen Lane
414 Monument Street, Suite C
Greenwood, SC 29646
Phone: (864) 227-1570
Fax: (864) 227-2610

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
EMILY Y. MORGAN
CLERK OF COURT
2015 MAR 23 AM 8:34

Greenwood, South Carolina
March 18, 2015

cc: client
Judge R. Lawton McIntosh, courtesy copy

Pamela Richey,
 PLAINTIFF(S)

Shirley W. Booth, Thomas J. Booth, et al
 DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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:

Plaintiff's Motion to Alter or Amend is denied without formal argument. No formal order is requested.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

TRUE COPY
[Signature]
 ABBEVILLE COUNTY CLERK OF COURT

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 APR 2 AM 8
 EMILY Y MCMAHAN
 CLERK OF COURT

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any judgment 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.

[Signature]
 Circuit Court Judge

2155
 Judge Code

3-31-13
 Date

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

RECEIVED
JAN 11 2016
SC Court of Appeals

Pamela Richey

Appellant,

vs.

Shirley W. Booth, Thomas J. Booth and
Estate of Lee C. Williams,

Respondents.

APPELATE CASE NO. 2015-001056

CERTIFICATE OF SERVICE

The undersigned of the law firm of Bacot & Padgett, LLC, does hereby certify that on the 5 day of January, 2016, she served the Initial Brief of Respondent Estate of Lee C. Williams and Designation of Matter via First Class U. S. Mail to:

SERVED:

V. Claire Allen, Deputy Clerk
The South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

R. Jamison Tinsley
212 Oak Avenue
Greenwood, South Carolina 29646

Jane H. Merrill
410 Main Street
Greenwood, South Carolina 29646

BACOT & PADGETT, LLC
Attorneys for Respondent
Estate of Lee C. Williams



BY: Eileen Lane, Paralegal
414 Monument Street, Suite C
Greenwood, SC 29646
Phone: (864) 227-1570
Fax: (864) 227-2610

Greenwood, South Carolina
January 5, 2016

cc.client

BACOT & PADGETT, LLC

Attorneys and Counselors at Law
A South Carolina Limited Liability Company

Adam S. Bacot
James Graham Padgett, III

TELEPHONE: (864) 227-1570
FACSIMILE: (864) 227-2610
EMAIL: padgett@bacotlawfirm.com

414 Monument Street, Suite C
Greenwood, SC 29646

RECEIVED

January 5, 2016

JAN 11 2016

SC Court of Appeals

V. Claire Allen, Deputy Clerk
The South Carolina Court of Appeals
P. O. Box 11629
Columbia, South Carolina 29211

Re: Pamela Richey v. Shirley W. Booth, Thomas J. Booth and Estate of Lee C. Williams
Appellate Case No. 2015-001056


Dear Ms. Allen,

Please find enclosed the original and 2 copies of the Initial Brief of Respondent Estate of Lee C. Williams and the original and 2 copies of the Designation of Matter together with the original and 2 copies of the Certificate of Service in the above referenced matter.

After filing, please return our copies to us in the enclosed self-addressed, stamped envelope.

If you have any questions or comments, please do not hesitate to contact me.

Yours Truly,


Eileen Lane,

Paralegal to James Graham Padgett, III
Attorney for Respondent
Estate of Lee C. Williams

JGP/el
cc: R. Jamison Tinsley
Jane Merrill
Client

Hasler

01/05/2016

US POSTAGE

\$07.95⁰



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011D10639050

RECEIVED

JAN 11 2016

SC Court of Appeals

BACOT & PADGETT, LLC

Attorneys at Law

414 Monument St. Suite C

Greenwood, SC 29646

To:

V. Claire Allen, Deputy Clerk

The South Carolina Court of Appeals

P. O. Box 11629

Columbia, South Carolina 29211