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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM KERSHAW COUNTY
ALISON RENEE LEE, CIRCUIT COURT JUDGE
CASE NO. 2015-001556

Jimmy Boykin, Sammy Boykin a/k/a Sandy H. Boykin, Sr., and
Kenny Boykin, Plaintiffs

v.

Zady R. Burton, Individually and as Personal Representative of
the Estate of Helen L. Burton, and Sandy Boykin a/k/a Sandy H. Boykin, Jr., Defendants,

Of Whom Zady R. Burton, Individually and as Personal Representative of the Estate of Helen L.
Burton is the Appellant and Jimmy Boykin is the Respondent.

RECORD ON APPEAL

Moultrie B. Burns, Jr., Esq.
Attorney for Respondent
1111 Church Street
Camden, SC 29020
Telephone: (803) 432-4391
Facsimile: (803) 425-4816
eMail:
mburns@thesavagefirm.

Roger B. Jellenik
Attorney for Appellant
1106 Little Street
Camden, SC 29020
Telephone: (803) 424-1919
Facsimile: (803) 424-1922
eMail: rbjatty@mac.com

January 13, 2016

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

CASE NUMBER: 2013-CP-28-00876

Jimmy Boykin et al

Zady R Burton et al

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.
- ☐ **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:

ORDER INFORMATION

After a review of all the pleadings, motions, memoranda, exhibits, affidavits and based upon the argument of counsel during the hearing, Petitioner Jimmy Boykin's motion to enforce the settlement is **GRANTED**. The parties shall simultaneously execute the following items:

1. Delivery of the executed Deed of Distribution to Jimmy Burton as grantee to be held in trust by Petitioner's attorney until disbursement of the appropriate funds;
2. Payoff of the existing mortgage (Zady shall give authority to get the payoff from the lender);
3. Payment of \$8000 to Zady individually and as PR of the Estate;
4. Delivery of a \$4000 promissory note payable over 5 years at no interest and first purchase money mortgage to Zady individually and as PR of the Estate;
5. Proof of insurance;
6. Stipulation of Dismissal with Prejudice of this action as well as the pending magistrate action;
7. Filing documents to close the Estate;
8. Mutual releases signed by the remaining parties with terms in compliance with the Mediation Agreement and this Order.

All of the above must be executed within 90 days of the date of this Order.

AND IT IS SO ORDERED.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

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MAY 21 2015

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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: This abstract is not certified. Copy of Original on File in this Court.

Circuit Court Judge

Judge Code 2118

SCRPC Form 4C (10/2011)

Clerk of Court

Kershaw County

R.2

For Clerk of Court Office Use Only

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

Moultrie B. Burns Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

Roger B. Jellenik

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

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

CASE NUMBER: 2013-CP-28-00876

Jimmy Boykin et al

Zady R Burton et al

PETITIONER

RESPONDENT

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.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. No. suit); ☐ 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:

ORDER INFORMATION

Respondent's Motion to Alter or Amend filed May 29, 2015 is **DENIED**. This Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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 Ally Shree Lee Judge Code 2118 Date 6/23/2015

For Clerk of Court Office Use Only

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

Moultrie B. Burns Jr.

ATTORNEY(S) FOR THE PLAINTIFF(S)

Roger B. Jellenik

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

SCRPC Form 4C (10/2011) Roger B. Jellenik, Esq.

Debra N. J. Jellenik
Clerk of Court Kershaw County

R.H

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Jimmy Boykin, Sammy Boykin)
a/k/a Sandy H. Boykin, Sr., and)
Kenny Boykin,)
Petitioners)

v.)

Case No. 2013-CP-28-00876

Zady R. Burton, individually and)
As Personal Representative of)
the Estate of Helen L. Burton and)
Sandy Boykin a/k/a Sandy H.)
Boykin, Jr.,)
-----)

2015 MAY 29 PM 4:01
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CLERK OF COURT
FIFTH JUDICIAL CIRCUIT
SOUTH CAROLINA

RESPONDENTS' MOTION TO ALTER OR AMEND

Respondent Zady R. Burton, individually and as Personal Representative of the Estate of Helen L. Burton, pursuant to Rule 59(e), SCRCP, hereby moves the Court to reconsider its order ("Order") dated May 14, 2015, and filed for record on May 18, 2014, granting Petitioner Jimmy Boykin's motion to enforce a mediated settlement. In support of this motion, Respondent Burton shows the following to the Court:

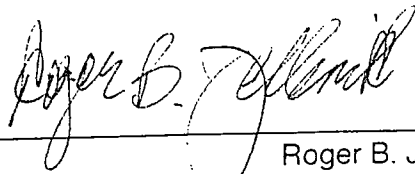
1. The contents of a mediation are confidential. *See* ADR Rules 6(e), 7(c), and 8.
2. The evidence offered in support of Petitioner's motion to enforce a mediated settlement consists of the mediator's Proof of ADR and a memorandum prepared by the mediator, signed by the parties, and offered by Petitioners into evidence.
3. Petitioner's motion reads in part as follows — "The Plaintiff brought this action seeking, inter alia, a private sale of 72 Burdell Road, Lugoff. The case was mediated May 2, 2014 resulting in the Proof of ADR filed May 6, 2014 ... specifying the terms of the sale, which would be accomplished by Defendant execution a Deed of Distribution" It is respectfully submitted that Petitioner's motion's characterization of the Proof of ADR is not supported by any evidence. Further, if intended as a description of the content of the mediation, Petitioner's motion violates confidentiality rules cited in paragraph 1 above.
4. Petitioner's subsequent "Memorandum in Support of Motion" reads in pertinent part as follows — "This memorandum is submitted in support of ... [Petitioner's motion] seeking an

Order requiring the Respondent ... to deliver a proper deed of distribution for 72 Burdell Road ... pursuant to the mediated settlement agreement dated 5-2-14." It is respectfully submitted that Petitioner's memorandum's characterization of the mediated settlement agreement is not supported by any evidence and, if intended as a description of the content of the mediation, in violation of confidentiality rules cited in paragraph 1 above.

5. As written, the Court's Order requires a transfer of real property. However, neither the Proof of ADR nor the mediation memorandum makes reference to real property, let alone to the transfer of any specific real property.
6. In his motion, Petitioner noted that no formal settlement agreement was executed. Yet, Petitioner seems to suggest that the content of a proposed settlement agreement is grounds for enforcing it. Respondent respectfully disagrees. *See, e.g.,* Rule 43(k), SCRPC, and Farnsworth v. Davis Heating & Air Conditioning, Inc., 367 S.C. 634, 627 S.E.2d 724 (2006).
7. Plaintiff does not object to enforcement of the outcome of the mediation as set forth in the post-mediation memorandum.

WHEREFORE, Respondent respectfully requests that the Court alter or amend its Order either by deleting any reference in the Order to any conditional or unconditional duty on the part of Respondent to transfer any real property or, alternatively, by denying Plaintiff's Motion in its entirety.

Respectfully submitted this 29th day of May, 2015.



Roger B. Jellenik
Attorney for Respondent
S.C Bar No. 13546

Roger B. Jellenik
Attorney at Law
1106 Little Street
Camden, SC 29020
T. (803) 424-1919
F. (803) 424-1922
e. rbjatty@mac.com

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUL 29 2015

SC Court of Appeals

APPEAL FROM KERSHAW COUNTY
ALISON RENEE LEE, CIRCUIT COURT JUDGE
CASE NO. 2015-001556

Jimmy Boykin, Sammy Boykin a/k/a Sandy H. Boykin, Sr., and
Kenny Boykin,

Respondents

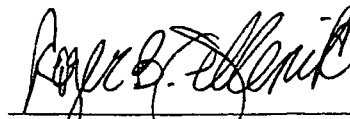
vs.

Zady R. Burton, Individually and as Personal Representative of
the Estate of Helen L. Burton,

Appellant

AMENDED NOTICE OF APPEAL

Zady R. Burton, Individually and as Personal Representative of the Estate of Helen L. Burton, appeals from the judgment of Circuit Court Judge Alison Renee Lee dated May 14, 2015, and filed for record on May 18, 2015, and her order denying reconsideration dated June 23, 2015, and filed for record on June 26, 2015. The former order was received by counsel for Appellant on or about May 21, 2015; the latter order was received by counsel for Appellant on June 29, 2015. Copies of each order on appeal are attached hereto as required by Rule 203, SCACR.



Roger B. Jellenik
Attorney at Law
1106 Little Street
Camden, SC 29020

Telephone: (803) 424-1919

Facsimile: (803) 424-1922

eMail: rbjatty@mac.com

July 27, 2015

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JUL 29 2015

SC Court of Appeals

Attorney for Respondent Jimmy Boykin:

Moultrie B. Burns, Jr.
Savage, Royall & Sheheen, LLP
P.O. Drawer 10
Camden SC 29020

UPON INFORMATION AND BELIEF, i) OPPOSING COUNSEL DOES NOT PRESENTLY REPRESENT ANY OTHER PARTY TO THIS ACTION OTHER THAN JIMMY BOYKIN, AND ii) NO OTHER OPPOSING PARTIES IN THIS CASE ARE OR HAVE BEEN REPRESENTED BY OTHER COUNSEL.

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

IN THE PROBATE COURT
2006-ES-28-00391
(Helen L. Burton Estate)

Jimmy Boykin, Sammy Boykin,)
a/k/a Sandy H. Boykin, Sr., and)
Kenny Boykin,)

Petitioners)

vs.)

Zady R. Burton, individually and as)
Personal Representative of the)
Estate of Helen L. Burton, and as)
Trustee under the Will of Helen L.)
Burton, and Sandy Boykin, a/k/a)
Sandy H. Boykin, Jr.,)

Respondents.)

2013 LP 28 00149

LIS PENDENS

FILED FOR RECORD
CLERK OF COURT
KERSHAW COUNTY, S.C.
2013 MAY 31 PM 12:02

NOTICE IS HEREBY GIVEN:

That an action has been commenced and is now pending in the Probate Court for Kershaw County for the sale of real estate pursuant to S.C. Code §62-3-1301 et seq., for property more particularly described as follows:

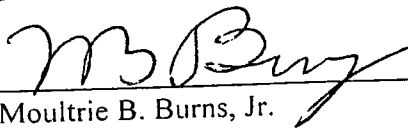
All that piece, parcel or lot of land, with improvements thereon, situate, lying and being about four (4) miles west of the City of Camden, in Wateree Township, School District No. 29F, in the County of Kershaw, State of South Carolina, being Lot No. 53 and a portion of Lot No. 54 on plat of property of C. C. Whitaker, et al, prepared by A. B. Boykin, Surveyor, dated April 4, 1949, recorded in the office of the Clerk of Court (now Register of Deeds) for Kershaw County in Plat Book 14, page 21, and more particularly shown on an individual plat prepared by S. Tetterton, R.L.S., dated September 30, 1968, recorded in the office of the Register of Deeds for Kershaw County in Plat Book 34 at page 1241. Said property fronts west on Burdell Road for a distance of 100 feet, extending back eastwardly therefrom for a distance of 161 feet on its northern boundary and for a distance of 177 feet on its southern boundary and having a width across its eastern boundary of 100 feet, and being bounded as follows: NORTH by remaining portion of Lot No. 54; EAST by Lot No. 68; SOUTH by Lot No. 52; and, WEST

by Burdell Road.

The above-described property is the same property conveyed to Charles E. Burton and Helen L. Burton by Joint Survivorship Deed of Tommy G. Granger and Sandra R. Granger dated March 19, 1970, and recorded in the office of the Clerk of Court (now Register of Deeds) for Kershaw County in Book HW, page 1900 on March 23, 1970, with title vesting in Helen L. Burton on the death of Charles E. Burton on March 5, 1979. Reference is made to that deed of Zady Burton to Helen L. Burton dated October 23, 1979, and recorded in Book IO, page 470 on August 6, 1980. Also referenced is that Quit-Claim Deed recorded in Book 3098, page 37.

Tax Map #: 283-17-00-040 S48

SAVAGE, ROYALL & SHEHEEN L.L.P.

By 
Moultrie B. Burns, Jr.
Attorney for the Petitioners
1111 Church Street
Post Office Drawer 10
Camden, South Carolina 29020
(803) 432-4391
SC Bar # 1042

May 31, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

IN THE PROBATE COURT
2006-ES-28-00391
(Helen L. Burton Estate)

Jimmy Boykin, Sammy Boykin,)
a/k/a Sandy H. Boykin, Sr., and)
Kenny Boykin,)

Petitioners)

vs.)

AMENDED
PETITION

Zady R. Burton, individually and as)
Personal Representative of the)
Estate of Helen L. Burton, and)
Sandy Boykin, a/k/a Sandy H.)
Boykin, Jr.,)

Respondents.)

Petitioners allege as follows:

1. Petitioners Jimmy Boykin (hereinafter "Jimmy"), Sammy Boykin, a/k/a Sandy H. Boykin, Sr. (hereinafter "Sammy"), and Kenny Boykin (hereinafter "Kenny") are interested parties under the Last Will and Testament of Helen L. Burton dated August 14, 1997 (hereinafter "Will"), a copy of which is attached hereto as Exhibit A.

2. The Respondent Zady R. Burton (hereinafter "Zady") is the Personal Representative of the Estate of Helen L. Burton (hereinafter "Estate") and an interested person under said Will.

3. The Respondent Sandy H. Boykin, Jr. (hereinafter "Sandy") is an interested person under said Will.

4. By its Order dated June 25, 2012, the Probate Court terminated the testamentary trust created in said Will effective September 30, 2011, as being uneconomic (upheld on appeal by Order filed May 20, 2013); however, the Court did not direct how the primary asset at 72 Burdell Road (hereinafter "Home") should be distributed or disposed of.

5. The testamentary trust was never funded, including the fact that the home was never deeded to the trust.

6. At the time of decedent's death, October 24, 2006, Jimmy and Sammy had resided in the home with the decedent for decades and they have continuously so resided.

2013 MAY 31 AM 11:54
HARRIETT S. PENCE
JUDGE OF PROBATE
KERSHAW COUNTY, SC

A.11

7. At the time of decedent's death the home was subject to decedent's mortgage to Nations Credit Financial Services Corporation dated March 20, 1998 recorded in Book 616 page 229 in the original amount of \$40,600.85 (hereinafter the "mortgage").

8. The decedent's Will does not specifically require payment of the mortgage by any interested party, although the Will authorizes the trustee to mortgage the home.

9. Since decedent's death, Petitioners have thus far made approximately 70 month mortgage payments totaling approximately \$25,000.00 including principal in excess of \$8,000.00.

10. Since decedent's death Petitioners have maintained the home, in spite of the express intent in the Will that the trust maintain the home.

11. The Respondent Sandy has no interest in the home as he has quit claimed his interest to Jimmy by deed dated September 20, 2012 recorded in Book 3098 page 37.

12. The home place, or the net proceeds if sold by the Estate, should be distributed only after proper construction of the Will.

13. Petitioners are informed and believe that there is little or no equity in the home and that the obligations and costs of administration of the Estate far exceed any equity in the home.

FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT TO CONSTRUE WILL
UNDER SC CODE § 15-53-30)

14. The previous allegations (1-13) are re-alleged as if set forth herein verbatim.

15. Petitioners are informed and believe that the meaning, intent and effect of decedent's Will should be construed (as authorized by §15-53-30) as granting a beneficial life interest or life estate to Petitioners and a contingent remainder to Zady.

FOR A SECOND CAUSE OF ACTION
(TO ESTABLISH LIEN ON THE HOME)

16. The previous allegations (1-15) are re-alleged as if set forth herein verbatim.

17. Petitioners are informed and believe they are entitled to a lien on the

home, equal to the sum of the principal portion of the mortgage payments which Petitioners have made and are making, reduced by any mortgage interest paid by Zady, this lien to be subordinate only to the existing mortgage.

FOR A THIRD CAUSE OF ACTION
(SALE OF REAL ESTATE - PURSUANT TO § 62-3-1301 et seq.)

18. The previous allegations (1-17) are re-alleged as if set forth herein verbatim.

19. Petitioners are desirous of purchasing the home from the Estate for the fair market value, which is \$32,000.00 based on Zady's appraisal, by assuming the mortgage balance, applying Petitioners' lien (for principal payments) and paying any additional equity to the Estate upon terms approved by the Court.

20. Petitioners believe they are entitled to approval of a private sale pursuant to S.C. Code §62-3-1309.

FOR A FOURTH CAUSE OF ACTION
(FOR CONSTRUCTIVE TRUST)

21. The previous allegations (1-20) are re-alleged as if set forth herein verbatim.

22. Auto-Owners Insurance issued checks to Helen Burton (one for \$494.34 dated June 23, 2010, and one for \$1,302.91 dated July 21, 2010) for roof damage on or about June 15, 2010, on policy # 96-302220-00.

23. Through efforts of Petitioners' attorney, the checks were re-issued payable to the Estate of Helen Burton.

24. Petitioners paid for both the roof work repairs and the insurance policy premiums, and the Estate is wrongfully withholding said insurance proceeds.

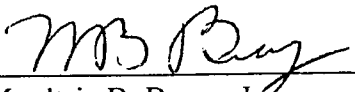
25. Petitioners are informed and believe that said insurance proceeds are being held in Zady's attorney's escrow account and Zady is unjustifiably refusing to direct reimbursement to Petitioners.

26. Petitioners are informed and believe that said insurance funds are held in a "constructive trust" and they are entitled to an order of the Court requiring refund in full to Petitioners.

WHEREFORE, Petitioners pray that the Court inquire into the matters herein set forth, construe the Will as granting a life interest (as alleged in C/A #1), grant Petitioners a lien on the home (as alleged in C/A #2), authorize a private sale of the home

(as alleged in C/A #3), order a refund of the insurance proceeds as being held in a constructive trust (as alleged in C/A #4), and for such other and further relief as the Court deems proper.

SAVAGE, ROYALL & SHEHEEN L.L.P.

By 
Moultrie B. Burns, Jr.
Attorney for the Petitioners
1111 Church Street
Post Office Drawer 10
Camden, South Carolina 29020
(803) 432-4391
SC Bar # 1042

May 31, 2013

HBL
1

EXHIBIT 'A'

Last Will and Testament

OF
HELEN L. BURTON

I, HELEN L. BURTON, being of sound and disposing mind and memory, do hereby make, publish, declare and constitute this as and for my Last Will and Testament, hereby revoking any and all wills or instruments of a testamentary nature heretofore executed by me.

ITEM I: I direct that all of my just debts and funeral expenses be paid with the first monies coming into the hands of my personal representative.

ITEM II: I hereby will, devise and bequeath all of my property, both real and personal, wherever situate, of whatsoever nature, to my son, Zady Burton, in trust for the lifetime care of Sammy Boykin; Sandy Boykin; Kenny Boykin; Jimmy Boykin and Zady Burton. It is my intention that Zady Burton maintain my family home at 72 Burdell Road, Lugoff, South Carolina 29078 so that any or all of the above four named persons shall have a home for their life, provided that they behave, do nothing unlawful in the house, do not permit drugs or alcohol in the house, and do not permit illicit affairs with members of the opposite sex in the house. Further, it is my desire that the parties occupying the house be responsible for taxes and insurance. Zady Burton shall be the sole party to have the power to mortgage the property and then only for the maintenance and care of the property. After the death of Sammy Boykin, Sandy Boykin, Kenny Boykin and Jimmy Boykin, title to the property shall vest in Zady Burton, his heirs or assigns.

FURMAN, SPEEDY & STEGNER

ATTORNEYS AT LAW
ONE LAFAYETTE COURT
CAMDEN, SOUTH CAROLINA 29020

L.15

ITEM III: I have other children and grandchildren to whom I leave my love and affection, letting them know that I have not forgotten them but believe it is in the best interests of the family that I provide a safe home for Sammy Boykin, Sandy Boykin, Kenny Boykin and Jimmy Boykin, and I leave my thanks, in lieu of any fees, to my trustee, Zady Burton.

ITEM IV: To all of my children and grandchildren I leave a wish that they love and fear their God and try to do unto others as they would have done unto them.

ITEM V: I hereby nominate, constitute and appoint my son, Zady Burton, as personal representative of this my Last Will and Testament and direct that he so serve without bond.

IN WITNESS WHEREOF, I hereunto set my Hand and Seal this 14 day of July, 1997.

Helen L. Burton
HELEN L. BURTON

SIGNED, SEALED, PUBLISHED AND DECLARED BY HELEN L. BURTON, as and for her Last Will and Testament who, in her presence and in the presence of each other and at her request, have hereto subscribed our names as witnesses.

Nancy L. Bennett
[Signature]

ADDRESS Camden, B.C.

ADDRESS Camden, S.C.

I, HELEN L. BURTON, the testator, sign my name to this instrument this 14 day of August, 1997, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Helen L. Burton
HELEN L. BURTON

I, Nancy S. Bennett, one of the witnesses, sign my name to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his/her last will and that he/she signs it willingly (or willingly directs another to sign for him/her), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Nancy S. Bennett

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

SUBSCRIBED, sworn to and acknowledged before me by HELEN L. BURTON, the testator and subscribed and sworn to before me by Nancy S. Bennett, one of the witnesses, this 14 day of August, 1997.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 8 Dec 2000

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE PROBATE COURT

Jimmy Boykin, Sammy Boykin)
A/k/a Sandy H. Boykin, Sr., and)
Kenny Boykin,)
Petitioners)

CASE NO. 2006-ES-28-00391

v.)

Zady R. Burton, individually and)
As Personal Representative of the)
Estate of Helen L. Burton and)
Sandy Boykin a/k/a Sandy H.)
Boykin, Jr.,)
Respondents)

FILED
2013 JUN 28 PM 4:11
HARRIETT S. PIERCE
JUDGE OF PROBATE
KERSHAW COUNTY, S.C.

RESPONSIVE PLEADING

Respondent Zady R. Burton ("Respondent") individually and as Personal Representative for the Estate ("Estate") of his mother, Helen L. Burton ("Decedent"), submits this pleading in response to Petitioners' Amended Petition filed May 31, 2013, and alleges and says the following:

Facts and Procedural Posture

1. Decedent died testate on October 24, 2006, leaving her assets to a testamentary trust ("Trust"). See Decedent's Will attached as Exhibit A. Under the terms of the Trust, Petitioners were beneficiaries for a period of time not to exceed the duration of their lives, and Respondent was both a co-beneficiary during that period and the residuary beneficiary. Decedent's Estate contained essentially no assets except for her home and real property ("the Home Place") situated at 72 Burdell Road, Lugoff, SC, and Decedent's furniture, furnishings, and fixtures within at the time of her death.
2. At the time of Decedent's death, Petitioners were living in the Home Place, and, upon information and belief, one or more Petitioners has resided there since. Except as discussed below, throughout this period of time, Petitioners made mortgage payments and paid for homeowners insurance and property taxes.

3. After Decedent's death, and without prior notice to or consent of Respondent, Petitioners advertised and conducted a sale of Decedent's personal property including Decedent's furniture and personal belongings and have never advised Respondent as to what was sold, to whom, for how much, or what became of the sales proceeds.
4. After his appointment as Personal Representative, Respondent attempted to inspect the Home Place so that he could prepare an Inventory and Warranty of Appraisement as required by applicable law, but he was rebuffed by Petitioners.
5. Sometime during the first half of 2011, Petitioners stopped paying for homeowners insurance without prior notice to Respondent. Since there was no money in the Estate or Trust, Respondent himself purchased new homeowners insurance with his own funds and paid for coverage in order to preserve the Home Place from potential foreclosure.
6. Given these circumstances, Respondent sent a letter ("Letter") to Petitioners on August 16, 2011, attached as Exhibit B, notifying them of the termination of the Trust effective September 30, 2011, pursuant to SC Code 62-7-414(a) and (c) and offering to negotiate in its place a long term lease.
7. Instead of replying to Respondent's Letter, Petitioners filed a Petition in the Kershaw County Probate Court on September 28, 2011, seeking Respondent's removal as Personal Representative of the Estate, his removal as Trustee of the Trust, appointment of a successor trustee, modification of the Trust, and additional remedies unrelated to the Trust. Respondent filed a Motion to Dismiss ("Motion") the Petition on December 2, 2011. Petitioners filed a "Memorandum in Opposition to Rule 12(b)(6) Motion" on January 23, 2012. After a hearing, the Hon. Harriett S. Pierce, Judge of Probate, issued an Order dated June 25, 2012, granting Respondent's Motion as to Petitioners' Trust claims.
8. On September 27, 2012, Petitioners filed their Notice of Appeal of Judge Pierce's Order to the Kershaw County Court of Common Pleas, but their appeal ("Appeal") was denied by Order of the Hon. L. Casey Manning filed May 20, 2013, which Order is attached as Exhibit C.
9. Meanwhile, during the fourth quarter of 2012, Respondent learned from the mortgage servicing company that Petitioners had more than 60 days earlier stopped making mortgage principal and interest payments, that two payments were overdue, and that the

Home Place was at risk of foreclosure. Again, Petitioners did not give Respondent notice of their decision or action.¹

10. Given these circumstances, in order to preserve the Estate, Respondent individually made up the deficient mortgage payments and continued making all payments of principal and interest thereafter up to and including the payment due on or about June 1, 2013.
11. Due to these circumstances, Respondent filed an eviction action and then an ejectment action in the Kershaw County Magistrate's Court to force Petitioners out of the Home Place where they had been living for nothing at Respondent's sole individual expense for several months. After due consideration, Hon. M. Scott Rankin, Magistrate's Court Judge, denied ejectment due to the pendency of proceedings in the Probate Court, but ordered Petitioners to make monthly payments in the amount of \$418.19 directly to the Estate until the Probate Court determined the outcome of the claims of Petitioners and Respondent.² See Judge Rankin's Order attached as Exhibit D.
12. Petitioners then filed the Amended Summons and Petition,³ which is the subject of this responsive pleading.

FIRST DEFENSE

(As to the allegations in Petitioners' Amended Petition)

13. Respondent admits the allegations in paragraph 1.
14. Respondent admits the allegations in paragraph 2.
15. Respondent admits the allegations in paragraph 3.
16. Respondent denies the allegations in paragraph 4. Respondent terminated the Trust pursuant to SC Code 62-7-414 because it was uneconomic. The Probate Court Order simply dismissed Petitioners' claims regarding the Trust because the Trust no longer existed.
17. Respondent admits the allegations in paragraph 5 subject to the fact that the Trust was never funded because Decedent's Estate had no assets to fund it with.

¹ Indeed, during a status conference on November 7, 2012, Petitioners' counsel admitted that Petitioners failure to communicate was deliberate in order to pressure Respondent.

² The Order provides that failure by Petitioners to make timely payment will be grounds for issuance of a warrant of ejectment.

³ The Amended Petition deletes previous claims for removal of Respondent as Personal Representative and Trustee, but adds other claims addressed below.

18. Respondent admits the allegations in paragraph 6, provided that, upon information and belief, Petitioner Kenny Boykin and Respondent Sandy Boykin a/k/a Sandy H. Boykin, Jr., also lived at the Home Place for some period(s) of time.
19. Respondent is without knowledge or information sufficient to form a belief as to the allegations of paragraph 7 and therefore demands strict proof thereof.
20. Respondent admits the allegations in paragraph 8, subject to the limitations that
- a. Decedent's Will only permits Respondent to mortgage the premises for "the maintenance and care of the property";
 - b. Decedent's Will does not contain any language directing how mortgage payments shall be made or by whom;
 - c. Decedent's Will does not contain any language relieving Petitioners of all or, for that matter, any financial obligations related to the Home Place; and
 - d. Decedent's Will contains no language allowing Petitioners to live at the Home Place free of charge.
21. Respondent admits only that portion of paragraph 9 that alleges that Petitioners made certain mortgage payments, but Respondent is without knowledge or information sufficient to form a belief as to the exact amount of such mortgage payments or the portion thereof attributable to principal, and Respondent therefore demands strict proof thereof from Petitioners. Please refer also to paragraphs 4 and 5 of the Amended Petition.
22. Respondent denies the allegation in paragraph 10 that the Trust was expressly intended to maintain the Home Place. Further,
- a. Respondent is without knowledge or information sufficient to form a belief as to the nature and extent of Petitioners' efforts and expenditures to maintain the Home Place, and Respondent therefore demands strict proof thereof from Petitioners. Please refer also to paragraphs 4 and 5 of the Amended Petition.
 - b. Petitioners' own decisions and actions, without timely notice to Respondent, to stop making timely payments for mortgage principal and interest and for homeowners insurance contradict Petitioners' allegations in paragraph 10.
23. Respondent is without knowledge or information sufficient to form a belief as to the allegation in paragraph 11 of the interest, or absence thereof, of Respondent Sandy Boykin a/k/a Sandy H. Boykin, Jr., and accordingly Respondent demands strict proof

- thereof from Petitioners. Respondent is aware of no interest that this Respondent Boykin or any Petitioner has in the Home Place other than as a beneficiary of the terminated Trust.
24. Respondent denies any allegation in paragraph 12 and demands strict proof thereof to the extent that it expresses or implies that the Home Place or the net proceeds of any sale thereof should be disbursed otherwise than in accordance with applicable provisions of the Probate Code.
25. Respondent admits the allegation in paragraph 13 that the obligations and costs of administration of the Estate exceed the equity in the Home Place. However, Respondent denies the allegation in paragraph 13 that there is little or no equity in the Home Place.
26. Respondent offers no comment on paragraph 14.
27. Respondent denies the allegations in paragraph 15 and demand strict proof thereof.
28. Respondent offers no comment on paragraph 16.
29. Respondent denies the allegations in paragraph 17 and demand strict proof thereof.
30. Respondent offers no comment on paragraph 18.
31. Respondent is without knowledge or information sufficient to form a belief as to any allegation of fact in paragraph 19, accordingly Respondent demands strict proof thereof. The remainder of paragraph 19 expresses Petitioners' desire or position on certain issues in this case. Respondent respectfully disagrees based upon applicable law, principles of equity set forth in affirmative defenses and counterclaims set forth below.
32. Paragraph 20 alleges no facts, but rather expresses Petitioners' belief. Respondent respectfully disagrees on the ground that SC Code 62-3-1309 speaks for itself, and its application or non-application to this case is to be determined by the Probate Court.
33. Respondent offers no comment on paragraph 21.
34. Respondent admits the allegations in paragraph 22, provided that, upon information and belief, Respondent alleges that, before issuance of these checks by the insurance company, Petitioners had not notified the insurance company that Decedent had died.
35. Respondent admits the allegations in paragraph 23, provided that, upon information and belief, Respondents allege that the checks re-issued to the Estate of Helen Burton were only sought after a Petitioner endorsed Decedent's name on the original checks and later "whited it out".

36. Respondent admits only that portion of the allegations in paragraph 24 noting that Petitioners paid for both the roof repairs and certain insurance policy premiums. Respondent denies that the Estate is wrongfully withholding insurance proceeds and demands strict proof thereof.

37. As to paragraph 25, Respondent admits only that the undersigned attorney is holding the said insurance proceeds on behalf of the Estate. Respondent denies that he has unjustifiably refused to direct reimbursement to Petitioners and demands strict proof thereof.

38. Paragraph 26 alleges no facts, but rather expresses Petitioners' belief or conclusion of law. Respondent respectfully disagrees that the aforementioned insurance proceeds are properly the subject of a constructive trust for the benefit of Petitioners. Respondent believes that the insurance proceeds should be disbursed pursuant to an order of the Probate Court issued in accordance with applicable law.

SECOND DEFENSE AND FIRST AFFIRMATIVE DEFENSE

(Failure of Devise)

39. The allegations in paragraphs 1 through 38 above are incorporated herein by reference.

40. SC Code 62-2-604 states, subject to an inapplicable exception, that "if a devise other than a residuary devise fails for any reason it becomes part of the residue."

41. The devise in Decedent's Will to the Trust failed because the Estate had no assets to pay the costs of maintaining the Trust, and therefore the Trust was terminated as uneconomic pursuant to SC Code 62-7-414.

42. Respondent is the residuary devisee of Decedent's Will.

43. Accordingly, Respondent is entitled to fee simple absolute ownership of the Home Place.

THIRD DEFENSE AND SECOND AFFIRMATIVE DEFENSE

(Classification of Claims)

44. The allegations in paragraphs 1 through 43 above are incorporated herein by reference.

45. The Estate has no assets other than the Home Place, and Petitioners have admitted "that the obligations and costs of administration of the Estate far exceed any equity in the [Home Place]." Petition, ¶13.

46. SC Code 62-3-805(a) sets an order of priority for payment of claims by the Personal Representative against an Estate "(i)f the applicable assets of the Estate are insufficient to

pay all claims in full ..."; the first priority is "costs and expenses of administration, including attorney's fees, and reasonable funeral expenses".

47. Accordingly, Respondent is informed and believes that, as Personal Representative, he is prohibited by law from making any payment in response to any claim by Petitioners against the Estate unless i) Petitioners can prove the validity of their claim, and ii) after payment of higher priority claims, there are funds remaining sufficient to pay Petitioners.

FOURTH DEFENSE AND THIRD AFFIRMATIVE DEFENSE

(Unclean Hands; Equitable Estoppel)

48. The allegations in paragraphs 1 through 47 above are incorporated herein by reference.

49. Petitioners have engaged in a deliberate, persistent, and unfair course of conduct over a period of years — concealing material facts from Respondent in both his capacity as Personal Representative and individually, frustrating Respondent's efforts to probate the Estate, unnecessarily and pointlessly delaying probate of the Estate by use of legal processes, and causing Respondent to expend his own personal funds for Petitioners' support — with the goal of using the fundamentally uneconomic condition of the Estate as a lever to defeat Respondent's residuary interest in the Estate and gain exclusive control and/or ownership for themselves over the Home Place despite the intent and contents of Decedent's Will.

50. Examples of this course of conduct include

- a. Denying Respondent access to the Home Place so that he could not prepare a proper Inventory and Warranty of Appraisement;
- b. Advertising and conducting a sale of contents of the Home Place without notice to or consent of Respondent without disclosing what was sold, to whom, for how much, or what became of the sale proceeds;
- c. Not notifying Respondent of the existence of a homeowners insurance policy issued to Decedent, not notifying the insurer on said policy of Decedent's death, making claims against the homeowners insurance policy issued to Decedent, and signing Decedent's name as an endorsement to one or more checks issued to Decedent as payment for homeowners insurance claims by Petitioners;

- d. Ceasing homeowners insurance payments on the Home Place without timely notifying Respondent, thereby unnecessarily creating a risk of foreclosure and raising the expense of maintaining the Home Place;
 - e. Making mortgage loan payments without objection or claim over a period of five or more years after Decedent's death with the knowledge that the Estate was without assets other than the Home Place, rejecting Respondent's offer to help make such payments despite the fact that he was not living there, and then claiming a right to a lien on the Home Place;
 - f. Ceasing mortgage loan payments on the Home Place and concealing that fact from Respondent in an effort to cause the lender to foreclose on the Home Place, thus, in their minds, creating an opportunity for Petitioners to buy the Home Place out of foreclosure;
 - g. Not replying to Respondent's Letter terminating the Trust or engaging in good faith negotiations to carry out Respondent's efforts to comply with SC Code 62-7-414(a) and (c) and to preserve the Home Place from foreclosure;
 - h. Continuing to live at the Home Place without making the payments that Petitioners had made over a period of several years since Decedent's death, thereby causing Respondent to expend his own personal funds for Petitioners' benefit; and
 - i. Utilizing legal processes to force Respondent to spend his own personal funds to preserve the Home Place, allow Petitioners to stay free of charge at the Home Place, and pressure Respondent into allowing Petitioners to gain title to the Home Place on Petitioners' terms.
51. As to facts concealed from Respondent, such concealment was deliberate; Respondent was ignorant of the facts in question at the time when such knowledge might have reduced expenses of administration of the Estate, preserved Estate assets, and otherwise promoted the potential for meeting Decedent's intent as expressed in her Will; and such concealment has caused actual damages to the Estate and to Respondent individually.
52. Accordingly, Respondent is informed and believes that Petitioners' causes of action cannot prevail due to the affirmative defenses of "unclean hands" and equitable estoppel.

FIFTH DEFENSE AND FIRST COUNTERCLAIM

(Abuse of Process)

53. The allegations in paragraphs 1 through 52 above are incorporated herein by reference.

54. Petitioners pursued a consistent course of conduct over the years to try acquire the Home Place free of the terms of Decedent's Will and to deprive Respondent of his own assets and any benefit that he might realize as an heir or as residuary beneficiary of the Estate. Thus,

- a. Petitioners sold or otherwise disposed of Estate assets without notice to or consent of Respondent and have never accounted for any resulting income.
- b. Petitioners stopped making homeowners insurance premium payments in 2011 despite notice from the lender that such premiums needed to be paid.
- c. Petitioners filed their Notice of Appeal of Judge Pierce's Order on September 27, 2012, but never preserved an issue for review by the appellate court. Although their appeal was denied, the stay that it caused delayed probate of Decedent's Estate for more than eight months.
- d. Petitioners stopped making mortgage loan payments in the third quarter of 2012 without prior notice to Respondent despite the risk of foreclosure by the lender, thus causing Respondent individually to make the missing payments in his effort to carry out his duties, as Personal Representative, to preserve the Estate.
- e. Petitioners lived essentially free of charge (no mortgage or homeowners insurance payments) at the Home Place for approximately nine months during 2012 and 2013. During this period, Petitioners' costs were borne by Respondent individually because, as Petitioners knew beforehand, the Estate has had essentially no assets since Decedent's death except for the Home Place and its contents, much of which, upon information and belief, was sold by Petitioners for their own benefit.
- f. Petitioners now have served the Amended Petition in which
 - i. Paragraph 19 states that "Petitioners are desirous of purchasing the [Home Place] from the Estate for fair market value"; and
 - ii. Paragraph 20 states that "Petitioners believes that they are entitled to approval of a private sale pursuant to S.C. Code §62-3-1309."

55. Based upon the foregoing, Petitioners have engaged in an abuse of process in that

- a. Petitioners have engaged in legal processes for an ulterior purpose, that is, to gain control over the Home Place and its contents at the expense of Respondent individually,

in derogation of Respondent's rights as the residuary beneficiary under the terms of Decedent's Will, and in violation of the intent of Decedent's Will;

b. Petitioners ulterior purpose was their primary motive for engaging in legal processes, and Petitioners fully recognize that Decedent's Estate is facing claims and obligations that "far exceed any equity in the [Home Place]." See Petition, ¶13.

c. Petitioners appeal without even preserving an issue for review by the appellate court stayed the probate process at the very time that Petitioners stopped making mortgage payments and was a willful act in the use of the process not proper in the regular conduct of the proceeding.

d. Petitioners' abuse of process has caused Decedent's Estate to incur costs and obligations plainly in excess of its ability to pay. Further, Petitioners' abuse of process has caused Respondent individually to incur costs and expenses in his effort as Personal Representative to preserve the Estate.

56. Accordingly, Respondent is informed and believes that both the Estate and Respondent individually are entitled to recover actual and punitive damages from Petitioners by reason of Petitioners' abuse of process.

SIXTH DEFENSE AND SECOND COUNTERCLAIM

(Accounting)

57. The allegations in paragraphs 1 through 56 above are incorporated herein by reference.

58. Petitioners sold or otherwise disposed of certain contents of the Home Place, which were Estate assets in which Respondent had an interest individually as residuary beneficiary.

59. Petitioners never disclosed to Respondent as Personal Representative or in his individual capacity what was sold, to whom, for how much, or what happened to the proceeds.

60. Accordingly, Respondent in his capacity as Personal Representative is informed and believes that the Estate is entitled to a full accounting of the proceeds of any sale of Estate assets and of any other disposition of any Estate asset by any Petitioner.

SEVENTH DEFENSE AND THIRD COUNTERCLAIM

(Conversion; Waste of Assets)

61. The allegations in paragraphs 1 through 60 above are incorporated herein by reference.

62. Petitioners converted Estate assets to their own use or wasted such assets in that they sold or otherwise disposed of Estate assets in which Respondent had an interest individually as

residuary beneficiary without ever disclosing to or obtaining the consent of Respondent in his capacity as Personal Representative or individually what was sold, to whom, for how much, or what happened to the proceeds.

63. Petitioners knew of the contents of Decedent's Will and of Respondent's residuary beneficial interest in the contents of the Home Place that they sold or otherwise disposed of, and therefore Petitioners' conduct was reckless and/or in conscious disregard of both the Estate's and Respondent's individual rights.

64. Accordingly, Respondent is informed and believes that both the Estate and Respondent individually are entitled to recover actual and punitive damages from Petitioners by reason of Petitioners' conversion and/or waste of Estate assets.

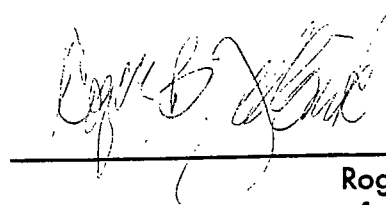
Based upon the foregoing, Respondent Zady R. Burton as Personal Representative of the Estate of Helen L. Burton and individually hereby requests that the Court:

A. Enter judgment in Respondent's favor and against Petitioners with respect to each of Petitioners' four causes of action;

B. Enter judgment in favor of Respondent and against Petitioners for the relief requested in each of Respondent's three Counterclaims; and

C. Grant such other and further relief in favor of Respondent as the Court deems appropriate.

Dated this 28th day of June, 2013.



Roger B. Jellenik
Attorney for Respondent
S.C. Bar No. 13546

Roger B. Jellenik
Attorney at Law
1111 Broad Street, Box J
Camden, SC 29020
Telephone: 803-424-1919
Facsimile: 803-424-1922
e-Mail: rbjatty@mac.com

EXHIBIT A

HB L
1

Last Will and Testament

OF
HELEN L. BURTON

I, HELEN L. BURTON, being of sound and disposing mind and memory, do hereby make, publish, declare and constitute this as and for my Last Will and Testament, hereby revoking any and all wills or instruments of a testamentary nature heretofore executed by me.

ITEM I: I direct that all of my just debts and funeral expenses be paid with the first monies coming into the hands of my personal representative.

ITEM II: I hereby will, devise and bequeath all of my property, both real and personal, wherever situate, of whatsoever nature, to my son, Zady Burton, in trust for the lifetime care of Sammy Boykin; Sandy Boykin; Kenny Boykin; Jimmy Boykin and Zady Burton. It is my intention that Zady Burton maintain my family home at 72 Burdell Road, Lugoff, South Carolina 29078 so that any or all of the above four named persons shall have a home for their life, provided that they behave, do nothing unlawful in the house, do not permit drugs or alcohol in the house, and do not permit illicit affairs with members of the opposite sex in the house. Further, it is my desire that the parties occupying the house be responsible for taxes and insurance. Zady Burton shall be the sole party to have the power to mortgage the property and then only for the maintenance and care of the property. After the death of Sammy Boykin, Sandy Boykin, Kenny Boykin and Jimmy Boykin, title to the property shall vest in Zady Burton, his heirs or assigns.

FURMAN, SPEEDY & STEGNER

ATTORNEYS AT LAW
ONE LAFAYETTE COURT
CAMDEN, SOUTH CAROLINA 29020

P.30

I, HELEN L. BURTON, the testator, sign my name to this instrument this 14 day of August, 1997, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Helen L. Burton
HELEN L. BURTON

I, Nancy S. Bennett, one of the witnesses, sign my name to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his/her last will and that he/she signs it willingly (or willingly directs another to sign for him/her), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Nancy S. Bennett

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

SUBSCRIBED, sworn to and acknowledged before me by HELEN L. BURTON, the testator and subscribed and sworn to before me by Nancy S. Bennett, one of the witnesses, this 14 day of August, 1997.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: Feb 2000

EXHIBIT B

Tuesday, August 16, 2011

CERTIFIED MAIL

Mr. Jimmy Boykin
Mr. Kenny Boykin
Mr. Sandy Boykin
72 Burdell Road
Lugoff, SC 29078

Mr. Sammy Boykin
% Springdale Health Care Center
146 Battleship Road
Camden, SC 29020

RE: Estate of Helen L. Burton
Termination of Helen L. Burton Testamentary Trust

Gentlemen:

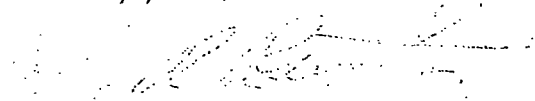
Pursuant to SC Code §62-7-414(a) and (c), this letter will serve as notice to each of you as qualified beneficiaries that, as Trustee of the referenced Trust, I have concluded that

1. The total value of the Trust property is substantially less than \$100,000.00;
2. The value of the trust property is insufficient to justify the cost of administration; and
3. This trust will be terminated as of September 30, 2011.

Please be advised that this property may be leased by one or more of you at a rental and under terms mutually acceptable. However, should a lease not be negotiated and signed by September 15, 2011, you will be expected to vacate the property by September 30, 2011.

A copy of SC Code 62-7-414 is shown on the following page for your information. Please feel free to call if you have any questions, and thank you for your attention to this matter.

Sincerely yours,



Zady R. Burton

RBJ/AMBP 20110816 trust termin ltr.pages

Enclosure(s): Yes

Distribution: Kershaw County Probate Court; Chron; file

2.33

EXHIBIT C

A.34

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-28-920

Jimmy Boykin Sammy Boykin

Zady R Burton Zady R Burton PR Zady R
Burton TR Estate of Helen L Burtonaka Sandy J Boykin, Sr Kenny Boykin
PLAINTIFF(S)Sandy Boykin aka Sandy H Boykin, Jr
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: *Appeal is denied. Estate to be closed under Probate supervision.*

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 payable 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

Judge Code

Date

EXHIBIT D

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE COURT
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	
	)	
Estate of Helen L. Burton,	)	Case No: 2013CV2810100682
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
Sandy H. Boykin, Sr., Kenny Boykin,	)	
Sandy H. Boykin, Jr., and Jimmy Boykin,	)	
	)	
Defendants	)	

This matter came before the Court upon the request of the Defendant after Plaintiff's application for a Warrant of Ejectment was submitted to the Court on or about May 14, 2013. This application was filed following the service of all above-named Defendants with Notices to Quit the premises located at 72 Burdell Road, Lugoff, South Carolina 29078. Appearing at the call of the case on behalf of the Plaintiff was the wife of the Personal Representative, Regina Burton and the attorneys of record, Jennifer M. Clinkscale and Roger B. Jellenik. The Defendant Jimmy Boykin appeared and was accompanied by his counsel of record, Moultrie B. Burns, Jr.

On Monday, May 20, 2013, Defendant served upon Zady Burton, Personal Representative to the Estate of Helen Burton a subpoena requiring his appearance at the time of hearing. Furthermore, at the time of hearing, Mr. Burns requested a "factual hearing" on the matter.

After considering the statements of counsel, the Court hereby orders as follows:

1. The Court takes judicial notice that the Estate of Helen L. Burton is the rightful owner of the property at issue in this matter. The Court further takes judicial notice that the

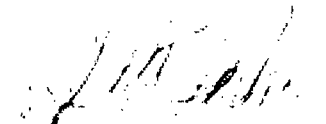
Defendants have made no mortgage payments on the subject property since approximately August 2012.

2. After inquiry regarding the availability of newly established facts, the Defendant did not offer any facts to the Court that had not previously been heard. Therefore, the Court denies Mr. Harris' request for a factual hearing in this matter due to the Court's prior knowledge of the facts surrounding this action.
3. The subpoena served upon Zady Burton by the Defendants is quashed due to the undue burden its enforcement would put upon Mr. Burton due to his failing health as documented by his treating physician.
4. The Court denies the Plaintiff's application for a Warrant of Ejectment due to the Defendants' claims now pending before the Kershaw County Probate Court.
5. The Court finds the Plaintiff qualifies for a remedy afforded by S.C. Code Ann. § 15-67-610 and that the issuance of a continuing bond for the fair market value of the home is an appropriate remedy. Beginning June 5, 2013, the Defendants shall be required to pay to the Estate of Helen L. Burton the amount of \$418.19 per month. This amount will be due on the fifth (5th) of each month until the issues surrounding the mortgage have been resolved. This is a continuing bond and filing any appeal will not stay the Defendants' obligation to make this payment. The Court determined this amount to approximate the fair market value of the home by combining the amount of the monthly mortgage payment and the monthly insurance payment and taking into consideration payments the Defendant has made on behalf of the subject property. The Court estimates this amount is actually a reduction of the fair market value of the property. Further Defendant is ordered to continue payment of property taxes on the subject property.

6. Should the Defendants fail to make timely payment of the bond, this will be grounds for issuance of a Warrant of Arrest.

IT IS SO ORDERED:

Camden, South Carolina
June 9, 2011



The Honorable M. Scott Rankin

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE PROBATE COURT
2006ES2800391
(Helen L. Burton Estate)

Jimmy Boykin, Sammy Boykin,
a/k/a Sandy H. Boykin, Sr., and
Kenny Boykin)

Petitioners)

Vs.)

**ORDER
GRANTING MOTION**

Zady R. Burton, individually and as
Personal Representative of the
Estate of Helen L. Burton, and
Sandy Boykin, a/k/a Sandy H.
Boykin, Jr.)

Respondents)

TO: ROGER B. JELLENIK, ATTORNEY FOR ZADY R. BURTON INDIVIDUALLY
AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF HELEN L. BURTON
AND SANDY BOYKIN, A/K/A SANDY H. BOYKIN, JR., PRO SE:

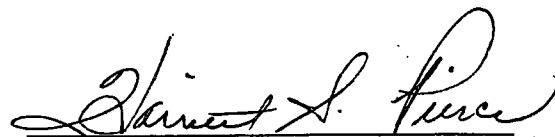
Motion for removal to Circuit Court for the purpose of an action to determine the
construction of the Will of Helen L. Burton was filed with this Court on July 2nd, 2013 and is
hereby granted.

A hearing is waived by this Court as the decision is a matter of law as set forth in
S.C. Code of Law Section 62-1-302, subsection (d) (2).

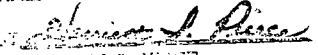
Witness my hand and seal this 8th day, August, 2013.

RECEIVED
AUG 20 2013

Roger B. Jellenik, Esq.


Probate Judge of Kershaw County
Camden, South Carolina

A CERTIFIED COPY:

ATTEST: 
PROBATE JUDGE
KERSHAW COUNTY S.C.

A.40

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF Kershaw

FILED FOR RECORD

2014 MAY 16 PM 4:41

PROOF OF ADR OR EXEMPTION

Jimmy Boykin, et. al.

Plaintiff,

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

vs.

FILE NO.: 2013-CP-28-876

Zady R. Burton, individually, et. al.
Defendant.

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

PURSUANT to the South Carolina Alternative Dispute Resolution Rules (SCADR):

- A. _____ I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

- B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

Mediation

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

G. Thomas Cooper, Jr.

3. The ADR was conducted on May 2

ATTEST True, Correct & Certified
Copy, of Original on File in this
Court

Joyce McDONALD
Clerk of Court Kershaw County

P.42

Manny LC @ SC Cat - 074

4. As a result of ADR, this case should be considered (please check one);

(X) Fully Settled.

(X) by Consent Judgment, to be filed by Attorneys

or () Voluntary Dismissal to be filed by

() Partially Settled.

() At an Impasse.

() In need of further ADR I ☐ am ☐ am not willing to continue as a neutral. I recommend that ADR resume as of

5. Plaintiff ☒ was present ☐ was not present
Defendant ☒ was present ☐ was not present

6. Other participants were:

____ Lawyer for Defendant Moultrie B. Burns
____ Lawyer for Plaintiff Roger B. Jellenik
____ Representative for Insurance Carrier
____ Guardian *ad Litem*
____ Experts
____ Others Defendant represented by POA Regina Burton

7. Choice of the neutral was by:

X Stipulation
____ Court Order

8. The total number of hours spent in ADR was: 4.5 hours.

9. Further comments of the neutral:

Neutral's Signature

Date: May 6, 2014

L.43

G. THOMAS COOPER, JR.

Certified Arbitrator/Mediator

LED FOR RECORD

2014 MAY -6 PM 4:41

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Retired/Active
Fifth Judicial Circuit of South Carolina

5-2-14

2013-CP-13-876

A Jimmy Bowker AGREES TO PAY TO ZADY BURTON
ON BEHALF OF HIMSELF AND THE ESTATE OF
HEREN BURTON THE SUM TOTAL OF \$12,000
AS FOLLOWS:

ZADY BURTON, BY REGINA BURTON AGREES
TO ACCEPT ON BEHALF OF HIMSELF AND
THE ESTATE OF HEREN BURTON THE SUM

OF 1) \$12,000 AS FOLLOWS

\$8,000 PAYABLE UPON EXECUTION OF
APPROPRIATE RELEASES AND

\$4,000 PAYABLE IN INSTALLMENTS
OVER A PERIOD OF 5 YEARS WITH NO (0%)
INTEREST.

- AND -

B EXECUTION OF FAMILY SETTLEMENT AGREEMENT
MUTUAL RELEASE OF ALL PARTIES
COORDINATE IN SETTLEMENT OF HEREN BURTON ESTATE

Regina Burton
REGINA BURTON POA

Jimmy Bowker
Jimmy Bowker

R.44

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE PROBATE COURT

DEED OF DISTRIBUTION
(Real Property Only)
NOT A WARRANTY DEED

IN THE MATTER OF : IN THE MATTER OF HELEN L. BURTON

HELEN L. BURTON, CASE NUMBER: 2006-ES-28-00391

County where property is located if not above County:

The undersigned states as follows:

Decedent died on October 24, 2006, and probate of the Estate is being administered in the Probate Court for Kershaw County in File # 2006-ES-28-00391.

I was appointed the Personal Representative on _____.

Decedent owned real property described as follows:

Tax Map Number: 283-17-00-040 S48

Property address: 72 Burdell Road, Lugoff, SC 29078

Mailing address for
tax notice: 72 Burdell Road, Lugoff, SC 29078

Legal Description:

All that piece, parcel or lot of land, with improvements thereon, situate, lying and being about four (4) miles west of the City of Camden, in Wateree Township, School District No. 29F, in the County of Kershaw, State of South Carolina, being Lot No. 53 and a portion of Lot No. 54 on plat of property of C. C. Whitaker, et al, prepared by A. B. Boykin, Surveyor, dated April 4, 1949, recorded in the office of the Clerk of Court (now Register of Deeds) for Kershaw County in Plat Book 14, page 21, and more particularly shown on an individual plat prepared by S. Tetterton, R.L.S., dated September 30, 1968, recorded in the office of the Register of Deeds for Kershaw County in Plat Book 34 at page 1241. Said property fronts west on Burdell Road for a distance of 100 feet, extending back eastwardly therefrom for a distance of 161 feet on its northern boundary

and for a distance of 177 feet on its southern boundary and having a width across its eastern boundary of 100 feet, and being bounded as follows: NORTH by remaining portion of Lot No. 54; EAST by Lot No. 68; SOUTH by Lot No. 52; and, WEST by Burdell Road.

The above-described property is the same property conveyed to Charles E. Burton and Helen L. Burton by Joint Survivorship Deed of Tommy G. Granger and Sandra R. Granger dated March 19, 1970, and recorded in the office of the Clerk of Court (now Register of Deeds) for Kershaw County in Book HW, page 1900 on March 23, 1970, with title vesting in Helen L. Burton on the death of Charles E. Burton on March 5, 1979. Reference is made to that deed of Zady Burton to Helen L. Burton dated October 23, 1979, and recorded in Book IO, page 470 on August 6, 1980.

Reference is further made to the Quit-Claim Deed of Kenny Boykin to Jimmy Boykin dated April 29, 2014, and recorded in Book 3225, page 235 on April 30, 2014, and Quit-Claim Deed of Sandy Boykin, Jr., to Jimmy Boykin dated September 20, 2012, and recorded in Book 3098, page 37 on May 29, 2013.

This transfer is made pursuant to:

- ☐ Decedent's will
- ☐ Intestacy Statue : SCPC 62-2-103
- ☐ Private Family Agreement SCPC 62-3-912
- ☐ Disclaimer by:
- ☐ Probate Court Order issued on:

XXX Other: Mediation Agreement dated May 2, 2014, filed May 6, 2014, with proof of ADR in Circuit Court File No. 2013-CP-28-876.

In accordance with the laws of the State of South Carolina, the Personal Representative does hereby release all of the Personal Representative's right, title and interest, including statutory and/or testamentary powers, over the real property described to the beneficiaries below:

Name: Jimmy Boykin
Address: 72 Burdell Road, Lugoff, SC 29078

- ☐ *Additional sheet is attached for names of additional Beneficiaries (check, if applicable).*

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the above Estate, has executed this Deed of Distribution, on this _____ day of October, 2014.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF**

Estate of: Helen L. Burton
Signature of Personal
Representative: _____
Print Name: Zady Burton

If applicable, Signature
of Co-Personal: N/A
Print Name: _____

Witness: _____
Print Name: _____

Witness: _____
Print Name: _____

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF KERSHAW)

I, _____, Notary Public for the State of South Carolina do hereby certify that Zady Burton, Personal Representative of the Estate of Helen L. Burton, personally appeared before me this day and acknowledged the due execution of the foregoing Deed of Distribution.

Witness my hand seal this the _____ day of October, 2014.

(Signature of Notary Public) (Seal)

Print name of Notary Public
Notary Public for State of South Carolina
My commission expires: _____

Note: It is recommended that an attorney prepare this document and determine if a title examination is necessary.

A.47

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW)

Jimmy Boykin, et. al.,)

Plaintiff,)

vs.)

Zady R. Burton, individually and as)
Personal Representative of the)
Estate of Helen Burton, et. al.,)

Defendant.)

MEMORANDUM IN SUPPORT
OF MOTION

2013-CP-28-876

FILED
CLERK OF COURT
KERSHAW COUNTY, S.C.

2015 MAR 31 PM 3:53

CLERK OF COURT

This action was brought pursuant to Probate Court §62-3-1301, et seq., the only procedure for sale of lands by the probate court, specifically §62-3-1309 which authorizes a private sale. The answer filed by the estate "admits that the obligations and costs of administration of the estate exceed the equity in the home place."

This memorandum is submitted in support of the motion of the Petitioner Jimmy Boykin (hereinafter Jimmy) seeking an Order requiring the Respondent Zady Burton, individually and as personal representative, (hereinafter Zady) to deliver a proper deed of distribution for 72 Burdell Road (hereinafter the Home) pursuant to the mediated settlement agreement dated 5-2-14.

Prior to the mediation Jimmy received and recorded quit claim deeds from his brothers, the Respondent Sandy Boykin and the Petitioner Kenny Boykin. Also Jimmy's father, the Petitioner Sammy Boykin died on 4-9-2014.

The mediated agreement dated 5-2-14 was signed by Jimmy and by Zady and provides that Jimmy "agrees" to pay \$12,000 (including specified financing) and

Zady "agrees" to accept same. Further, the parties agreed to sign a family settlement

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APR - 1 2015

Roger B. Jellenik, Esq.
R.46

agreement and mutual release".

Opposing counsel prepared the attached settlement agreement and release marked Exhibit A. The "notations" on the attached are those of the undersigned and should be ignored for purposes of this motion. Exhibit A provides for said \$12,000 payment, as well as dismissal of the action, mutual releases and paying off the existing mortgage. Jimmy agrees to all of those provisions. **However, opposing counsel has made a closing contingent on: a) the dismissal of the action; b) mutual release; and, c) mortgage pay-off being accomplished prior to the delivery of the deed of distribution and that payment be made to Zady individually rather than individually and as PR.**

Jimmy has deposited with the undersigned funds sufficient to pay the amount agreed to at mediation plus paying off the existing mortgage. He has been ready, willing and able to close for months. Reference is made to Jimmy's affidavit and the affidavit of Carl Reynolds of Reynold's Insurance Services.

A simple, normal, real estate closing, with disbursement by the grantee's attorney, as settlement agent, would accomplish **simultaneously** the following:

1. Delivery of executed Deed of Distribution (attached to motion) to Jimmy as Grantee.
2. Payment of \$8,000 to Zady (individually and as PR).
3. Delivery of a \$4,000 promissory note and first purchase money mortgage to Zady (individually and as PR).
4. Evidence of insurance naming Zady (individually as a PR) as additional insured.

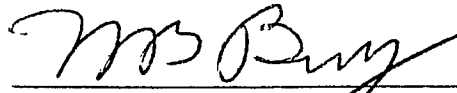
5. Paying off existing mortgage, (Zady must give settlement agent authority to get the pay-off from the lender).

6. Stipulation of Dismissal with Prejudice as between Jimmy and Zady.

7. Mutual releases signed by Jimmy and Zady.

It is submitted that Jimmy Boykin is entitled to an Order enforcing the mediation agreement as set forth above.

Respectfully Submitted.



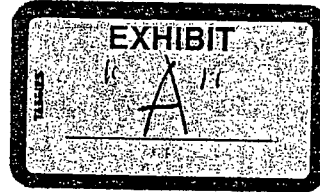
Moultrie B. Burns, Jr., Attorney for
the Plaintiff, Jimmy Boykin
Post Office Drawer 10
Camden, South Carolina 29021
(803) 432-4391

March 31, 2015.

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE PROBATE COURT

Jimmy Boykin, Sammy Boykin)
a/k/a Sandy H. Boykin, Sr., and)
Kenny Boykin,)
Petitioners)



v.)

CASE NO. 2006-ES-28-00391

Zady R. Burton, individually and)
As Personal Representative of the)
Estate of Helen L. Burton and)
Sandy Boykin a/k/a Sandy H.)
Boykin, Jr.,)
Respondents)

SETTLEMENT AGREEMENT AND RELEASE

THIS AGREEMENT, effective as of May 2, 2014, is by and between Jimmy Boykin individually and as Personal Representative of the Estate of Sammy Boykin a/k/a Sandy H. Boykin, Sr.; Kenny Boykin; Zady R. Burton individually and as Personal Representative of the Estate of Helen L. Burton ("Estate"); and Sandy Boykin a/k/a Sandy H. Boykin, Jr.

WHEREAS, Jimmy Boykin, Sammy Boykin a/k/a Sandy H. Boykin, Sr., and Kenny Boykin are the named Petitioners ("Petitioners") in the captioned action, and Zady R. Burton, individually and as Personal Representative of the Estate of Helen L. Burton ("Estate") and Sandy Boykin a/k/a Sandy H. Boykin, Jr., are the named Respondents ("Respondents") in the captioned action;

WHEREAS, Sammy Boykin a/k/a Sandy H. Boykin, Sr., is now deceased, and Jimmy Boykin is the Personal Representative of his Estate;

WHEREAS, the captioned action arose out of the provisions and circumstances attendant upon the Last Will and Testament ("Will") of Helen L. Burton ("Decedent");

WHEREAS, the Estate and all parties hereto have little or no financial resources or expectations of such resources, but wish to arrive at an amicable settlement of the captioned action under such circumstances;

WHEREAS, Kenny Boykin and Sandy Boykin a/k/a Sandy H. Boykin, Jr., have each assigned their respective interests to all property of any kind covered by this Agreement to Jimmy Boykin, as to which please see Exhibit "A", attached hereto and incorporated herein;

WHEREAS, the captioned action was removed to the Kershaw County Court of Common Pleas, and the parties to this Agreement wish to have this action dismissed by consent with prejudice;

WHEREAS, the captioned action is related to administration of the Estate, and the parties to this Agreement wish to resolve their differences and have the Estate closed;

NOW, THEREFORE, the parties hereto, intending to be legally bound hereby, do enter into this Settlement Agreement in consideration of the promises, terms, conditions, and provisions hereinafter set forth, the sufficiency of which is hereby acknowledged:

1. Dismissal of Circuit Court Action. The parties agree that this Settlement Agreement is executed in compromise of disputed claims, that it is not to be construed as an admission of liability on the part of any party, and that each party specifically denies liability to any other and wishes merely to avoid the expense and inconvenience of litigation and to resolve the captioned matter and possible further disputes based upon Decedent's Will in its present form by compromise. Accordingly, both Petitioners and Respondents hereby agree to move the Court to dismiss the captioned action by consent with prejudice and to co-operate in closing the Estate and conducting all further proceedings for that purpose, including but not necessarily limited to distribution of Estate assets pursuant to this Settlement Agreement under the jurisdiction of the Kershaw County Probate Court.

*when
get
deed*
^{new} 2. Consent Order. Upon execution of this Settlement Agreement, and as a prerequisite to its further requirements, the parties hereto shall file a Consent Order of Dismissal of the captioned matter in the form attached hereto as Exhibit B.

3. Deed of Distribution. Subject to the provisions of sections 4 and 5 hereof, Respondent Burton in his representative capacity shall issue the deed of distribution ("Deed") in the form attached as Exhibit "C" to Petitioner Jimmy Boykin.

4. Delivery of Deed of Distribution and Consideration Therefor. Upon execution of this Agreement, Respondent Burton shall proceed to prepare and file with the Kershaw County Probate Court the Deed in the form attached as Exhibit "C" and closing documents

for the Estate. After approval of the Deed by the Judge of Probate of Kershaw County, Respondent Burton shall execute and deliver same to Petitioner Jimmy Boykin subject to

a. Delivery of a cashier's check payable to the Estate of Helen L. Burton in the amount necessary to pay off the mortgage loan then applicable to the real property described in the Deed;

b. Execution and delivery by Petitioner Jimmy Boykin of a promissory note in the amount of \$4,000.00, payable to Respondent Burton or his heirs, devisees, or assigns, and accompanying mortgage, each in the form attached as Exhibit D; and

c. Payment by Petitioner Jimmy Boykin to Respondent Burton or his heirs, devisees, or assigns of the sum of \$8,000.00 in the form of a cashiers check issued by a bank with an office in the City of Camden, South Carolina; and

c. Preparation and filing of a Consent Order of Dismissal of Magistrate's Court Case No. _____.

5. Co-operation in Closing Estate. Petitioners and Respondents shall co-operate in providing information reasonably requested by Respondent Burton in his capacity as Personal Representative of the Estate for the orderly closing of the Estate.

6. General Release.

a. Petitioners and Respondent Sandy Boykin a/k/a Sandy H. Boykin, Jr., including, without limitation, their heirs, successors, assigns, trustees, co-trustees, settlors, employers, employees, predecessor trusts, successor trusts, affiliate trusts, and related entities hereby remise, release, and forever discharge Respondents, including without limitation, their heirs, successors and assigns, in full of and from any and all claims, demands, liabilities, debts, rights, actions, costs, fees, expenses, compensation and causes of action, at law or in equity, related in any manner whatsoever to the Estate of Helen L. Burton and her Last Will and Testament, the administration and operation of the Decedent's Estate, and the claims set forth in the captioned action, including any claims which were, or which could have been, set forth by Petitioners against Respondents in the captioned action or otherwise.

a. Respondents, including, without limitation, their heirs, successors, assigns, trustees, co-trustees, settlors, employers, employees, predecessor trusts, successor trusts, affiliate trusts, and related entities hereby remise, release, and forever discharge Petitioners,

and Respondent Sandy Boykin a/k/a Sandy H. Boykin, Jr., including without limitation, their heirs, successors and assigns, in full of and from any and all claims, demands, liabilities, debts, rights, actions, costs, fees, expenses, compensation and causes of action, at law or in equity, related in any manner whatsoever to the Estate of Helen L. Burton and her Last Will and Testament, the administration and operation of the Decedent's Estate, and the claims set forth in the captioned action, including any claims which were, or which could have been, set forth by Respondents against Petitioners and Respondent Sandy Boykin a/k/a Sandy H. Boykin, Jr., in the captioned action or otherwise.

7. Miscellaneous.

- a. Agreement Binding; Non-Assignment. Each party represents and warrants that (s)he is properly identified and has the authority to enter into this Agreement and execute additional documents as may be required by the terms of this Agreement. The parties agree that this Agreement shall be binding upon any and all successors in interest to the parties, provided that the parties agree that they have not irrevocably assigned, transferred, or conveyed in any manner all or any part of their legal claims or legal rights against the other in connection with the matters described herein, and provided further that the respective parties shall take steps immediately to revoke any assignment, transfer, or conveyance that may have been entered into heretofore.
- b. Voluntary Agreement; Advice of Counsel. Each party hereto freely acknowledges that (s)he signs this agreement as his or her voluntary act and deed and that they have received of a copy of this agreement. Each party further acknowledges that (s)he has carefully read this agreement, knows its contents, understands it, and has been afforded the opportunity to retain competent legal counsel of his or her own choosing to furnish legal advice with respect to its contents. The parties hereto further agree to assume the risk that the law factor may be otherwise than they believe.
- c. Parol Evidence. Except as to the promises, covenants, representations, and warranties contained herein and in the documents attached hereto, as applicable, no party is relying on any collateral, oral or written representation or promise as an inducement to enter into or as a part of this Agreement.

- d. Amendment or Modification. No document purporting to amend or modify this Agreement shall be effective unless in writing and signed by each Party hereto.
- e. Complete Agreement. This agreement contains the entire agreement of the parties, and the terms are contractual and not mere recitals.
- f. Effective Date; Applicable Law. When executed by all of the parties hereto, this Agreement shall be deemed effective as of the date first shown above and shall be interpreted and governed in accordance with the laws of the State of South Carolina without regard to principles of conflicts of law.
- g. Counterparts and Signing. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. This Agreement may be executed by facsimile, which shall have binding effect. Copies of original execution pages of this Settlement Agreement shall have the same force and effect as the originals themselves.

IN WITNESS WHEREOF, and, subject to subsection f of Section 7 above, the Parties hereto set forth their hands and seals on the dates set forth below.

Jimmy Boykin

(Seal)

Jimmy Boykin as Personal Representative
of the Estate of Sammy Boykin a/k/a
Sandy H. Boykin, Sr.

(Seal)

Kenny Boykin

(Seal)

Sandy Boykin a/k/a Sandy H. Boykin, Jr.

(Seal)

Zady R. Burton

(Seal)

Zady R. Burton as Personal Representative
of the Estate of Helen L. Burton

(Seal)

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

Jimmy Boykin, et. al.,)
Plaintiff,)

vs.)

AFFIDAVIT

Zady R. Burton, individually and as)
Personal Representative of the)
Estate of Helen Burton, et. al.,)
Defendant.)

2013-CP-28-876

CLERK OF COURT
KERSHAW COUNTY, S.C.

2015 MAR 31 PM 3:53

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PERSONALLY APPEARED BEFORE ME Jimmy Boykin who, after being
duly sworn, states and avers as follows:

1. This Affidavit is given in support of my pending motion to obtain a Deed of Distribution from Zady R. Burton, individually and as Personal Representative of the Estate of Helen Burton (hereinafter Zady).
2. I have resided at 72 Burdell Road since I was seven (7) years old and I am now thirty-five (35) years old. We lived with my grandmother who died in October, 2006. She left a Will specifically authorizing me to live in the property. I was my father's primary caregiver in the home for his extended illness until he died in April, 2014. I brought an action, removed to Circuit Court, to purchase the property and reached a mediated agreement with Zady dated May 2, 2014. I obtained quit claim deeds from my brothers prior to the mediation.
3. I have deposited sufficient funds with my attorney to pay Zady and to pay off the existing mortgage, but Zady consistently refuses to have a normal closing.
4. After depositing sufficient funds with my attorney, I arranged for

E. 56

insurance on the property with Reynolds Insurance Services. I was devastated when I received the call from Mr. Reynolds, reference being made to Mr. Reynolds' Affidavit.

5. I have relied upon the mediated agreement to do an extra amount of repairs, although this experience has caused me more than financial pain.

6. I continue to be ready, willing and able to pay the money and receive a proper deed, using the normal closing practices as described to me by my attorney.

IN WITNESS WHEREOF I have set my hand and seal this 31st day of March, 2015.

Jimmy Boykin
Jimmy Boykin

Sworn to before me this 31st day of March, 2015.

Mont B. Bennis
Notary Public for S.C.
My Commission Expires: 1-17-2023

2013-CP-28-876

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

AFFIDAVIT

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CLERK OF COURT
KERSHAW COUNTY, S.C.

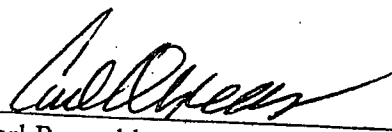
PERSONALLY APPEARED BEFORE ME, Carl Reynolds, who, after being duly sworn, states and avers as follows:

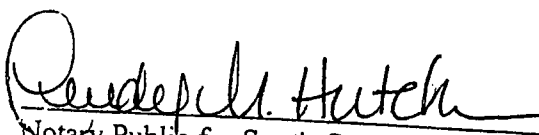
I am the owner of Reynolds Insurance in Lugoff, SC. On August 11, 2014, I issued a "Certificate of Insurance" for Jimmy Boykin's purchase of 72 Burdell Road naming Zady Burton as mortgagee. A copy of said certificate is attached hereto. Thereafter, I returned a call from a Zady Burton and a female answered the phone who identified herself as the wife of Zady Burton. It was my impression that, as the female was talking to me, Zady Burton was in the background telling her what to say. The caller said emphatically that Jimmy would not be getting the house at 72 Burdell Road and insurance would not be necessary.

It was very upsetting to Jimmy Boykin when I called him about the above call and that insurance certificate had to be cancelled since the sale did not close.

IN WITNESS WHEREOF, the undersigned has set his hand and seal this 12th day of November, 2014.

SWORN TO AND SUBSCRIBED
before me this 12th day of
November, 2014.
803-438-1055


Carl Reynolds
Reynolds Insurance Services, Inc.
P. O. Box 550
Lugoff, S.C. 29078


Notary Public for South Carolina
My commission expires: 12-8-2021

A.58


Allied
Insurance

 a Nationwide Insurance[®] company

 Reynolds Insurance Svcs Inc
 Po Box 550
 Lugoff SC 29078 0550
 Agent Number: 70413

CERTIFICATE OF INSURANCE

 Jimmy Boykin
 72 Burdell Rd
 Lugoff, SC 29078-9431

Policy Period - From: 08/13/2014 To:08/13/2015

Policy Number: HOC 0048606930

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHT UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICY BELOW.

Characteristics:

Year Built	10/1960
Construction Type	Frame

Coverages/Amounts:

HO-3	
Package:	Gold
A: Dwelling	100200
B: Other Structures	10020
Other Structures Increased Limit	None
C: Personal Property	73500
D: Loss of Use	Actual Loss up to 12 months
E: Personal Liability	300000
F: Med Pay Each Person	2000
All Other Perils Deductible	1,000 Ded
Wind/Hail Deductible	
Hurricane Deductible	

Total Premium

\$610.16

Additional Coverages & Discounts:

Advanced Home Protection	N		
Premier Endorsement	Y	Personal Property Replacement	Y
Premier Extra	N	Dwelling Replacement Cost	125% Capped
Scheduled Personal Property	N	Agreed Value Scheduled Personal Property	N

1.59

Multi-policy Discount	Y	Protective Devices Credit	N
Home Renovation Discount	Y	Claim-Free Discount	Y
Blanket Personal Property	N	Gated Community Discount	N
Equipment Breakdown	N	Intra-Agency Transfer Discount	N
Multi Line Discount	N	Limitation of Coverage to Designated Premises	N

Bill Plan: Direct to Insured

First Mortgagee

Loan Number:

Name:

Address:

City, State, Zip:

Zady Burton Loans

401 Norden Dr

Camden SC 29020

THIS IS TO CERTIFY THAT THE POLICY OF INSURANCE HAS BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICY DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICY.

A. 60

JIMMY BOYKIN SCDL 007789851 803-572-1778 72 BURDELL RD LUGOFF, SC 29078		2476 87408/530 117
Pay to the Order of <u>Reynolds INS.</u>		<u>8-11-14</u> Date
<u>One Hundred one dollar and 70/100</u>		\$ 101.70
First Citizens First Citizens Bank & Trust Company, Inc.		Dollars
For <u>insurance on house</u>		<u>Jerry</u>
⑆05390604⑆⑆080488654709⑆ 02476		

R.61

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Jimmy Boykin, Sammy Boykin)
a/k/a Sandy H. Boykin, Sr., and)
Kenny Boykin,)
Petitioners)

v.)

Case No. 2013-CP-28-00876

Zady R. Burton, individually and)
As Personal Representative of)
the Estate of Helen L. Burton and)
Sandy Boykin a/k/a Sandy H.)
Boykin, Jr.,)
Respondents)

RESPONDENT BURTON'S BRIEF IN RESPONSE TO PETITIONER'S MOTION

The Respondent, Zady Burton ("Respondent Burton"), individually and as Personal Representative of the Estate of Helen L. Burton, submits this brief in response to the Petitioner Jimmy Boykin's ("Jimmy") Motion to Enforce Mediation Agreement ("Petitioner's Motion").

1. **Parties.** Petitioner is one of three initial petitioners in this case, the other two being Sammy Boykin a/k/a Sandy H. Boykin, Sr. ("Sammy"), and Kenny Boykin ("Kenny"). Upon information and belief, Sammy died on April 9, 2014, and the Motion at bar has been filed on Jimmy's behalf only. Upon information and belief, Respondent Sandy Boykin a/k/a Sandy H. Boykin, Jr. ("Sandy"), is not represented by counsel and has not appeared in this action. As to Respondent Burton, due to his health, his wife, Regina Burton has been appointed his attorney-in-fact.¹
2. **Procedural Posture.** This action was initially filed in the Kershaw County Probate Court and thereafter removed by Petitioners' motion to the Court of Common Pleas. A mediation was conducted by Judge G. Thomas Cooper on May 2, 2014, and thereafter Judge Cooper filed the

¹ A copy of the "Limited Power of Attorney" is attached as Exhibit A. Also included in Exhibit A are physician's letters identifying the health conditions underlying Ms. Burton's appointment as Respondent Burton's attorney-in-fact.

Proof of ADR and its attachment hereinafter collectively referred to as "Proof of ADR").²
Neither Kenny nor Sandy appeared at the mediation.

3. **Background.** The background of this case is as follows –

3.1. *Decedent's Will.* Jimmy is one of Sammy's sons and a grandson of Helen L. Burton, Deceased ("Decedent"), who died testate on October 24, 2006. Decedent's Last Will and Testament ("Decedent's Will")³ dated August 14, 1997, imposed a testamentary trust ("Trust") upon all of her assets, real and personal, named Respondent Burton as her Personal Representative and as Trustee, and named all original parties to this action as life beneficiaries of the Trust with the remainder interest titled to Respondent Burton, his heirs or assigns. The principal asset(s) of Decedent's Estate were her former residence ("72 Burdell Road") located in Lugoff, SC, and its contents.

3.2. *Termination of the Trust.* Regrettably, Decedent's Will did not provide funds sufficient to administer the Trust or the probate process. Consequently, the financial burden of supporting these activities fell upon the surviving family members.⁴ On August 16, 2011, Respondent as Personal Representative of Decedent's Estate sent, and filed with the Court, a letter terminating the Trust pursuant to S.C. Code 62-7-414(a) and (c).⁵ On September 28, 2011, Jimmy, Sammy, and Kenny filed a Probate Court Petition to i) modify the Trust, ii) remove Respondent as Trustee and Personal Representative, and iii) allow Jimmy, Sammy, and Kenny to recover their periodic payments or gain title to 72 Burdell Road. The Kershaw County Probate Court upheld the Trust's termination by Order dated June 25, 2012. Petitioners appealed that decision, but the Court of Common Pleas denied the appeal and ordered the Decedent's Estate closed under Probate court supervision in a Form 4 Order filed May 20, 2013.

3.3. *Magistrate's Court Case.* During the summer of 2012, Petitioner(s) living at 72 Burdell Road stopped making periodic payments for mortgage and insurance with no notice to

² A copy of the Proof of ADR is attached as Exhibit B.

³ See the copy of Decedent's Will attached as Exhibit C.

⁴ Thus, upon information and belief, Sammy, Jimmy, Kenny, and/or Sandy have paid for the mortgage, utilities, insurance, and taxes for 72 Burdell Road because they lived there. Respondent Burton has paid for probate of Decedent's Estate.

⁵ See the copy of the letter and the cited statute attached as Exhibit D.

Respondent Burton. When the mortgage servicing agent notified Respondent Burton of the default, the payments were already 60 days overdue, and the property was at risk of foreclosure. Respondent Burton individually borrowed money and made the required payments from his personal funds to save 72 Burdell Road from foreclosure. Thereafter, Respondent Burton as Personal Representative filed in Kershaw County Magistrate's Court for Petitioners' ejectment. The resulting order dated June 7, 2013, allowed Petitioner(s) to retain possession of 72 Burdell Road and required that Petitioner(s) pay to Respondent Burton as Personal Representative of Decedent's Estate the sum of \$418.19 by the fifth day of each month pending the outcome of the captioned case.⁶

3.4. *Amended Petition and Removal to Circuit Court.* On May 31, 2013, Jimmy, Sammy, and Kenny filed an Amended Petition in which the primary focus of the causes of action appears to be Petitioners' desire to gain title to 72 Burdell Road notwithstanding the terms of Decedent's Will.⁷ On June 28, 2013, Respondent Burton filed a responsive pleading.⁸ On July 2, 2013, Petitioners filed for removal of this action to the Court of Common Pleas. Upon information and belief, Jimmy is the only remaining Petitioner at this time.

4. *Mediation and Petitioner's Motion.* A status conference before the Hon. L. Casey Manning was held on or about April 9, 2014. As a result of that status conference, the mediation previously noted was held on May 2, 2014, resulting in the Proof of ADR. Then, on or about November 17, 2014, Jimmy began paying the mortgage servicing agent directly and stopped making payments to Respondent Burton due under Judge Rankin's Order. Despite notice and an opportunity to cure, Jimmy refused to resume payments to Respondent Burton as Personal Representative pursuant to Judge Rankin's Order. Respondent Burton then filed a motion for a rule to show cause with the Kershaw County Magistrate's Court. As a result of the hearing on

⁶ See Judge Rankin's Order dated June 7, 2013, a copy of which is attached as Exhibit E.

⁷ The Amended Petition omitted the causes of action related to the Trust and removal of Respondent as Trustee and Personal Representative and seeks a lien on 72 Burdell Road, a private sale of that property to Petitioners, and refund of certain insurance proceeds.

⁸ The Responsive Pleading contains allegation denials, affirmative defenses, and counterclaims.

March 4, 2015, Judge Rankin ordered Jimmy to resume making the payments as required by his Order dated June 7, 2013.⁹

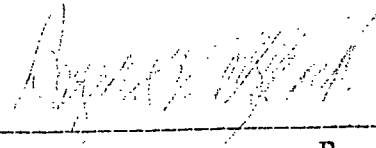
5. **Respondent Burton's Position.** Respondent Burton asks that Petitioner's Motion be denied because

5.1. The relief sought by Jimmy's Motion is not in accord with the text of the Proof of ADR;
and

5.2. Petitioner has declined to execute a settlement agreement noted in the Proof of ADR, insisting instead that the case is already settled.

WHEREFORE, based upon the foregoing, Respondent Burton respectfully requests that the Court deny Petitioner's Motion and grant such other and further relief as the Court deems just and appropriate.

Respectfully submitted this 30th day of March, 2015.



Roger B. Jellenik
Counsel for Respondent Burton
S.C Bar No. 13546

Roger B. Jellenik
Attorney at Law
1106 Little Street
Camden, SC 29020
T. 803-424-1919
F. 803-424-1922
e. rjellenik@camden.com

⁹ The Magistrate Court's Order based upon the hearing held on March 4, 2015, is still pending as of this date. Also, during the hearing, Respondent Burton voluntarily agreed to account for payments made by Petitioner(s) received by the Estate of Helen L. Burton from and after May 2, 2014.

EXHIBIT A

R.66

LIMITED POWER OF ATTORNEY

I, Zady R. Burton, individually and in my capacity as Personal Representative of the Estate of Helen L. Burton, hereby appoint my spouse, Regina Burton, as my attorney-in-fact (my "agent") to act for me and in my name (in any way I could act in person) in both my individual and representative capacities with respect to the following powers:

I. POWERS OF ATTORNEY-IN-FACT

THE FOLLOWING POWERS ARE INTENDED TO APPLY TO 1) THE PROBATE PROCEEDING PRESENTLY PENDING BEFORE THE KERSHAW COUNTY PROBATE COURT AS CASE NO. 2006-ES-28-00391, AND 2) THE EVICTION PROCEEDING PRESENTLY PENDING BEFORE THE KERSHAW COUNTY MAGISTRATE'S COURT AS CASE NO. 2012CV2810101564:

A. Real estate transactions. The agent is authorized to buy, sell, exchange, rent and lease real estate (which term includes, without limitation, real estate subject to a land trust and all beneficial interests in and powers of direction under any land trust); collect all rent, sale proceeds and earnings from real state; convey, assign and accept title to real estate; grant easements, create conditions and release rights of homestead with respect to real estate; create land trusts and exercise all powers under land trusts; hold, possess, maintain, repair, improve, subdivide, manage, operate and insure real estate; pay contest, protest and compromise real estate taxes and assessments; and, in general, exercise all powers with respect to real estate which the principal could if present and under no disability.

B. Financial institution transactions. The agent is authorized to open, close, continue and control all accounts and deposits in any type of financial institution (which term includes, without limitation, banks, trust companies, savings and building and loan associations, credit unions and brokerage firms); deposit in and withdraw from and write checks on any financial institution account or deposit; and, in general, exercise all powers with respect to financial institution transactions which the principal could if present and under no disability.

C. RESERVED.

D. Tangible personal property transactions. The agent is authorized to buy and sell, lease, exchange, collect, possess and take title to all tangible personal property; move, store, ship, restore, maintain, repair, improve, manage, preserve, insure and safekeep tangible personal property; and, in general, exercise all powers with respect to tangible personal property which the principal could if present and under no disability.

E. RESERVED.

F. RESERVED.

G. RESERVED.

H. RESERVED.

I. RESERVED.

J. RESERVED.

K. Claims and litigation. The agent is authorized to institute, prosecute, defend, abandon, compromise, arbitrate, settle and dispose of any claim in favor of or against the principal or any property interests of the principal; collect and receipt for any claim or settlement proceeds and waive agreements and other contracts as necessary in connection with litigation; and, in general,

exercise all powers with respect to claims and litigation which the principal could if present and under no disability.

L. RESERVED.

M. RESERVED.

N. Estate transactions. Subject to applicable law, the agent is authorized to accept, receipt for, exercise, release, reject, renounce, assign, disclaim, demand, sue for, claim and recover any legacy, bequest, devise, gift or other property interest or payment due or payable to or for the principal; assert any interest in and exercise any powers over any trust, estate or property subject to fiduciary control; transfer assets to any revocable trust created by the principal; establish a revocable trust solely for the benefit of the principal that terminates at the death of the principal and is then distributable to the legal representative of the estate of the principal; and, in general, exercise all powers with respect to estates and trusts which the principal could if present and under no disability; provided, however, that the agent may not make or change a will and may not revoke or amend a trust revocable or amendable by the principal or require the trustee of any trust for the benefit of the principal to pay income or principal to the agent unless specific authority to that end is given, and specific reference to the trust is made, in the statutory property power form.

O. RESERVED.

II. COMPENSATION

My agent shall not be entitled to compensation for services rendered as agent under this power of attorney.

III. EFFECTIVE DATE

This power of attorney shall become effective on this date, and such rights, powers, and authority shall remain in full force and effect, including during my disability or incompetency, and until I give notice in writing that such power is terminated.

IV. SUCCESSOR

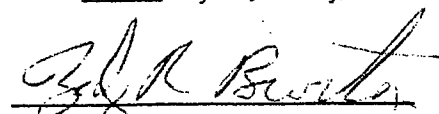
If any agent named by me shall die, become incompetent, resign or refuse to accept the office of agent, I name Robert Burton as successor to such agent.

V. GUARDIAN

If a guardian of my estate (my property) is to be appointed, I nominate the agent acting under this power of attorney as such guardian, to serve without bond or security.

I am fully informed as to all the contents of this form and understand the full import of the grant of powers to my agent.

This the 8 day of January, 2013.


Zady R. Burton, Principal

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

I, Harrie D. Miller Notary Public within and for the State and County aforesaid,
do hereby certify that the foregoing Power of Attorney was this day executed by ZADY R.
BURTON, who executed and acknowledged the same before me to be his act and deed in due
form of law.

Given under my hand and notarial seal on this the 8 day of January, 2013.

Harrie D. Miller
Notary Public, State of South Carolina

My commission expires: My Commission Expires on December 5, 2022

A.69



GREEN B. NEAL, M.D.

Internal Medicine and Cardiology

1415 Barnwell Street

Columbia, SC 29201

Phone: (803) 661-1004 Fax: (803) 779-6623 Cell: 803-920-0953

04/05/2014

To Whom It May Concern:

**Re: Mr. Zady Burton
DOB 03/16/1961
SS# XXX-XX-4982**

Dear Madam or Sir:

Mr. Burton has been followed by me for CAD and Severe Anxiety and Depression.

He is not able to Testify in Court because of a severe Heart Disease, Angina and CHF (Congestive Heart Disease stage 3).

He has Chronic Depression and Anxiety with Chronic Adaptive Disorder. When he has these chest severe chest pains they usually requires Hospitalization.

He is very Depressed and Emotional and it is my best Medical opion, that he not testify because, of a more likely than not chance that he will have a Heart Attack.

Please call or write, if you require any further information.

Sincerely,

Green B. Neal, MD

A.70



GREEN B. NEAL, M.D.

Internal Medicine and Cardiology

1415 Barnwell Street

Columbia, SC 29201

Phone: (803) 661-1004 Fax: (803) 779-6623 Cell: 803-920-0953

May 21, 2013

RE: Zady Burton
1401 Norton Drive
Camden, SC 29020-3119

To Whom It May Concern:

Mr. Burton is currently under my care and has been for some time. He is not to be under any stress due to severe chronic heart disease.

Please feel free to write or call should you have any questions.

Sincerely,

Green B. Neal, M.D.
GBN/tmn

L. 71

EXHIBIT B

p. 72

STATE OF SOUTH CAROLINA

COUNTY OF Kershaw

Jimmy Boykin, et. al.
Plaintiff,

vs.

Zady R. Burton, individually, et. al.
Defendant.

FILED FOR RECORD
MAY 6 PM 4:41
CLERK OF COURT
KERSHAW COUNTY, S.C.

IN THE COURT OF COMMON PLEAS

PROOF OF ADR OR EXEMPTION

FILE NO.: 2013-CP-28-876

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

PURSUANT to the South Carolina Alternative Dispute Resolution Rules (SCADR):

- A. _____ I certify that this case is exempt from ADR for the following reason and the parties wish to exercise that exemption:

Plaintiff/Attorney for Plaintiff

Defendant/Attorney for Defendant

Print Name

Print Name

Phone/Fax

Phone/Fax

Date: _____

- B. ☒ 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

Mediation

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

G. Thomas Cooper, Jr.

3. The ADR was conducted on May 2

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A.73

Roger B. Jellenik, Esq.

4. As a result of ADR, this case should be considered (please check one);

(X) Fully Settled.

(X) by Consent Judgment, to be filed by Attorneys

or () Voluntary Dismissal to be filed by _____

() Partially Settled.

() At an Impasse.

() In need of further ADR I ☐ am ☐ am not willing to continue as a neutral. I recommend that ADR resume as of _____.

5. Plaintiff ☒ was present ☐ was not present
 Defendant ☒ was present ☐ was not present

6. Other participants were:

_____ Lawyer for Defendant Moultrie B. Burns
 _____ Lawyer for Plaintiff Roger B. Jellenik
 _____ Representative for Insurance Carrier _____
 _____ Guardian *ad Litem* _____
 _____ Experts _____
 _____ Others Defendant represented by POA Regina Burton

7. Choice of the neutral was by:

X Stipulation
Court Order

8. The total number of hours spent in ADR was: 4.5 hours.

9. Further comments of the neutral:

Neutral's Signature

Date: May 6, 2014

A-74

SCADR 104B (11/2012)

1.75

FILED FOR RECORD

Retired/Active
Fifth Judicial Circuit of South Carolina

2014 MAY -6 PM 4:41

5-2-14

JOSE G. GALLAGHER
CLERK OF COURT
KERSHAW COUNTY, S.C.

176:
2013-CP-13-876

A Jimmy Bowker AGREES TO PAY TO ZOEY BURTON
ON BEHALF OF HIMSELF AND THE ESTATE OF
HEREN BURTON THE SUM TOTAL OF \$12,000
AS FOLLOWS:

ZOEY BURTON, BY REGINA BURTON AGREES
TO ACCEPT ON BEHALF OF HIMSELF AND
THE ESTATE OF HEREN BURTON THE SUM

OF 1) \$12,000 AS FOLLOWS

\$8,000 PAYABLE UPON EXECUTION OF
APPROPRIATE RELEASES AND

\$4,000 PAYABLE IN INSTALLMENTS
OVER A PERIOD OF 5 YEARS WITH NO (0%)
INTEREST.

- AND -

B- EXECUTION OF FAMILY SETTLEMENT AGREEMENT
MUTUAL RELEASE OF ALL PARTIES
COORDINATE IN SETTLEMENT OF HEREN BURTON ESTATE
REGINA BURTON POA
Jimmy Bowker
P. 76

EXHIBIT C

A.77

Last Will and Testament

OF
HELEN L. BURTON

I, HELEN L. BURTON, being of sound and disposing mind and memory, do hereby make, publish, declare and constitute this as and for my Last Will and Testament, hereby revoking any and all wills or instruments of a testamentary nature heretofore executed by me.

ITEM I: I direct that all of my just debts and funeral expenses be paid with the first monies coming into the hands of my personal representative.

ITEM II: I hereby will, devise and bequeath all of my property, both real and personal, wherever situate, of whatsoever nature, to my son, Zady Burton, in trust for the lifetime care of Sammy Boykin; Sandy Boykin; Kenny Boykin; Jimmy Boykin and Zady Burton. It is my intention that Zady Burton maintain my family home at 72 Burdell Road, Lugoff, South Carolina 29078 so that any or all of the above four named persons shall have a home for their life, provided that they behave, do nothing unlawful in the house, do not permit drugs or alcohol in the house, and do not permit illicit affairs with members of the opposite sex in the house. Further, it is my desire that the parties occupying the house be responsible for taxes and insurance. Zady Burton shall be the sole party to have the power to mortgage the property and then only for the maintenance and care of the property. After the death of Sammy Boykin, Sandy Boykin, Kenny Boykin and Jimmy Boykin, title to the property shall vest in Zady Burton, his heirs or assigns.

FURMAN, SPEEDY & STEGNER

ATTORNEYS AT LAW
ONE LAFAYETTE COURT
CAMDEN, SOUTH CAROLINA 29020

C. 76

ITEM III: I have other children and grandchildren to whom I leave my love and affection, letting them know that I have not forgotten them but believe it is in the best interests of the family that I provide a safe home for Sammy Boykin, Sandy Boykin, Kenny Boykin and Jimmy Boykin, and I leave my thanks, in lieu of any fees, to my trustee, Zady Burton.

ITEM IV: To all of my children and grandchildren I leave a wish that they love and fear their God and try to do unto others as they would have done unto them.

ITEM V: I hereby nominate, constitute and appoint my son, Zady Burton, as personal representative of this my Last Will and Testament and direct that he so serve without bond.

IN WITNESS WHEREOF, I hereunto set my Hand and Seal this 14 day of Aug, 1997.

Helen L. Burton
HELEN L. BURTON

SIGNED, SEALED, PUBLISHED AND DECLARED BY HELEN L. BURTON, as and for her Last Will and Testament who, in her presence and in the presence of each other and at her request, have hereto subscribed our names as witnesses.

Nancy L. Bennett
[Signature]

ADDRESS

Candler, A.C.

ADDRESS

Candler, S.E.

I, HELEN L. BURTON, the testator, sign my name to this instrument this 14 day of August, 1997, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Helen L. Burton
HELEN L. BURTON

I, Nancy S. Bennett, one of the witnesses, sign my name to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his/her last will and that he/she signs it willingly (or willingly directs another to sign for him/her), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Nancy S. Bennett

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

SUBSCRIBED, sworn to and acknowledged before me by HELEN L. BURTON the testator and subscribed and sworn to before me by Nancy S. Bennett, one of the witnesses, this 14 day of August, 1997.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 8 Dec 2000

P. 90

EXHIBIT D

A.61

CERTIFIED MAIL

Tuesday, August 16, 2011

Mr. Jimmy Boykin
Mr. Kenny Boykin
Mr. Sandy Boykin
72 Burdell Road
Lugoff, SC 29078

Mr. Sammy Boykin
% Springdale Health Care Center
146 Battleship Road
Camden, SC 29020

RE: Estate of Helen L. Burton
Termination of Helen L. Burton Testamentary Trust

Gentlemen:

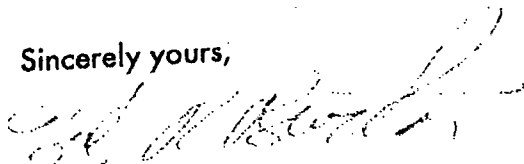
Pursuant to SC Code §62-7-414(a) and (c), this letter will serve as notice to each of you as qualified beneficiaries that, as Trustee of the referenced Trust, I have concluded that

1. The total value of the Trust property is substantially less than \$100,000.00;
2. The value of the trust property is insufficient to justify the cost of administration; and
3. This trust will be terminated as of September 30, 2011.

Please be advised that this property may be leased by one or more of you at a rental and under terms mutually acceptable. However, should a lease not be negotiated and signed by September 15, 2011, you will be expected to vacate the property by September 30, 2011.

A copy of SC Code 62-7-414 is shown on the following page for your information. Please feel free to call if you have any questions, and thank you for your attention to this matter.

Sincerely yours,



Zady R. Burton

RBJ/AMBP 20110816 trust termin ltr.pages

Enclosure(s): Yes

Distribution: Kershaw County Probate Court; Chron; File ✓

P.82

ENCLOSURE: SC CODE 62-7-414

SECTION 62-7-414. Modification or termination of uneconomic trust.

(a) After notice to the qualified beneficiaries, and without court approval, the trustee of a trust consisting of trust property having a total value less than one hundred thousand dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

(b) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

(c) Upon termination of a trust under this section, the trustee shall distribute the trust property as ordered by the court or, if the court does not specify the manner of distribution, or if no court approval is required, in a manner consistent with the purposes of the trust.

(d) This section does not apply to an easement for conservation or preservation.

A.43

EXHIBIT E

A. 64

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Estate of Helen L. Burton,

Plaintiff,

vs.

Sandy H. Boykin, Sr., Kenny Boykin,
Sandy H. Boykin, Jr., and Jimmy Boykin,

Defendants.

IN THE MAGISTRATE COURT
FOR THE FIFTH JUDICIAL CIRCUIT

Case No.: 2013CV2810100682

ORDER

This matter came before the Court upon the request of the Defendant after Plaintiff's application for a Warrant of Ejectment was submitted to the Court on or about May 14, 2013. This application was filed following the service of all above-named Defendants with Notices to Quit the premises located at 72 Burdell Road, Lugoff, South Carolina 29078. Appearing at the call of the case on behalf of the Plaintiff was the wife of the Personal Representative, Regina Burton and the attorneys of record, Jennifer M. Clinkscales and Roger B. Jellenik. The Defendant Jimmy Boykin appeared and was accompanied by his counsel of record, Moultrie B. Burns, Jr.

On Monday, May 20, 2013, Defendant served upon Zady Burton, Personal Representative to the Estate of Helen Burton a subpoena requiring his appearance at the time of hearing. Furthermore, at the time of hearing, Mr. Burns requested a "factual hearing" on the matter.

After considering the statements of counsel, the Court hereby orders as follows:

1. The Court takes judicial notice that the Estate of Helen L. Burton is the rightful owner of the property at issue in this matter. The Court further takes judicial notice that the

R. 45

Defendants have made no mortgage payments on the subject property since approximately August 2012.

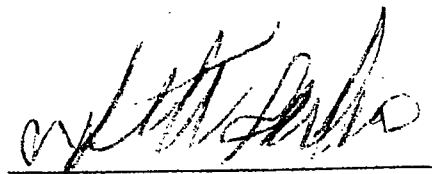
2. After inquiry regarding the availability of newly established facts, the Defendant did not offer any facts to the Court that had not previously been heard. Therefore, the Court denies Mr. Burns' request for a factual hearing in this matter due to the Court's prior knowledge of the facts surrounding this action.
3. The subpoena served upon Zady Burton by the Defendants is quashed due to the undue burden its enforcement would put upon Mr. Burton due to his failing health as documented by his treating physician.
4. The Court denies the Plaintiff's application for a Warrant of Ejectment due to the Defendants' claims now pending before the Kershaw County Probate Court.
5. The Court finds the Plaintiff qualifies for a remedy afforded by S.C. Code Ann § 15-67-610 and that the issuance of a continuing bond for the fair market value of the home is an appropriate remedy. Beginning June 5, 2013, the Defendants shall be required to pay to the Estate of Helen L. Burton the amount of \$418.19 per month. This amount will be due on the fifth (5th) of each month until the issues surrounding the mortgage have been resolved. This is a continuing bond and filing any appeal will not stay the Defendants' obligation to make this payment. The Court determined this amount to approximate the fair market value of the home by combining the amount of the monthly mortgage payment and the monthly insurance payment and taking into consideration payments the Defendant has made on behalf of the subject property. The Court estimates this amount is actually a reduction of the fair market value of the property. Further Defendant is ordered to continue payment of property taxes on the subject property.

A. 56

6. Should the Defendants fail to make timely payment of the bond, this will be grounds for issuance of a Warrant of Ejectment.

IT IS SO ORDERED!

Camden, South Carolina
June 7, 2013



The Honorable M. Scott Rankin

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Jimmy Boykin, Sammy Boykin)
a/k/a Sandy H. Boykin, Sr., and)
Kenny Boykin,)
Petitioner(s))

Case No. 2013-CP-28-00876

v.)

MOTION TO COMPEL

Zady R. Burton, individually and)
As Personal Representative of the)
Estate of Helen L. Burton and)
Sandy Boykin a/k/a Sandy H.)
Boykin, Jr.,)
Respondents)

FILED FOR RECORD
2015 MAR 13 PM 3:01
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

RESPONDENT'S MOTION TO COMPEL

Respondent, Zady R. Burton ("Respondent Burton"), individually and as Personal Representative of the Estate of Helen L. Burton, pursuant to Rules 26, 33, 34, and 37 of the South Carolina Rules of Civil Procedure, moves the Court to enter an order compelling the Petitioners to answer Respondent Burton's First Set of Interrogatories to Petitioners ("Interrogatories") and compelling Petitioner(s) to produce for inspection and copying the documents and things requested in Respondent Burton's First Set of Requests for Production ("Requests"). In support of this motion, Respondent Burton shows the following to the Court:

1. On January 14, 2015, Respondent Burton served the Petitioner with the Interrogatories and Requests. A copy of the letter of transmittal, the Interrogatories, and the Requests are attached as Exhibit A.
2. Although more than 30 days have passed, the Petitioner has failed to serve answers or objections to the Interrogatories or to the Requests or to ask for additional time to respond.
3. By letter dated March 5, 2015, the undersigned requested on behalf of Respondent Burton that the Petitioner respond to the Interrogatories and Requests for Production, the Petitioner responded by email dated March 11, 2015, and the undersigned replied that same date. Copies of this correspondence are attached as Exhibit B.

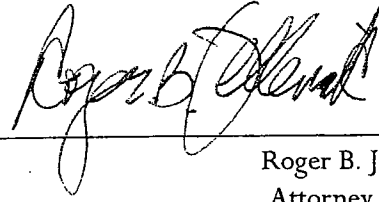
WHEREFORE, the Respondent Burton moves the Court to award the following relief:

- a. Order the Petitioner to respond fully and completely to the Interrogatories and Requests within ten (10) days of the entry of this order; and

A. 88

b. Such other and further relief in favor of Respondent Burton as the Court deems just and appropriate.

Respectfully Submitted this 13th day of March, 2015.



Roger B. Jellenik
Attorney at Law
S.C. Bar No. 13546

Roger B. Jellenik
Attorney at Law
1106 Little Street
Camden, SC 29020
T. (803) 424-1919
F. (803) 424-1922
e. rbjatty@mac.com

EXHIBIT A

EXHIBIT A

A.91

ROGER B. JELLENIK
ATTORNEY AT LAW

1106 Little Street
Camden, SC 29020

Telephone 803-424-1919
Facsimile 803-424-1922
rbjatty@mac.com

Wednesday, January 14, 2015

Moultrie B. Burns, Jr., Esq.
Savage Royall & Sheheen, L.L.P.
P.O. Drawer 10
Camden SC 29020

RE: Estate of Helen L. Burton, Case No. 2006-ES-28-00391
Document Transmittal

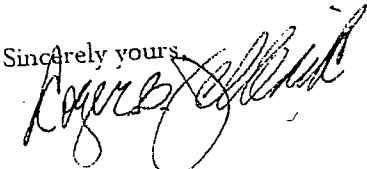
Dear Mr. Burns:

On behalf of my client, Zady R. Burton, individually and as Personal Representative of the referenced Estate, enclosed herewith and hereby served upon you please find copies of the following documents related to the referenced matter:

1. My client's Interrogatories;
2. My client's Requests for Production; and
3. A Proof of Service.

Please feel free to contact me if there are any questions, and thank you for your attention to this matter.

Sincerely yours,



Roger B. Jellenik

RBJ/AMBP 20150114 doc trans to oa.pages

Enclosure(s): Yes

Distribution: Client; Chron; File

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Jimmy Boykin, Sammy Boykin)
a/k/a Sandy H. Boykin, Sr., and)
Kenny Boykin,)
Petitioners)

Case No. 2013-CP-28-00876

v.)

RESPONDENT'S FIRST SET OF
INTERROGATORIES

Zady R. Burton, individually and)
As Personal Representative of the)
Estate of Helen L. Burton and)
Sandy Boykin a/k/a Sandy H.)
Boykin, Jr.,)
Respondents)

**RESPONDENT BURTON'S FIRST SET OF INTERROGATORIES
TO PETITIONERS**

TO MOULTRIE B. BURNS, JR., ESQ., as attorney for the Petitioners Jimmy Boykin ("Jimmy"), Sammy Boykin a/k/a Sandy H. Boykin, Sr., Deceased ("Decedent Boykin"), and Kenny Boykin ("Kenny"), collectively, "Petitioners":

The Respondent, Zady R. Burton ("Zady" or "Respondent Burton") as Personal Representative of the Estate of Helen L. Burton, Deceased, pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, serves the following interrogatories upon the Petitioners to be answered within 30 days from service hereof. These interrogatories are intended to be continuing, and you are therefore instructed to supplement your responses up to and through the time of trial to the extent required by the South Carolina Rules of Civil Procedure.

DEFINITIONS

A. The term "documents" as used herein means all original writings of any nature whatsoever and all non-identical copies thereof in your possession, custody and control, regardless of where located, and regardless of whether printed or reproduced by any process, or written and/or produced by hand, or stored in or upon any form of mechanical, magnetic, or electronic information retrieval medium or system, and whether or not claimed to be privileged or otherwise excludable from discovery, and

including, but not limited to, contracts, agreements, records, tape recordings, correspondence, memoranda, communications, reports, studies, summaries, compilations, abstracts, minutes or records of all meetings including directors, shareholders, and executive officer meetings, notes, agenda, bulletins, notices, announcements, statements, instructions, charts, manuals, brochures, schedules, price lists, telegrams, teletypes, papers, books, accounts, letters, photographs, objects, transcripts of oral statements, court papers or any other tangible thing.

B. The term "concerning" or "concerns" as used herein means referred or referring to, alluded or alluding to, related or relating to, connected with, regarding, describing or reflecting.

C. The terms "Petitioners", "you" or "your" as applicable and as used herein shall be taken in the singular and plural and mean Petitioners or Petitioner Jimmy in any capacity and all other persons acting or purporting to act without objection on his, her, or their behalf.

D. The term "Petition" as used herein shall mean the Petition filed in the office of the Clerk of Court under the caption herein.

E. The phrase "72 Burdell Road" as used herein shall mean the land and improvements situated at 72 Burdell Road, in the Town of Lugoff, County of Kershaw, State of South Carolina.

F. The terms "you", or "your" as applicable and as used herein shall mean Petitioner Jimmy individually or in his representative capacity as Personal Representative of the Estate of Sammy Boykin a/k/a Sandy H. Boykin, Sr., Deceased ("Decedent's Estate"), and all other persons acting or purporting to act without objection on his behalf.

G. The terms "and" and "or" shall be both conjunctive and disjunctive.

INTERROGATORIES

INTERROGATORY NO. 1. With respect to the Amended Petition give the name of and last known address and telephone number for each and every person known to you to be a witness concerning the facts of the case and, for each such person, state:

a. a summary of the facts about which the person has knowledge;

b. whether Petitioners anticipate calling or intend to call that person in support of their case at trial; and

c. for each person identified, whether written or recorded statements have been taken and, if so, for each such written or recorded statement, a summary of its content(s), the medium (e.g., paper, floppy disk, hard disk, magnetic audio or video tape, etc.) upon which it exists or has been stored or recorded, the name(s) of the person(s) having a copy of the statement, and the location(s) of each such copy.

INTERROGATORY NO. 2. Identify every person other than Petitioners' attorney with whom any Petitioner has had discussions concerning the claims or defenses asserted by

a. The Amended Petition; or

b. Respondent Burton's Amended Response; and

repeat in detail the substance of those discussion, and, for each such discussion, identify the time and place, and the name, organizational affiliation, address, and telephone number of each attendee.

INTERROGATORY NO. 3. For each cause of action set forth in the Amended Petition, please set forth a list of photographs, plats, sketches, charts, diagrams, tables, and other prepared documents in Petitioners' possession or control upon which Petitioners intend to rely in the trial of this case.

INTERROGATORY NO. 4. Please state the names and addresses of all expert witnesses that you plan to use and/or call at the time of trial, and set forth a summary of the substance of the testimony expected to be given by each such expert witness.

INTERROGATORY NO. 5. Set forth the names and addresses of all insurance companies providing insurance coverage to Petitioners or any of them relating to the counterclaims in Respondent Burton's Amended Response and set forth the applicable policy number(s) or member number(s). For each insurer identified in the answer hereto, please state whether the insurer's coverage or defense in this case is qualified or being withheld or conditioned upon any reservation of the insurer's rights.

INTERROGATORY NO. 6. With respect to each claim in the Amended Petition and each counterclaim, please describe all specific facts, identify all persons having knowledge of such facts, and identify all documents concerning such facts to which you referred or which you contend support your position.

INTERROGATORY NO. 7. Please state who has resided at 72 Burdell Road and for what period(s) of time since the death of Decedent Helen L. Burton.

INTERROGATORY NO. 8. Please list each bank, credit union, or other financial institution in which Decedent Boykin or Jimmy maintained an account from and after the date of Decedent Helen L. Burton's death until the present time.

INTERROGATORY NO. 9. As to Decedent Helen L. Burton, from and after the year 2000, please state whether

- a. any insurance policies were purchased on her life, when, and by whom;
- b. the face amount of each such policy; the beneficiary(ies) for each such policy;
- c. any insurer(s) on any such policy(ies) that cancelled coverage or declined to pay the proceeds after Decedent Helen L. Burton's death and the reason given by any such insurer for taking such a position; and
- d. any insurer(s) paid proceeds of such policies, to whom, how much, and when.

INTERROGATORY NO. 10. As to Decedent Boykin, from and after the year 2000, please

- a. state whether he executed one or more powers of attorney and identify the named agent or attorney-in-fact in each such document;
- b. state whether Jimmy in any capacity withdrew any funds from any financial institution account maintained, in whole or in part, in Decedent Boykin's name before or after his death;
- c. state whether any insurance policies were purchased on Decedent Boykin's life, when, by whom, and the face amount of each such policy;
- d. identify the beneficiary(ies) for each such policy;
- e. Identify any insurer(s) on any such policy(ies) that cancelled coverage or declined to pay the proceeds after Decedent Helen L. Burton's death, and state the reason given by the insurer for taking such a position; and
- f. State whether any insurer(s) paid proceeds of such policies, to whom, how much, and when.

INTERROGATORY NO. 11. As to Petitioner Jimmy, from and after the year 2005, please

- a. state how he dispositioned any life insurance proceeds that he received; and
- b. state his annual income to date.

INTERROGATORY NO. 12. As to the contents of 72 Burdell Road, please

- a. state whether any of the furniture and furnishings were sold after Decedent Helen L. Burton's death, when, by whom, to whom, and at what price; and
- b. state the disposition of any proceeds received as a result of any such sale.

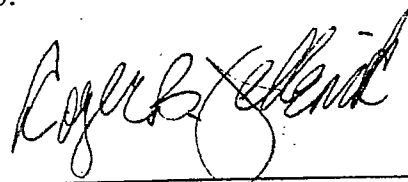
INTERROGATORY NO. 13. As to Petitioner Kenny who has been listed as a petitioner in this matter, please state whether he has been represented by counsel from the date of initial filing of this case in the Kershaw County Probate Court of this case and, if so, who that counsel has been.

INTERROGATORY NO. 14. Please set forth any and all other supporting information in your possession or that you are relying upon in any way that concerns any cause(s) of action or claim(s) raised in the Amended Petition.

INTERROGATORY NO. 15. These interrogatories are served together with Respondent's First Set of Requests for Production of Documents and Things of even date. For each document sought therein and withheld by Petitioners from production on the ground of attorney-client privilege, work product doctrine, or any other privilege:

- a. Describe the nature of the privilege; and
- b. Describe the document by author, addressee or recipient, date, type (memorandum, letter, invoice, notes, etc.) and general subject matter.

Respectfully submitted this 13th day of January, 2015.



Roger B. Jellenik
Attorney for Respondent Burton
SC Bar No. 13546

Roger B. Jellenik
Attorney at Law
1106 Little Street
Camden, South Carolina 29020
Telephone: 803-424-1919
Facsimile: 803-424-1922
e-Mail: rbjatty@mac.com

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Jimmy Boykin, Sammy Boykin)
a/k/a Sandy H. Boykin, Sr., and)
Kenny Boykin,)
Petitioners)

Case No. 2013-CP-28-00876

v.)

RESPONDENT'S FIRST SET OF
REQUESTS FOR PRODUCTION

Zady R. Burton, individually and)
As Personal Representative of the)
Estate of Helen L. Burton and)
Sandy Boykin a/k/a Sandy H.)
Boykin, Jr.,)
Respondents)

**RESPONDENT BURTON'S FIRST SET OF
REQUESTS FOR PRODUCTION TO PETITIONERS**

TO MOULTRIE B. BURNS, JR., ESQ., as attorney for the Petitioners Jimmy Boykin ("Jimmy"), Sammy Boykin a/k/a Sandy H. Boykin, Sr., Deceased ("Decedent Boykin"), and Kenny Boykin ("Kenny"), collectively, "Petitioners":

The Respondent, Zady R. Burton ("Zady" or "Respondent Burton") as Personal Representative of the Estate of Helen L. Burton, Deceased, pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, requests that the Petitioners produce the following documents and things within thirty (30) days from the date of service hereof. These requests for production of documents and things shall be continuing in nature until the day of trial, and you are instructed to serve supplemental responses to the extent required by the South Carolina Rules of Civil Procedure.

The definitions and instructions set forth below shall govern the following requests for production of documents and things, as well as your responses to them:

DEFINITIONS.

A. The term "documents" as used herein means all original writings of any nature whatsoever and all non-identical copies thereof in your possession, custody and control,

regardless of where located, and regardless of whether printed, or reproduced by any process, or written and/or produced by hand, or transmitted by social media or stored in any form of mechanical or electronic information retrieval system, and whether or not claimed to be privileged or otherwise excludable from discovery, and including, but not limited to, contracts, agreements, records, tape recordings, correspondence, memoranda, communications, reports, studies, summaries, compilations, abstracts, minutes or records of all meetings, including directors, shareholders, and executive officer meetings, notes, agenda, bulletins, notices, announcements, statements, instructions, charts, manuals, brochures, schedules, price lists, telegrams, teletypes, papers, books, accounts, letters, photographs, objects, transcriptions of oral statements, court papers, or any other tangible thing.

B. The term "concerning" or "concerns" as used herein means referred or referring to, alluded or alluding to, related or relating to, connected with, regarding, describing or reflecting.

C. The phrase "72 Burdell Road" as used herein shall mean the land and improvements situated at 72 Burdell Road, in the Town of Lugoff, County of Kershaw, State of South Carolina.

D. The terms "Petitioners", "you" or "your" as used herein shall be taken in the singular and plural and mean Petitioners or any of them in any capacity and all other persons acting or purporting to act without objection on his, her, or their behalf.

E. The term "Amended Petition" as used herein shall mean the Amended Petition filed in the office of the Clerk of Court under the caption herein.

F. The term "Counterclaims" as used herein shall mean the causes of action and claims against any or all Petitioners as set forth in the Amended Petition.

G. The terms "and" and "or" shall be both conjunctive and disjunctive.

INSTRUCTIONS

1. You must serve a written response within thirty (30) days after service of this request. Your response must state that production and related activities will be permitted as requested or that the requested production is objected to, in which event the reasons for your objection must be stated.

2. Documents produced for inspection must be produced as they are kept in the usual course of business or be organized and labeled to correspond with the categories in this request.

3. For each document withheld from production on the ground of attorney-client privilege, work product doctrine or any other privilege:

a. Describe the nature of the privilege.

b. Describe the document by author, addressee or recipient, date, type (memorandum, letter, invoice, notes, etc.) and general subject matter.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

REQUEST NO. 1. All documents referred to in or used in preparation of your responses to Respondent Burton's First Set of Interrogatories of even date served together with these Requests for Production including without limitation copies of each policy of insurance identified in your response to Interrogatory No. 5.

REQUEST NO. 2. All documents that you intend to introduce at trial or otherwise rely upon in the assertion of each cause of action or claim in your Petition in this action.

REQUEST NO. 3. A copy of all correspondence between any Petitioner and any insurance company regarding

a. any policy insuring the life of Decedent Helen L. Burton from or after the date of her death;

b. any policy insuring the life of Decedent Boykin from or after the date of death of Decedent Helen L. Burton; and

c. any policy insuring the real property or improvements associated with 72 Burdell Road.

REQUEST NO. 4. Any document

a. Forming an attorney/client relationship for purposes of the captioned action by and between Moultrie B. Burns, Jr., Esq., or Savage Royall, and 1) Sammy Boykin a/k/a Sandy H. Boykin, Sr., and 2) Kenny Boykin; and

b. Terminating an attorney/client relationship for purposes of the captioned action by and between Moultrie B. Burns, Jr., Esq., or Savage Royall, and Kenny Boykin.

REQUEST NO. 5. For the time period from the date of death of Decedent Helen L. Burton up to the present time, all contracts, deeds, or similar instruments of conveyance purporting to transfer interests in and to 72 Burdell Road executed by any party to the captioned action.

REQUEST NO. 6. Any document executed by Petitioner Kenny or Respondent Sandy Boykin a/k/a Sandy H. Boykin, Jr., from or after the date of death of Decedent Helen L. Burton to the present time, waiving or releasing any interest in the estate of their father, Sammy Boykin a/k/a Sandy Boykin, Sr.

REQUEST NO. 7. As to Petitioner Jimmy, any correspondence to or from him from and after the date of death of Decedent Helen L. Burton to the present time, regarding the interests of Petitioner Kenny or Respondent Sandy Boykin a/k/a Sandy H. Boykin, Jr., in 72 Burdell Road or the Estate of Sammy Boykin a/k/a Sandy H. Boykin, Sr.

REQUEST NO. 8. From and after the date of death of Decedent Helen L. Burton to the present time,

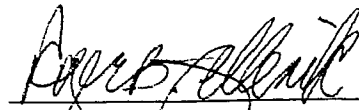
- a. Monthly bank statements for all bank, credit union, or other financial accounts in the name of Sammy Boykin a/k/a Sandy Boykin, Sr.; and
- b. Monthly bank statements for all bank, credit union, or other financial accounts in the name of Jimmy Boykin.

REQUEST NO. 9. As to insurance policies,

- a. A copy of each policy in force within two years before the date of death of Decedent Helen L. Burton insuring the life of Decedent Helen L. Burton regardless of whether the insurer ever paid the proceeds of such policy to any beneficiary.
- b. A copy of each policy in force from or after the date of death of Decedent Helen L. Burton insuring the life of Decedent Boykin regardless of whether the insurer ever paid the proceeds of such policy to any beneficiary.

REQUEST NO. 10. As to Petitioners,

Respectfully submitted this 13th day of January, 2015.



Roger B. Jellenik
Attorney for Respondent
SC Bar No. 13546

Roger B. Jellenik
Attorney at Law
1106 Little Street
Camden, South Carolina 29020
Telephone: 803-424-1919
Facsimile: 803-424-1922
e-Mail: rbjatty@mac.com

EXHIBIT B

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ROGER B. JELLENIK
ATTORNEY AT LAW

1106 Little Street
Camden, SC 29020

Telephone 803-424-1919
Facsimile 803-424-1922
rbjatty@mac.com

Thursday, March 5, 2015

Moultrie B. Burns, Jr., Esq.
Savage Royall & Sheheen, L.L.P.
P.O. Drawer 10
Camden SC 29020

RE: Estate of Helen L. Burton, Case No. 2013-CP-28-00876
Overdue Discovery Requests

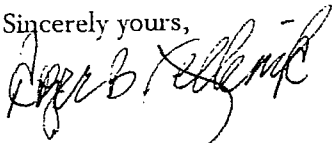
Dear Mr. Burns:

Following up on my letter dated January 14, 2015, transmitting discovery requests, a copy of which is enclosed, please be advised that, as of the date of this letter, no responses to those discovery requests have been received by this office. The purpose of this letter is to request that your client's responses be delivered to this office on or before 5:00 PM, March 16, 2015. In this regard, please note that the answers to interrogatories are to be provided pursuant to Rule 33, SCRPC, and the documents requested are to be provided pursuant to Rule 34, SCRPC.

While I would prefer to avoid the necessity for doing so, please note that, if suitable discovery responses are not received by this office by 5:00 PM, March 16, 2015, I will have to file a motion to compel.

Please feel free to contact me if there are any questions, and thank you for your attention to this matter.

Sincerely yours,



Roger B. Jellenik

RBJ/AMBP 20150305 ltr to oa.pages

Enclosure(s): Yes

Distribution: Kershaw County Clerk of Court; Client; ~~Chen~~; File

From: **Roger B. Jellenik** rbjatty@mac.com
Subject: Re: Burton Estate
Date: March 11, 2015 at 8:56 AM
To: Moultrie Burns MBurns@thesavagefirm.com

Moultrie:

Thank you for your email below. As discussed (most recently at the behest of Judge Rankin), we have very differing views of the sequence of events and circumstances surrounding the mediation. I understand your email below to be consistent with your past position that judicial resolution of the issues here in a formal court context is the only path acceptable to you, and therefore, despite my belief that your decision is not in anyone's best interests in this matter, I will cease any effort to develop an alternative. Accordingly, I will proceed to file a motion to compel and take other steps that I had hoped to avoid.

By the way, what makes you think that Judge Manning will be hearing this case?

Roger B. Jellenik
Attorney at Law
1106 Little Street
Camden, SC 29020
T. (803)424-1919
F. (803)424-1922
e. rbjatty@mac.com

This message may contain privileged, confidential, or proprietary information and is intended for the addressee(s) only. If the reader of this transmission is not the intended recipient,

1. You should destroy this message and any "hard copies", and you should delete this message from any and all storage media.
2. You are hereby notified that copying, printing, dissemination, distribution, or storage of this message or the information contained herein is strictly prohibited.
3. You should notify the sender of any unintended recipient by return e-mail.

Thank you.

On Mar 11, 2015, at 8:46 AM, Moultrie Burns <MBurns@thesavagefirm.com> wrote:

Roger,

I received your letter about your discovery, but, as we discussed last week, I consider the case settled. After the mediation you prepared an agreement providing for dismissal and asked me to prepare the stipulation which I did last July. Your position now and then seem inconsistent. Judge Manning has a pending motion which will determine the issue.

Please respond you are in receipt of this.

Regards, Moultrie

Moultrie B. Burns, Jr.
Savage, Royall & Sheheen, LLP
P.O. Drawer 10 -- Camden, SC 29021
1111 Church Street -- Camden, SC 29020
803-432-4391
803-425-4816 (fax)
mburns@thesavagefirm.com

P. 106

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF KERSHAW) DOCKET NO. 2013-CP-28-00876
 3)
 4 JIMMY BOYKIN, et. Al,)
 5 Plaintiffs)
 6 -VS-) TRANSCRIPT OF RECORD
 7 ZADY R. BURTON, et. Al,)
 8 Defendants.)

9 April 6, 2015
 10 CAMDEN, SOUTH CAROLINA
 11

12 B E F O R E:

13 The Honorable Allyson Lee, presiding Judge.
 14

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

16
 17 Moultrie B. Burns, Jr., Esquire
 18 Attorney for Plaintiff
 19

20 Roger B. Jellenik, Esquire
 21 Attorney for Defendant
 22

23

24

25

RECEIVED
 OCT - 7 2015

Roger B. Jellenik, Esq.

Crystal Jackson,
 Court Reporter

A.107

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1 THE COURT: This is Jimmy Boykin, et al -vs-
2 Zady Burton, et al. It is docket number
3 2013-CP-28-00876. The plaintiff is represented by
4 Moultrie Burns. Is that correct?

5 MR. BURNS: That's correct.

6 THE COURT: And the defendant's represented
7 by Roger Jellenik. Is that correct?

8 MR. JELLENIK: Jellenik.

9 THE COURT: Jellenik. I'm sorry. And we
10 are here on a couple of motions that has been filed.
11 They seem to be intertwined relating two either
12 compelling or enforcing portions of, I guess, a
13 settlement that may have been entered into pursuant to
14 mediation. I have had the opportunity to review the
15 briefs that were submitted in the affidavits and
16 exhibits that were attached. And so, I guess, Mr.
17 Burns, since yours was filed first, I will hear from you
18 first.

19 MR. BURNS: If I may, Your Honor, is there
20 another motion?

21 THE COURT: Well, I think it is really kind
22 of one and the same. It says Motion to Compel but it
23 relates to discovery, but perhaps not.

24 MR. BURNS: Okay. Judge, first, I apologize
25 for being a little late. We were up on the third floor.

E. 109

1 THE COURT: That's all right. I came down
2 early, so that's not a problem.

3 MR. BURNS: Judge, this action was filed
4 back in May of 2013 by my client, Jimmy Boykin, who is
5 here with me today, and his father and his brother,
6 seeking the sale of the home. And prior to mediation,
7 his father passed away and his brother quitclaimed his
8 interest in the home so that Jim could try to buy it.

9 THE COURT: And there's another brother,
10 right?

11 MR. BURNS: He also has quitclaimed his
12 interest in the home. Jimmy is the one who's lived
13 there and he's lived there for 28 years since he was
14 seven years-old. The mediation was conducted by retired
15 circuit Judge G. Thomas cooper and it resulted in an
16 agreement for Jimmy to buy the home. That mediation was
17 in May of 2014, almost a year ago. And in August of
18 2014, my client deposited with me the money to pay for
19 the home and also to pay to pay off the mortgage. A
20 cash deal is usually the easiest kind to close, in my
21 experience, Judge, but not so in this case. Prior to
22 receiving a deed, the opposition is requiring release of
23 my actions and dismissal of the action and release of
24 the parties and even payment of the mortgage to the
25 estate rather than the bank. I don't know if in 40

A.110

1 years, whether I have had anybody pay the mortgage off
2 except the why buyer's attorney, a settlement agent.
3 That's why we are seeking an order of enforcement, Your
4 Honor, just to put it in a nutshell, I suspect that the
5 personal representative may have changed his mind. The
6 affidavit I submitted from the real state broker
7 indicated that he had called me and said we were not
8 going to be able to do it. So, I guess it's going to
9 only be by Court Order. In my memorandum, I listed
10 seven things that could occur simultaneously, that would
11 result in us getting good title and also result in a
12 dismissal of the action and with the release of the
13 parties, all simultaneously. So that's the basis of my
14 motion, Your Honor.

15 THE COURT: Yes, sir. And I had, I did
16 read, it appears that Judge Cooper had, during the
17 mediation, kind of hammered out what the terms of the
18 agreement was as a result of the mediation. And one of
19 the things that created, you know, that I had a question
20 about, was, it talks about the parties agree to pay and
21 would accept on behalf of the parties, execution of the
22 family settlement agreement, mutual releases of the
23 parties and then there was a statement that says
24 cooperate in settlement of Helen Burton estate. And I
25 wasn't sure what that meant, because I understand that

R. III

1 there's been some ongoing, I guess, litigation, among
2 the parties relating to the property. So, I wasn't
3 sure, I got the impression that the estate was already
4 closed, because of the fact that the trust could not be
5 carried out. And so I didn't know -- and I guess, the
6 only thing that was left that was about the deed, if it
7 wasn't going to end up being a life estate to the other
8 beneficiaries or the I guess, I don't know how you call
9 them, I guess, the beneficiaries of the trust. And so,
10 that was the only question I had, was what that was
11 supposed to mean.

12 MR. BURNS: I'm not aware of us not agreeing
13 to do anything to have it closed. We're looking for
14 nothing in the estate. It seems like it would be a
15 mighty easy thing to, I'm not representing the estate.

16 THE COURT: Sure.

17 MR. BURNS: But for an application of
18 settlement to be filed, an accounting an proposal of
19 distribution with a notice of the demand for hearing.
20 As I understand it, there's the cost, I mean, the
21 expenses of the estate , exceed the \$12,000.00 that they
22 are getting from this sale. So, I can't imagine that
23 there would be a fight about it if the obligations
24 exceed the --

25 THE COURT: And perhaps that's something

C. 112

1 that Mr. Jellenik can answer for me. Yes, sir.

2 MR. JELLENIK: Thank you, Your Honor. And
3 Mr. Burns was not the only one who was late. I also
4 apologize. We thought this hearing was on the third
5 floor.

6 THE COURT: That's all right.

7 MR. JELLENIK: As to the merit's of the
8 motion before we get into any of the background stuff,
9 our position, I think, is pretty simple. First of all,
10 the petitioner relies upon the proof of A. D. R. And the
11 attached memorandum. There is no reference in there to
12 the sell of real estate. So that's one point.
13 Secondly, if I remember correctly, I believe it was in
14 the memorandum filed by petitioner. There was the text
15 of the settlement agreement that had been proposed at
16 one point. It's never been signed. The efforts to have
17 an agreement signed went on for some months, as Your
18 Honor has already noted, the text of the memorandum
19 mentions family settlement agreement. It doesn't exist.
20 There are certain things that I would love to get into,
21 but I can't. And the reason I can't, is the content of
22 the mediation is governed by the A. D. R. Rules and the
23 A. D. R. Rules mandate confidentiality as to certain
24 specific exceptions, at least as far as I can find out
25 speaking with people smarter than I am, it is not one of

A.113

1 those normal A. D. R. Exceptions.

2 THE COURT: I'm sorry to interrupt your
3 argument.

4 MR. JELLENIK: That's all right.

5 THE COURT: And I understand that the
6 mediations are subject to confidentiality, generally,
7 it's not to be discussed but in light of the fact that
8 there appear to be some agreement that was entered into
9 by the parties, that was signed by both parties and
10 those terms are now in dispute, would that not enable,
11 either through the motion to enforce the settlement, or
12 even separate court action to -- on the issues, would
13 that not allow some of that information to be disclosed
14 in order to give meaning to the terms as set forth?

15 MR. JELLENIK: Let me handle that one at a
16 time. The alleged mediation agreement, the petitioners
17 refer to, the only writing that refers to something of
18 that nature is the memorandum attached to the proof of
19 A. D. R. Filed by Judge Cooper. And again, there is
20 absolutely nothing in that document, that I'm aware of
21 now, if I miss something, I'm wide open. But I'm aware
22 of nothing in that document that refers to a transfer of
23 real estate, period. And that is what I understand
24 these folks to seek. And again, as to the mediation, if
25 one goes back to the pleadings, there are other causes

P. 1/4

1 of action on the part of the petitioner, claims and
2 there are counter claims aside from the affirmative
3 defense, there are counter claims on the part of the
4 respondent, specifically, respondent, is represented in
5 individual capacity. I don't know a delicate way to put
6 this. So I'm not going to try to be delicate. In my
7 opinion, this is an opinion, that's what it is, this
8 case should have gone away years ago. It was a
9 probative estate, it should never have given rise to
10 what's occurred. But it has. And we're here. We would
11 respectfully submit that the petitioner's motion be
12 denied. We would be open to remediating the matter. We
13 would be open to trying to litigate the matter if that
14 has to be done. We are open to that. But we do not
15 believe that petitioner's motion should be granted. We
16 don't believe the grounds exist to be granted under
17 rules applicable for rules of summary judgment.

18 THE COURT: Not in the format in which he's
19 alleged that it should be?

20 MR. JELLENIK: I would humbly submit that, I
21 don't think there's any other format that can be
22 alleged.

23 THE COURT: So, let me state what I think
24 would seem to be the obvious, based upon what was
25 written out by Judge Cooper, as to the terms of an

£, 115

1 agreement that came out of mediation last year. It says
2 Jimmy Boykin agrees to pay to Zady Burton on behalf of
3 himself and the estate of Helen Burton, the sum of
4 \$12,000.00 as follows, and Zady Burton, by Regina
5 Burton, who I understand has the power of attorney,
6 agrees to accept on behalf of himself and the estate of
7 Helen Burton, the sum of \$12, 000.00 as follows,
8 \$8,000.00 payable upon the execution of appropriate
9 releases and 4000 payable in installments over a period
10 of five years with no interest, and as part B.,
11 execution of family settlement agreement, (inaudible)
12 mutual of parties, cooperate in settlement of Helen
13 Burton estate. So based upon your argument before me
14 today, Mr. Jellenik, what I gathered from that is that,
15 Jimmy Boykin was agreeing to pay Zady Burton and at the
16 end of the estate \$12,000.00, in order to make this
17 lawsuit go away.

18 MR. JELLENIK: We didn't bring this lawsuit.
19 Mr. Boykin brought the lawsuit. We will be happy to see
20 it go away.

21 THE COURT: But in essence, that's what the
22 mediation does.

23 MR. JELLENIK: That's what the memorandum
24 says. But the memorandum also relates to a family
25 settlement agreement and the closing. You asked the

R. 116

1 question earlier. I'm not sure if this is answered. So
2 what's involved in closing the estate. There are other
3 issues that need to be addressed in the closing of that
4 estate. Again, I can't go too deeply into some of this
5 in terms of the mediation, but as Your Honor, and I
6 presume Your Honor is aware that in closing an estate,
7 there is certainly fairly normal things that occur when
8 you close an estate. And some of them is, for example,
9 there's a final account. We have to update the
10 inventory. There are -- and there are issues related to
11 those things that we need no corporation of the petition
12 for and we have just not had it. And as you have
13 already heard from the petitioner's argument, there's
14 not a whole lot of discussion from it and I understand
15 why. I genuinely wish that I could go further than I
16 can at the moment.

17 THE COURT: And as I understand, this case
18 was originally in probate court, it was removed to
19 circuit court?

20 MR. JELLENIK: That is correct. The case
21 was -- the estate, obviously, was in probate court.
22 When Mr. Burton, as the personal representative,
23 terminated the trust, and I don't know if you have had a
24 chance to read some of the background in this.

25 THE COURT: I did. I read the documents

E, 117

1 that with in this file. I didn't go beyond.

2 MR. JELLENIK: I didn't want to take up your
3 time to tell you things you already know. But there was
4 a trust termination and that was upheld by the probate
5 Court.

6 THE COURT: Yes, sir.

7 MR. JELLENIK: Mr. Boykin, there, Mr. Burns,
8 appealed that judgment to the court of common pleas and
9 Judge Manning denied the appeal and instructed that the
10 estate be closed by probate court. And the next thing
11 that happens, we had another pleading was brought and we
12 answered that, which is the amended summons and pleading
13 and responsive pleading to that, that you have before
14 you and a couple days after our answer, it was removed
15 to circuit court by motion of the petitioner. There is
16 a lot more to this case with you but I'm trying to
17 refine my remarks to the motion.

18 THE COURT: I understand. I'm just, I mean,
19 if the motion is about enforcing the terms of the
20 agreement at mediation, then, I mean, I basically read
21 what was written out that was signed by the parties.
22 So, it says to me that somebody's paying \$12,000 and
23 they are going to get a release. And to me that says
24 there's a release of all parties arising out of this
25 particular circuit court action and the issues that were

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1 brought in this action, and that's what's being
2 resolved. And without going through and reciting
3 everything that was in this action, that's the way I see
4 it. So thank you.

5 MR. JELLENIK: Thank you, Your Honor.

6 THE COURT: Mr. Burns?

7 MR. BURNS: Yes, Your Honor. Circular
8 reasoning, I believe, that they are proposing. He says
9 there's no mention of the real estate, and there is.
10 But if you look at the pleading, this was all about
11 buying the home. And if you look at the settlement --
12 and he says there's no settlement agreement signed.
13 Well, it would have been and the settlement agreement --

14 THE COURT: It has to be --

15 MR. BURNS: -- mentions the deed of
16 distribution. But the settlement agreement says that
17 the other side wants release and dismissal of the action
18 and when it closes, they want the mortgage payment
19 payable to the estate, not to the mortgage company. So
20 that's the reason and other reasons why there's no
21 settlement agreement signed. There's no need to be a
22 settlement agreement. They need to release. We are
23 willing to give it, if they are willing to dismiss the
24 action, we are willing to dismiss it. The suit was
25 about this home. We have got money in escrow. Their

L. 119

1 settlement agreement, confirms that it was about the
2 home, it is a memorandum that shows that. So, I think
3 we're entitled to the relief sought. And the order's
4 probably going to need to be pretty specific because
5 I've listed seven things in my memorandum, because we
6 have been trying to close this for a long time.

7 THE COURT: And just to make sure I'm clear,
8 and we're on the same page what's attached to your
9 number, exhibit number A, it says settlement agreement
10 and release, you are saying was prepared by Mr. Jellenik
11 and it incorporates the terms and conditions that were
12 not a part of what the parties have agreed to in the
13 mediation. And as I understand your motion, it is the
14 requirement that certain things be done before the deed
15 would be -- the deed to distribution would be executed.
16 And what I gathered, you are saying is that it can all
17 be done contemporaneously, that the release can be
18 signed the deed can be distributed, the money paid, the
19 mortgage paid off and the dismissal of the lawsuit all
20 in one transaction.

21 MR. BURNS: Correct.

22 THE COURT: And that there should not be any
23 precursors to everybody coming together and signing the
24 documents.

25 MR. BURNS: I don't think it needs to --

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1 correct. We will be glad to sign anything cooperating
2 with the closing of the estate now. See, I have heard
3 nothing specific even today, I've heard nothing
4 specific, that we can do.

5 THE COURT: And Mr. Jellenik, it is correct
6 that you prepared this particular settlement agreement
7 and release that was attached to his motion?

8 MR. JELLENIK: It is. It is also correct
9 that there were issues inheriting that. And one set of
10 issues became apparent as this progressed, and that's
11 the set of issues I can't get into. But I would
12 respectfully submit, Your Honor -- but the answer to
13 your question is yes, I prepared that draft. However,
14 as I pointed out, there is no executed family settlement
15 agreement, as noted in the memorandum. And with all due
16 respect to opposing counsel, if I can put in quotes, the
17 word testimony, his testimony or his argument here is
18 not to be taken as the results of the mediation.

19 THE COURT: Well --

20 MR. JELLENIK: -- with all due respect.

21 THE COURT: Certainly, to the extent that
22 there is the settlement agreement that you prepared and
23 it would be signed by all the parties, who would
24 basically be the family members involved and it
25 incorporates everybody who had an interest or who was a

A.121

1 beneficiary of the will of Helen Burton, basically --

2 MR. JELLENIK: -- Or all the parties to the
3 proceeding.

4 THE COURT: That she mentioned in that
5 particular.

6 MR. JELLENIK: I think had the agreement
7 been signed, okay, had an agreement been signed, because
8 as I said, there were issues that arose during the
9 course of this and I wish I could get into that. But if
10 that had happened, we -- presumably, I don't really
11 know, but presumably we would not be standing here had a
12 mutually settlement agreement been signed. But there is
13 no mediated settlement agreement as noted in the motion.

14 THE COURT: And so your position is that
15 this settlement agreement and release that was prepared
16 by you is not what was agreed to by the parties during
17 mediation?

18 MR. JELLENIK: That's something, I'm not
19 quite sure, if I can answer that without violating Rule
20 8B.

21 THE COURT: Really, you are going to have to
22 talk about it.

23 MR. JELLENIK: Let's put it this way,
24 without in regard to what happened in the mediation, I
25 believe, I'm discussing what is not the contents of the

L.122.

1 mediation, if I can do that, yes, if what's in there is
2 what I think is in there, yes some of that was not the
3 content of the mediation. I hope I said that right.

4 THE COURT: So what I hear is that, this
5 settlement agreement and release came about post
6 mediation and further discussions with the parties after
7 the mediation was reached, the mediation.

8 MR. JELLENIK: I believe that to be a
9 correct statement. And again, I go back to two things:
10 In order to grant a motion for summary judgment, there
11 has to be no genuine issues of material fact. I believe
12 in this situation, there are genuine issues of material
13 fact, which is what was in the mediation agreement,
14 indeed, is there a mediation agreement? And the second
15 thing is, under that circumstance, the law requires,
16 there's only one result you can get to if you don't have
17 a genuine issue as to material fact. We don't believe
18 this motion meets those. Thank you Your Honor.

19 THE COURT: Thank you. Does anybody else
20 wish to be heard on it before I close it out?

21 MR. BURNS: Again, Your Honor, I'd like to
22 point out that I have heard nothing specific that we can
23 do. The agreement says there will be a family
24 settlement agreement, but the agreement they presented
25 is clearly not in compliance with what was signed. And

A.123

1 it's not a normal closing. The agreement says that he
2 agrees to, Jimmy Boykin agrees to pay Zady Boykin on
3 behalf of himself and the estate the \$12,000. The way I
4 read the agreement that was prepared subsequent to that,
5 is paying the money to Mr. Burton, not to the estate.
6 So it's both, not in compliance with what the signed
7 agreement says, and it's not a normal closing and what I
8 describe as a normal closing, I don't see any prejudice
9 that the other side is getting. So and -- so if you
10 rule in their favor and effect, you are saying they can
11 put whatever they want to put in the settlement
12 agreement and since it is not paid, this is not a
13 binding agreement. And I don't believe that would be
14 correct.

15 THE COURT: Okay. Would you agree, Mr.
16 Burns, that apparently, some of the terms that were
17 placed in the settlement agreement and release were
18 things that were discussed and arrived at after the
19 mediation, or at the end of the mediation?

20 MR. BURNS: No, Your Honor. I mean, I'd
21 have to have something specific. If somebody would tell
22 me something specific, perhaps I could address it.

23 THE COURT: Well, I guess for example, you
24 know, who is to pay the mortgage off? Was that
25 something that was discussed during the mediation or

A, 124

1 prior to the mediation or was that part of the agreement
2 at the mediation? And if it was, was it, you know, why
3 was it not incorporated in those provisions that were
4 signed by, or that were written out by Judge Cooper?

5 MR. BURNS: I think the agreement envisioned
6 a normal closing. The grantees' attorney is settlement
7 agent, signs a settlement statement, showing where every
8 penny goes.

9 MR. JELLENIK: All I'm saying is, there is
10 nothing in the documents that supports what's been said.

11 MR. BURNS: I just don't have any specifics.
12 That's --

13 THE COURT: Well, I mean, the question, you
14 know, part of those terms would be, you know, who would
15 pay, the -- there's an agreement to pay \$12,000 but it
16 is silent as to who is to pay the mortgage off. And I
17 guess that would be ultimately in the normal closing,
18 that would be the responsibility of -- it would come out
19 of the seller's share of the proceeds from the
20 distribution to pay the mortgage off before the debt's
21 are dispersed.

22 MR. BURNS: No. They are getting \$12,000.
23 We are paying the mortgage. The agreement doesn't say
24 who is paying the closing cost. We are paying -- we
25 have agreed to pay all of them. They are getting the

A, 125

1 \$12,000 after the mortgage is paid off. I mean, they are
2 getting that.

3 THE COURT: I'll look at it again in setting
4 it. But I'm inclined to agree that while there may have
5 been some agreement, that certainly the terms of the
6 agreement, you know, seems to not be taken care of in
7 the course of the mediation, the mediation document that
8 was written out. So it appears that there is some
9 interpretation that's left open, which, I think would
10 prohibit the ability to be able to enforce the
11 settlement as it is written. Because you are adding in
12 terms that are not contained and apparently since the
13 parties can't agree on those terms, then there is not a
14 meeting of the minds.

15 MR. BURNS: I don't have a specific that I
16 haven't agreed to.

17 THE COURT: Well --

18 MR. BURNS: Unless you are talking about who
19 is going to pay the mortgage off. But that...

20 THE COURT: I'm talking about the fine
21 details of things that you are saying is in the
22 settlement agreement that was attached as your exhibit,
23 in those terms are not specified and there's -- I will
24 look at it, but at this particular point, I'm not
25 inclined to enforce it as it's written, because I don't

R.126

1 think there is an agreement on it.

2 MR. JELLENIK: Your Honor, excuse me. I
3 didn't mean to interrupt.

4 THE COURT: Yes, sir.

5 MR. JELLENIK: If I may at this point in
6 time, I'd also like to raise the Motion to Compel that
7 was filed on behalf of respondent Burton. On the basis
8 that the case is not subject to a mediated settlement
9 agreement, the case is open and respondent Burton has,
10 if I remember correctly, has posted interrogatories and
11 request for production of documents. We did not receive
12 a timely response, and therefore we issued communication
13 extending time and asking for response and we were
14 informed that the case was settled and there wasn't
15 going to be a response. And so we are at this point,
16 asking for the Court to grant our Motion to Compel.

17 THE COURT: And those were documents that
18 were served in January?

19 MR. JELLENIK: Yes, ma'am. That's correct.

20 THE COURT: But they were served in January
21 of this year. Is that correct?

22 MR. JELLENIK: Yes, ma'am.

23 THE COURT: After alledgedly, there had been
24 a settlement.

25 MR. JELLENIK: Well, we got the motion to

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1 enforce the mediation agreement, was filed, if I
2 remember it correctly, back last November.

3 THE COURT: Yes, sir.

4 MR. JELLENIK: And again, based upon the
5 proposition that there is no agreement as alleged in
6 those filings, and it is not like we trampled up the
7 ladder as fast as we could. We need to move the case.

8 THE COURT: Is there any response to that,
9 Mr. Burns?

10 MR. BURNS: Yes, Your Honor. The case is
11 settled in my opinion. So I saw no are reason to answer
12 the interrogatories.

13 THE COURT: So, it will all be wrapped in
14 together. Okay. When I look at it, depending on how I
15 Rule, I guess I will address this, the Motion to Compel
16 in conjunction with that.

17 MR. JELLENIK: All right. Thank you, Your
18 Honor.

19 THE COURT: Thank you. I will issue some
20 type of a written order. Thank you.

21 MR. JELLENIK: Thank you.

22 MR. BURNS: Thank you, Judge.

23

24 End of requested transcript.

25

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1 CERTIFICATE OF REPORTER)
2 STATE OF SOUTH CAROLINA)
3 COUNTY OF KERSHAW)
4

5 I, Crystal Jackson, court reporter and notary
6 public in and for the State of South Carolina, do
7 hereby certify that I reported the hearing held on the
8 6th day of April, 2015 that the foregoing 22 pages
9 represent a true and correct transcription of my
10 stenographic notes of said hearing.

11 I further certify that I am neither attorney nor
12 counsel for, nor related to or employed by, any of the
13 parties connected with this action, nor do I have any
14 financial interest in the outcome of this matter.

15 WITNESS my hand and seal this 5th day of October,
16 2015.
17

18 Crystal Jackson, CR
19 And notary Public for the State
20 of South Carolina
21

22
23
24
25

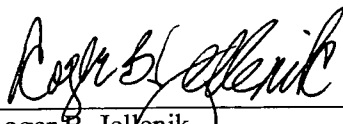
Crystal Jackson, CR

12/29

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.

January 13, 2016



Roger B. Jellenik
1106 Little Street
Camden, South Carolina 29020
(803) 424-1919
Attorney for Appellant

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5

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM KERSHAW COUNTY

Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2015-001556

Jimmy Boykin, Sammy Boykin a/k/a Sandy H. Boykin, Sr., and
Kenny Boykin, ... Respondent(s)

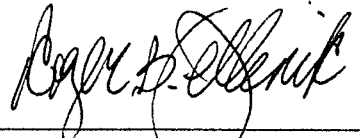
v.

Zady R. Burton, Individually and as Personal Representative of the Estate of Helen L. Burton,
and Sandy Boykin a/k/a Sandy H. Boykin, Jr., ... Appellant

PROOF OF SERVICE

I certify that I have served a copy of the Record on Appeal and this Proof of Service, each dated January 13, 2016, upon Respondent Jimmy Boykin by certified mail by depositing it in the United States Mail, postage prepaid, on January 13, 2016, addressed to his attorney of record, Moultrie B. Burns, Jr., Esq., at his office at 1111 Church Street, Camden, SC 29020.

January 13, 2016



Roger B. Jellenik
1106 Little Street
Camden, SC 29020
Telephone: (803) 424-1919
Facsimile: (803) 424-1922
eMail: rbjatty@mac.com
Attorney for Appellant