

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III

Case No. 2014-CP-07-1732

RECEIVED

MAR 30 2016

SC Court of Appeals

Marilyn W. Bunn, a person *non compos mentis* by and through her guardian,
Denise Suddes, and Margaret Bunn Lochmandy.....Respondents,

v.

Douglas S. Delaney, as Trustee and in his individual capacity, Alan Wilson,
the South Carolina Attorney General, Sacred Heart-Griffin High School,
St. Joseph's Home, Quincy University, Notre Dame, The Lawrenceville
School, All Saints Catholic Church, and Habitat for Humanity c/o All
Saints Catholic Church.....Defendants,

Of Whom Douglas S. Delaney is the.....Appellant.

RECORD ON APPEAL

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-07-01732

MARILYN W. BUNN, ET AL.

DOUGLAS S. DELANEY, ET AL.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

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, SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

THIS CAME BEFORE ME ON DEFENDANT DOUGLAS S. DELANEY'S MOTION FOR RECONSIDERATION, FILED 5/12/2015. AFTER HEARING FROM PARTIES, I HEREBY DENY THE MOTION.

Parties

2015 JUL 21 PM 3:59

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

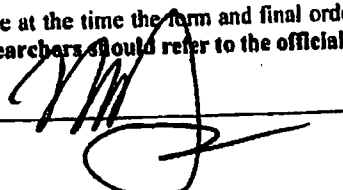
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

3069
Judge Code

7/22/15
Date

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:

ROBERT E. SUMNER IV

ATTORNEY(S) FOR THE PLAINTIFF(S)

SEAN M. BOLCHOZ

JAMES THEODORE GENTRY

LYDIA TURNIER

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:
JOHN M. AND MARILYN W. BUNN
CHARITABLE REMAINDER TRUST

MARILYN W. BUNN, A PERSON *NON*
COMPOS MENTIS BY AND THROUGH
HER GUARDIAN, DENISE SUDDER,
AND MARGARET BUNN LOCHMANDY,

PLAINTIFFS,

v.

DOUGLAS S. DELANEY, AS TRUSTEE
AND IN HIS INDIVIDUAL CAPACITY,
ALAN WILSON, THE SOUTH CAROLINA
ATTORNEY GENERAL, SACRED HEART-
GRIFFIN HIGH SCHOOL, ST. JOSEPH'S
HOME, QUINCY UNIVERSITY, NOTRE
DAME, THE LAWRENCEVILLE SCHOOL,
ALL SAINTS CATHOLIC CHURCH, AND
HABITAT FOR HUMANITY c/o ALL
SAINTS CATHOLIC CHURCH,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NUMBER 2014-CP-07-1732

2015 APR 30 AM 10:07
BEAUFORT COUNTY CLERK

ORDER GRANTING PLAINTIFFS'
MOTION FOR PARTIAL
SUMMARY JUDGMENT

THIS MATTER came before this Court on a Motion for Partial Summary Judgment filed by Marilyn W. Bunn, a Person *Non Compos Mentis* by and through Her Guardian, Denise Sudder, and Margaret Bunn Lochmandy, seeking to remove Doug Delaney as the independent successor to the Corporate Trustee of the John M. and Marilyn W. Bunn Charitable Remainder Trust u/a/d December 16, 1993 ("Trust") and, in the alternative, to modify the Trust. Having

conducted a hearing on this matter on March 16, 2015, the Court makes the following ruling based on the legal memoranda filed by the Parties and arguments of counsel.

BACKGROUND

On or about December 16, 1993, John M. Bunn and Marilyn W. Bunn, as Settlers ("Settlers") created the Trust, the purpose of which was to provide income to the Settlers during their lives; upon the death of the surviving Settlor, the balance of the trust estate is to be distributed to certain charities set forth in the Trust. John M. Bunn and Marilyn W. Bunn were named as the individual co-trustees (the "Individual Trustees") of the Trust. Security Investment Management and Trust Co., was named as the corporate trustee (the "Corporate Trustee") (the Individual Trustees and Corporate Trustee are collectively referred to as the "Trustees" and individually as, a "Trustee", as applicable). During the lifetimes of Settlers, the Trust was required to make a monthly distribution to the Settlers or surviving Settlor based on a formula provided in the Trust (the "Unitrust Payment"). Marilyn W. Bunn, the surviving Settlor, who lives in Gwinnett County, Georgia, is entitled to the Unitrust Payment for the remainder of her life.

The Trust sets forth the limited powers and duties of the Corporate Trustee, as well as the broader powers and duties of the Individual Trustees. The Trust authorizes the Settlers to "remove the Corporate Trustee at any time or times, with or without cause, and appoint an individual or corporation as a successor independent trustee" as long as the successor independent trustee is not a person or corporation either controlled by the Settlers or obligated to the Settlers. Marilyn Bunn appointed Douglas Delaney as successor Independent Trustee in 2001. The Trust names Margaret Bunn Lochmandy and Kelly Kathleen Bunn¹ ("K.K. Bunn") as

¹ Kelly Kathleen Bunn died in 2014.

successors to the Individual Trustees. The Trust gives the Individual Trustees the power to remove the Corporate Trustee, and, except where otherwise expressly provided or prohibited, all other discretionary decisions not otherwise delineated under the Trust agreement. At the time of the hearing, both Lochmandy and Delaney claimed to be the successor Individual Trustee, and neither recognized the other's authority.

STANDARD

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. See George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002).

ANALYSIS

Delaney denies that Lochmandy is the successor Individual Trustee and believes that a vacancy occurred when a guardian was appointed for Marilyn Bunn. He claims that Lochmandy did not accept the position of Trustee, and that the role of Individual Trustee cannot be automatically imposed on Lochmandy. Delaney also argues that the successor Independent Trustee, having the same powers and duties as the previous Corporate Trustee, is not subject to the same removal provisions. He asserts that the Trust contains no provision for removal of the successor Independent Trustee, and thus removal can only be made for cause under the South Carolina Trust Code. Delaney presented a sworn affidavit to the Court in support of his position that he is also the successor Independent Trustee, having appointed himself as such on June 17, 2014.

Interpretation of Trusts

The primary consideration in interpreting and construing a trust is to discern the testator's intent. *Holcombe-Burdette v. Bank of America*, 371 S.C. 648, 657, 640 S.E.2d 480, 484 (Ct. App. 2006) (citing *Epworth Children's Home v. Beasley*, 365 S.C. 157, 166, 616 S.E.2d 710, 715; *Bowles v. Bradley*, 319 S.C. 377, 380, 461 S.E.2d 811, 813 (1995) ("The primary consideration in construing a trust is to discern the settlor's intent.")). "In ascertaining a settlor's intent, if the language of the trust instrument is perfectly plain and capable of legal construction, such language determines the force and the effect of the instrument." *Holcombe-Burdette v. Bank of America*, 371 S.C. at 658, 640 S.E.2d at 485 (citing *Chiles v. Chiles*, 270 S.C. 379, 384, 242 S.E.2d 426, 429 (1978); *Floyd v. Floyd*, 365 S.C. 56, 615 S.E.2d 465 (Ct.App.2005) (affirming trial court's construction of testamentary trust language relating to trustee's discretionary powers); *Univ. of S. Cal. v. Moran*, 365 S.C. 270, 617 S.E.2d 135 (Ct. App. 2005)(construing the plain language of trust specifically to authorize trustee to enter into settlements); and *Estate of Stevens v. Lutch*, 365 S.C. 427, 617 S.E.2d 736 (Ct.App.2005) (relying on the trust language as most persuasive of settlor's intent regarding discretionary power of trustee)).

It is well-accepted in this state that the rules of construction for wills apply to the interpretation of trust documents. S.C. Code Ann. §62-7-112 (Supp. 2014); see also *Epworth Children's Home*, 365 S.C. at 166, 616 S.E.2d at 715 ("In fact, the law relating to discerning the drafter's intent is identical for wills and trusts.") (citing *All Saints Parish, Waccamaw v. Protestant Episcopal Church*, 358 S.C. 209, 224 n. 10, 595 S.E.2d 253, 262 n. 10 (Ct.App.2004)). "The paramount rule of will construction is to determine and give effect to the testator's intent." *Estate of Gill v. Clemson Univ. Found.*, 397 S.C. 419, 725 S.E.2d 516, (S.C. App. 2012) (citation omitted).

"[C]onstruction depends upon the trustor's intent at the time of execution as shown by the face of the document and not on any secret wishes, desires or thoughts after the event." *Chiles*, 270 S.C. at 384, 242 S.E.2d at 429 (quoting *Brock v. Hall*, 33 Cal.2d 885, 206 P.2d 360 (1949)). "Extrinsic evidence is not admissible to alter the plain language of a trust instrument." *Holcombe-Burdette v. Bank of America*, 371 S.C. at 658, 640 S.E.2d at 485 (citing *Bowles*, 319 S.C. at 380, 461 S.E.2d at 813).

The Individual Trustee

John M. Bunn predeceased Marilyn W. Bunn, leaving her as the sole Individual Trustee. When Marilyn W. Bunn was declared incapacitated in 2013, she was no longer competent to act as Individual Trustee. Citing the South Carolina Trust Code, which states a vacancy occurs in a trusteeship if a guardian is appointed for the trustee (S.C. Code Ann. § 62-7-704(a)(6)), Delaney maintains that the position of Individual Trustee was vacated upon the Georgia probate court's appointment of a guardian for Marilyn Bunn. Delaney ignores the language of the Trust, the Settlers' intent as expressed in the Trust, and the South Carolina Trust Code, especially paragraphs one through five of § 62-7-704(a), and § 62-7-704(d),² which mandates that the person designated in the terms of the trust must be given first priority as to any vacancy occurring in a trusteeship of a charitable trust.

The rules for Individual Trustee succession are set forth in the Trust. The terms of succession are mandatory and automatic; the successor trustees are not required to take any formal steps to accept their position. Upon the death of one of the Settlers, the surviving Settlor

²⁴ "A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority: (1) by a person designated in the terms of the trust to act as successor trustee. . . ." S.C. Code Ann. § 62-7-704(d)(1).

"shall act as the sole individual trustee hereunder." Should the surviving spouse resign or be unable to serve as trustee, Lochmandy and her sister K.K. Bunn, daughters of the Settlor, "shall act as the successor individual co-trustees hereunder." If one of the daughters was unable to serve because of resignation, refusal or inability,³ the surviving daughter "shall act as the individual trustee hereunder." The language of the Trust is unambiguous. The Settlor's intent is clear—should the surviving Settlor be incapacitated, her daughters succeed to the trusteeship.

Delaney maintains that K.K. Bunn and Lochmandy were required to take formal measures and affirmatively accept their positions as Individual Trustees, and concludes that because there were no outward formalities accepting the position, they had rejected the trusteeship. This is contrary not only to the language of the Trust, but also to the law of this state. "Unless directed otherwise by the court or the trust instrument, a successor trustee appointed by the court *or the trust instrument succeeds* to all the powers, duties and discretionary authority given to the predecessor trustee." S.C. Code § 62-7-812 (Supp. 2014) (emphasis added). There are no requirements for a named successor trustee to take any steps to accept or immediately affirm her position. Should the successor trustee not wish to serve, the South Carolina Trust Code requires the named successor trustee to reject the trusteeship, to resign or to be disqualified, or to be removed in order for a vacancy to occur (S.C. Code § 62-7-704(a) (Supp. 2014)). In other words, the named successor trustee must take some action to disclaim the trusteeship, or some action must be taken to remove the successor trustee. Delaney presents no evidence that K.K. Bunn or Lochmandy took any actions evidencing rejection of the trusteeship, resignation therefrom, or disqualification. As a matter of law, no vacancy occurred in the present case; and upon the incapacity of the surviving Settlor, K.K. Bunn and Lochmandy

³ This language reflects the language of S.C. Code Ann. § 62-7-704(a)(1-3).

became the successor Individual Trustees. When K.K. Bunn died, Lochmandy became the sole successor Individual Trustee.

Successor Trustees

Under the Trust, the successor trustees are treated the same as the original trustees. This applies to the Individual Trustee as well as the Corporate Trustee. The Trust unambiguously gives the Individual Trustees the right to "remove the corporate trustee at any time or times, with or without cause, and appoint an individual or a corporation as successor independent trustee...."

The plain and unambiguous language of the Trust proves the Settlers' intention for the Individual Trustees to have the authority to replace the Corporate Trustee and any successors. The Settlers' intent is apparent in the following provisions. First, the Trust places no significance on the identity of the corporate trustee or its successors. Security Investment Management and Trust, Co. is named as the original Corporate Trustee, but the Trust contemplates removal for cause and without cause. The Trust does not specify the identity of the independent successor to the Corporate Trustee, but gives the power and responsibility to select the successor to the Settlers and the Individual Trustees. Second, the only restriction on the selection of the independent successor to the Corporate Trustee is that it cannot be a company or person controlled by or legally obligated to the Settlers. This prohibition on the selection of the successor independent trustee demonstrates the Settlers did provide limitations in the Trust document where wanted; if the Settlers intended to prohibit not-for-cause removal of the successor independent trustee by the Individual Trustee or the Settlers, they would have provided so in the Trust. Third, the Trust does not state that the independent successor of the Corporate Trustee shall serve as a permanent trustee or that there is no way to remove the successor. To the contrary, the Trust states that the "every successor trustee shall have all the powers given the

originally named trustees." A successor is generally an entity who takes over and continues the role or position of another. Additional powers or protections would be rare and would need to be specified. Reading the removal provision in conjunction with this provision on successor trustee powers leads to only one logical conclusion: successor trustees step into the shoes of the original trustees and provisions applying to the removal original trustees also apply to the removal of successor trustees.

Delaney's argument that the Trust does not expressly empower the Individual Trustee to remove the independent successor of the Corporate Trustee is to no avail. It ignores the catchall provision granting the requisite authority to the Individual Trustees. The Trust conferred "except where expressly prohibited, all other discretionary decisions not otherwise delineated under this agreement [to] the individual trustees." Lest there be any confusion as to the removal powers, the Trust ensures that the Individual Trustees and their successors are authorized to carry out the intention of the Settlers. Given that the Settlers clearly and unambiguously authorized the removal of the Corporate Trustee, it only follows reason that the Individual Trustees and their successors are authorized to remove the independent successor of the Corporate Trustee.

Finally, the rules for successor trustees in the S.C. Trust Code support the clear position that the removal provision applies equally to the independent successor to the Corporate Trustee. SC Code Ann. § 62-7-812 states "Unless directed otherwise by the court or by the trust instrument, a successor trustee appointed by the court or by the trust instrument succeeds to all the powers, duties, and discretionary authority given to the predecessor trustee". SC Code Ann. § 62-7-812 (Supp. 2014).

As a matter of law, this Court finds the Trust plainly authorizes the successor Individual Trustee to remove the independent successor of the Corporate Trustee without cause. The intent

of the Settlers is clear and any uncertainty is clarified by the catchall provision regarding the powers of the Individual Trustees.

The Settlor

The Trust also provides the Settlor may remove the Corporate Trustee without cause. "[T]he settlors during their lifetime, the survivor of them after one of their deaths, . . . may remove the corporate trustee at any time or times, with or without cause, and appoint an individual or corporation as successor independent trustee . . ." When the Settlers established the Trust, they foresaw a possibility of future incapacity and provided for it: "The guardian or conservator of a settlor under disability or an agent of the settlors acting pursuant to a durable power of attorney shall receive notice and have *authority to act for settlors* under this article." The intent of the Settlers at the time the Trust was created is unambiguous in their provision for appointment of a guardian with authority to act on their behalf. L

Marilyn W. Bunn is the surviving Settlor of the Trust. On September 5, 2013, the Probate Court of Gwinnett County, Georgia, where she resides, determined that Mrs. Bunn was incapacitated and appointed Denise Suddes as Guardian. The Probate Court's Order expressly authorizes the guardian "to initiate or respond to litigation, as necessary, to modify the Trusts, remove and replace the current trustees of the Trusts, and pursue damages arising out of the conduct of one or more of the trustees of the Trusts." The Order is entitled to full faith and credit by the courts of the State of South Carolina. U.S. Const. art. IV, § 1. See *Durfee v. Duke*, 375 U.S. 106, 109, 84 S.Ct. 242, 11 L.Ed.2d 186 (1963) (finding full faith and credit "generally requires every State to give to a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it.") /

Under both the terms of the Trust and the Probate Court Order, Marilyn Bunn's Guardian has the power to act for her. As set forth above in the discussion of Successor Trustees, Delaney, as the successor independent trustee to the Corporate Trustee stands in the shoes of the original Corporate Trustee. Just as the Individual Trustees were shown to have the power to remove the successor independent trustee, it is clear the Settlers' power, by and through her Guardian, to remove the Corporate Trustee without cause also applies to the successor independent trustee to the Corporate Trustee.

Modification of the Trust

This Court makes no findings as to the alternative cause of action requesting modification of the Trust. The requested modification would have allowed the surviving children of the Settlers to appoint an individual trustee as the sole trustee, thus removing the current successor independent trustee. Because the Individual Trustee and the Settlor have the power to remove the successor independent trustee under the Trust, the Court refrains from ruling on this question.

IN CONCLUSION, this Court grants Plaintiffs' motion for partial summary judgment and finds, as a matter of law, that under the terms of the Trust and the law of South Carolina, Margaret Lochmandy is the sole Individual Trustee of the Trust. Further, as a matter of law, the successor independent trustee to the Corporate Trustee not only succeeds to the Corporate Trustee's duties and powers, but is also subjected to the same restrictions and the same provisions for removal as the Corporate Trustee. Pursuant to the terms of the Trust and the law of South Carolina, both the Individual Trustee and the surviving Settlor, by and through her Guardian, have the power to remove the successor independent trustee.

AND IT IS SO ORDERED.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
IN RE:)
JOHN M. AND MARILYN W. BUNN)
CHARITABLE REMAINDER TRUST)
UNDER AGREEMENT DATED)
DECEMBER 16, 1993)
_____)

MARILYN W. BUNN, a person *non*
compos mentis by and through her
guardian, DENISE SUDDER, and
MARGARET BUNN LOCHMANDY,

Petitioners,

v.

DOUGLAS S. DELANEY, as Trustee)
and in his individual capacity, and ALAN)
WILSON, THE SOUTH CAROLINA)
ATTORNEY GENERAL,)
_____)

Respondents.

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-07-1732

ORDER DENYING INJUNCTIVE
RELIEF

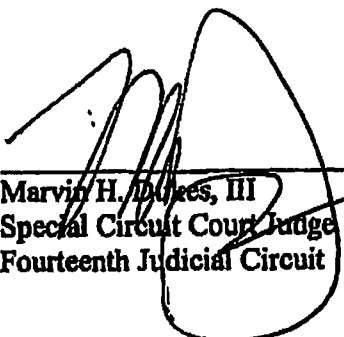
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CLERK OF COURT
JAMES H. HARRIS, JR.
CLERK OF COURT

THIS MATTER came before this Court on August 5, 2014 pursuant to the Petitioners' Motion for Temporary Restraining Order/Injunction and Appointment of a Receiver/Trustee *Ad Litem* (the "Motion");

IN THEIR MOTION, the Petitioners seek: to restrain Respondent Douglas S. Delaney, successor independent trustee of the trust at issue herein,¹ from any access to the Bunn CRT and/or its assets; the appointment of a receiver or trustee *ad litem* for the Bunn CRT; and an order directing the appointed receiver or trustee *ad litem* to continue to make the monthly "Unitrust" payment to the Settlor of the Bunn CRT, Marilyn Bunn; and

¹The John M. and Marilyn W. Bunn Charitable Remainder Trust Under Agreement dated December 16, 1993 (the "Trust").

This 28 day of Aug 2015.
Beaufort, South Carolina


Marvin H. Jones, III
Special Circuit Court Judge
Fourteenth Judicial Circuit

M/H

14-1732

AFTER REVIEWING the Motion and Respondent Delaney's Return to Petitioner's Motion for Temporary Restraining Order/Injunction and Appointment of a Receiver/Trustee *Ad Litem* ("Return"), the attachments and affidavits, and hearing the arguments of counsel, this Court finds and concludes as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The primary basis for Petitioners' Motion, and their most immediate concern, is the payment to the Settlor of her monthly "Unitrust" payment.
2. It appears that the Trust's current financial advisor, Wells Fargo Advisors ("Wells Fargo"), will continue to make the monthly Unitrust payment, although it will not change the existing depository bank account for the Unitrust payment² – as was previously requested by the Petitioners – because of the dispute between Respondent Delaney and the Petitioners. However, the existing depository bank account, according to the Petitioners, has been closed.
3. The Petitioners contend that, only if Respondent Delaney, the Trust's current successor independent trustee, is enjoined from any access to the Trust or its assets, will Wells Fargo recognize changes to the Trust account and send the Unitrust payment to the Settlor's new depository bank account, thereby avoiding "irreparable harm" to the Settlor, Marilyn Bunn.
4. "An injunction is a drastic equitable remedy courts may use in their discretion in order to prevent irreparable harm to a party." *Hampton v. Haley*, 403 S.C. 395, 743 S.E.2d 258 (2013). A preliminary or temporary injunction should issue only if necessary to preserve the status quo ante, and then, only upon a showing by the movant that, without such relief, it will suffer irreparable harm, that it has a likelihood of success on the merits and that there is no adequate remedy at law. *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010).
5. The Petitioners' Motion fails to demonstrate irreparable harm. Again, Wells Fargo

²See Wells Fargo letter dated July 10, 2014, a copy of which is attached to Petitioners' Motion.

will apparently continue to make the monthly Unitrust payment; indeed, according to the Wells Fargo Transaction Notice, attached to Respondent Delaney's Return, an electronic funds transfer of \$7,992.77 into Marilyn Bunn's existing depository bank account was made on July 25, 2014. Even if, as Petitioners' counsel postulated at the hearing, Wells Fargo fails to make such payment in the future, or the Unitrust payment fails to properly transfer into Marilyn Bunn's existing depository bank account, it is unclear how the requested injunction would remedy such a situation.³

6. As the Petitioners have failed to satisfy the irreparable harm element, it is unnecessary to address the other requirements for injunctive relief as this time.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT, in light of the foregoing, the Petitioners' Motion is DENIED.

IT IS SO ORDERED.

Edisto Island

Beaufort, South Carolina
August 16, 2014



The Honorable Brooks P. Goldsmith
Presiding Judge
Fourteenth Judicial Circuit

³In any event, during oral argument at the August 5 hearing, counsel for all of the parties agreed that they could enter into a stipulation or consent order for delivery to Wells Fargo, stating that Marilyn Bunn is entitled to her monthly Unitrust payment and that, if Wells Fargo remains unable or unwilling to deposit the payment to the changed depository account, a monthly check can be issued for Marilyn Bunn and delivered to her counsel.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN RE:

JOHN M. AND MARILYN W. BUNN
CHARITABLE REMAINDER TRUST
UNDER AGREEMENT DATED
DECEMBER 16, 1993

MARILYN W. BUNN, A PERSON *NON*
COMPOS MENTIS BY AND THROUGH
HER GUARDIAN, DENISE SUDES,
AND MARGARET BUNN LOCHMANDY

PETITIONERS,

v.

DOUGLAS S. DELANEY, AS TRUSTEE
AND IN HIS INDIVIDUAL CAPACITY,
AND ALAN WILSON, THE SOUTH
CAROLINA ATTORNEY GENERAL

RESPONDENT.

IN THE PROBATE COURT

CASE NUMBER 2014-GC0700034

FILED

JUL 18 2014

PROBATE COURT
BEAUFORT COUNTY, SC

VERIFIED
PETITION AND MOTION FOR
TEMPORARY RESTRAINING
ORDER AND INJUNCTIVE
RELIEF

Petitioners, through counsel, respectfully allege:

1. This Petition seeks the following primary relief: (i) approval of Marilyn W. Bunn's (the "Surviving Settlor") and Margaret Bunn Lochmandy's removal of Douglas S. Delaney's ("Delaney") as the independent successor trustee to the corporate trustee under the terms of the John M. And Marilyn W. Bunn Charitable Remainder Trust under Agreement dated December 16, 1993 (the "CRT"); (ii) (a) modification of the administrative provisions of the CRT due to circumstances not anticipated by the settlor such that modification will further the purposes of the CRT and will be in accordance with the settlors' probable intentions; (b) modification of the administrative terms of the CRT because administration under the existing terms is impracticable, wasteful, or impairs the CRT's administration; (iii) demand for an accounting (S.C. Code Ann. §§ 62-7-405, 62-7-412(a))

and (b), 62-7-413(a), and 62-7-813); and (iv) Motion for a Temporary Restraining Order/ Preliminary Injunction and Appointment of a Receiver.

2. This Petition seeks the following alternative relief: (i) removal and replacement of the trustee by the settlor, individual trustee, and income beneficiary because of a serious breach of trust (S.C. Code Ann. § 62-7-706(b)(1)), lack of cooperation among the trustees substantially impairs the administration of the trust (S.C. Code Ann. § 62-7-706(b)(2)), the unfitness, unwillingness, or persistent failure of the current trustee to administer the trust effectively (S.C. Code Ann. § 62-7-706(b)(3)), and due to a substantial change of circumstances (S.C. Code Ann. § 62-7-706(b)(4)); (ii) appointment of a suitable successor trustee (S.C. Code Ann. § 62-7-704(c)(3)); and (iii) damages and other appropriate relief with regard to Delaney's breach of trust and breach of fiduciary duty.

JURISDICTION AND VENUE

3. The Probate Court has ultimate jurisdiction over trusts in South Carolina pursuant to S.C. Code Ann. §§ 62-1-302(a)(3) and 62-7-201).

4. Delaney resides in Beaufort County, South Carolina.

5. Article IV, Section 1 of the CRT provides the following:

"The operation of the trust shall be governed by the laws of the State of South Carolina (or if no beneficiary or trustee resides in South Carolina, the law of the state of the situs of the corporate trustee)."

6. Venue for this proceeding is proper because the principal place of administration for the CRT is in Beaufort County as that is the location of the usual place of business of Delaney, the successor independent trustee to the corporate trustee (S.C. Code Ann. §§ 62-7-108 and 62-7-204).

7. Jurisdiction and venue are properly found in the Beaufort County Probate Court.

8. This case is properly removable to the Beaufort County Court of Common Pleas.

THE CHARITABLE REMAINDER TRUST AND ITS SETTLOR, TRUSTEES AND BENEFICIARIES

9. On or about December 16, 1993, John M. Bunn and Marilyn W. Bunn, as Settlers ("Settlers"), and John M. Bunn, Marilyn W. Bunn, as the individual co-trustees (the "Individual Trustees"), and Security Investment Management and Trust Co., as the corporate trustee (the "Corporate Trustee") (the Individual Trustees and Corporate Trustee are collectively referred to herein as, the "Trustees" and individually as, a "Trustee", as applicable), entered into the CRT, a copy of which is attached hereto and incorporated herein as Exhibit A, thereby creating the CRT for the benefit of Settlers during their lives and then for the benefit of certain charities as set forth at Article I, Section 3 of the CRT.

10. Article III, Section 1(a) of the CRT describes the duties of the corporate trustee. Section 1(a) states that the corporate trustee has the responsibility for collecting all income, maintaining all records, and preparing annual reports for the CRT.

11. Article III, Section 1(c) of the CRT describes the duties the individual trustee. Section 1(c) states, "Except where otherwise expressly provided or prohibited, all other discretionary decisions not otherwise delineated under this agreement may be performed by the individual trustees." Section 1(c) restricts individual trustee's duties, mandating that the "individual trustee will not participate in the exercise of any discretion which affects his or her interest or the interest of any person to who he or she is legally obligated."

12. Under Article I, Sections 1 and 2 of the CRT, during the lifetimes of Settlers, the CRT is required to distribute the unitrust amount of 10.87% of the net fair market value of the CRT's assets as valued on the first day of the taxable year in monthly installments on the last day of each month (the "Unitrust Payment") to the Settlers or the survivor of them for the remainder of their lives.

13. Delaney claims that he was appointed as successor independent trustee of the CRT, replacing the Corporate Trustee. Delaney is an attorney licensed to practice in the State of South Carolina. Upon further information and belief, Delaney advised and counseled Settlers on tax and estate planning matters, including the CRT.

14. John M. Bunn is deceased; thus, the Surviving Settlor is now entitled to the Unitrust Payment for the rest of her life.

15. The Surviving Settlor is eighty-one (81) years old and resides in Gwinnett County, Georgia.

16. The Surviving Settlor is incapacitated, and on September 5, 2013, the Probate Court of Gwinnett County, Georgia, appointed Denise Suddes as the guardian for Surviving Settlor.

17. Following the incapacity of the Surviving Settlor, Margaret Bunn Lochmandy and Kelly Kathleen Bunn automatically became the successor Individual Trustees of the CRT.

18. Kelly Kathleen Bunn died on February 26, 2014.

19. Margaret Bunn Lochmandy is now the sole successor Individual Trustee of the CRT.

20. The CRT assets are managed by Wells Fargo Bank.

21. The Surviving Settlor and Denise Suddes, as guardian for the Surviving Settlor, attempted to change the bank account into which the Unitrust Payment is transferred from Wells Fargo Bank because the Surviving Settlor's existing account on file was to be closed.

22. When Delaney learned of the requested account change, he objected and contacted Wells Fargo Bank.

23. Upon information and belief, Delaney informed Wells Fargo Bank that the Surviving Settlor, individually, and through Denise Suddes lacked authority to effect such a change.

24. Because of the questions about the requested change and the authority to make decisions regarding the CRT account, Wells Fargo Bank froze the CRT account.

25. Wells Fargo Bank will continue to authorize the Unitrust Payment, but only to the Surviving Settlor's bank account currently on file with the CRT, which has been closed and cannot be re-opened.

26. On June 17, 2014, Delaney executed a document titled, "Appointment of Successor Individual Trustee," improperly attempting to remove Margaret Bunn Lochmandy as the successor individual trustee of the CRT and naming himself as the successor individual trustee of the CRT.

27. The Surviving Settlor and Margaret Bunn Lochmandy refused to recognize Delaney's attempt to remove and replace the successor individual trustee.

28. Thereafter, the Surviving Settlor and Margaret Bunn Lochmandy served Delaney with a Notice of Removal of Trustee. The Notice of Removal of Trustee informed Delaney that the Surviving Settlor and successor individual trustee were exercising their rights under Article III, Section 3 of the CRT to remove the independent successor to the corporate trustee. Delaney refused to sign the Acknowledgement of Receipt of Notice of Removal of Trustee and has refused to resign as the independent successor to the corporate trustee.

29. Certain charities are the remainder beneficiaries of the CRT as set forth in Article I, Section 3. Those charities are as follows

- a. Sacred Heart-Griffin High School, a school located in Springfield, Illinois;
 - b. St. Joseph's Home, a charitable organization located in Springfield, Illinois;
 - c. Quincy University, a school located in Quincy, Illinois;
 - d. Notre Dame, a school located in South Bend, Illinois;
 - e. The Lawrenceville School, a school located in Lawrenceville, New Jersey;
 - f. All Saints Catholic Church, a church located in Dunwoody, Georgia; and
 - g. Habitat for Humanity c/o All Saints Catholic Church, a charitable organization located in Dunwoody, Georgia.
30. Alan Wilson is the Attorney General for the State of South Carolina.

PRIMARY RELIEF REQUESTED:
REMOVAL OF TRUSTEE BY SURVIVING SETTLOR
AND SUCCESSOR INDIVIDUAL TRUSTEE

31. Petitioners reallege paragraphs 1 through 30 as if fully set forth verbatim herein.

32. Article III, Section 3 of the CRT states, "the settlors during their lifetime, the survivor of them after one of their deaths, or the individual trustee, may remove the corporate trustee."

33. Article III, Section 4 of the CRT, reveals the intent of the Settlor was for the independent successor trustee to step into the shoes of the corporate trustee. Accordingly, all of the CRT provisions that apply to the corporate trustee also apply to the independent successor trustee, including the Surviving Settlor and Individual Trustee's ability to remove the independent successor to the corporate trustee.

34. Pursuant to the terms of the CRT, Petitioners demand that Delaney be removed as the independent successor trustee to the corporate trustee and that the Court appoint a successor independent successor trustee to the corporate trustee.

PRIMARY RELIEF REQUESTED:
MODIFICATION OF SUCCESSOR TRUSTEE PROVISIONS

35. Petitioners reallege paragraphs 1 through 34 as if fully set forth verbatim herein.

36. The Probate Court has authority to modify the administrative provisions of the CRT due to circumstances not anticipated by the settlor such that modification will further the purposes of the CRT which modification, to the extent practicable, will be in accordance with the Settlers' probable intention (S.C. Code Ann. §§ 62-7-412(a)).

37. The Probate Court has authority to modify the administrative terms of the CRT because administration under the existing terms would be impracticable, wasteful, or impair the CRT's administration. (S.C. Code Ann. §§ 62-7-412(b)).

38. The Settlor did not anticipate that having both an individual trustee and a corporate or independent trustee would be unmanageable or result in overly burdensome cost to the CRT, thereby substantially reducing the value of the remainder interest of the charitable beneficiaries.

39. In light of the nature of the CRT and the interests of the income beneficiary and the remainder beneficiaries (collectively, the "Beneficiaries"), Petitioners desire that the administrative provisions of the CRT be amended to incorporate new provisions for the removal and appointment of Trustees under Article III as provided at Exhibit B.

40. Modification will further the purposes of the CRT by ensuring that an institutional third party successor trustee is the sole trustee with a reasonable fee such that the assets ultimately passing to the charitable remainder beneficiaries are preserved to the maximum extent possible and not depleted by excessive trustee fees. Additionally, the power to remove such successor trustee will ensure that the CRT is properly managed.

41. In light of the nature of the CRT's and its Beneficiaries' interests, Petitioners desire that the administrative provisions of the CRT be amended to incorporate new provisions for the removal and appointment of trustees under Article III as provided in the amendment attached hereto as Exhibit B.

PRIMARY RELIEF REQUESTED:
DEMAND FOR ACCOUNTING

42. Petitioners reallege paragraphs 1 through 41 as if fully set forth verbatim herein.

43. Petitioners request, pursuant to S.C. Code Ann. § 62-7-813 and other applicable sections of the South Carolina Trust Code, that Delaney provide within thirty (30) days of the Court's Order: (i) an updated accounting for the CRT, including all CRT documents, amendments, executed trustee resignation documents; appointment of successor trustee documents, and other documents related to the administration of the CRT; and (ii) a list of all assets and liabilities for the CRT.

PRIMARY RELIEF REQUESTED:
**TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION AND
APPOINTMENT OF RECEIVER**

44. Petitioners reallege paragraphs 1 through 43 as if fully set forth verbatim herein.

45. Delaney committed a breach of trust and fiduciary duty in one or more of the following ways:

- a. Authorizing and receiving unreasonable and excessive trustee's fees without proper notice to or consent of the Surviving Settlor, successor individual trustees, and the Beneficiaries;
- b. Failing to keep the Surviving Settlor, successor individual trustees, Wells Fargo Bank, and the Beneficiaries properly informed (S.C. Code Ann. § 62-7-813);
- c. Providing erroneous or misleading information to the Surviving Settlor, successor individual trustees, Wells Fargo Bank, and the Beneficiaries;
- d. Failing to administer the CRT in good faith in accordance with the terms and purposes of the CRT and the interests of the Beneficiaries (S.C. Code Ann. § 62-7-101);
- e. Failing to comply with his duty of loyalty (S.C. Code Ann. § 62-7-802);
- f. Failing to comply with his duty of impartiality (S.C. Code Ann. § 62-7-803);
- g. Failing to comply with his duty to keep proper records (S.C. Code Ann. § 62-7-810);
- h. Demonstrating a lack of knowledge about the documents and property of the CRT;

- i. Failing to prudently administer the CRT (S.C. Code Ann. §§ 62-7-804 and 62-7-903);
- j. Attempting to remove and replace the successor independent trustee without adequate grounds or authority for the removal;
- k. Wrongfully refusing to accept his removal as the independent successor to the Corporate Trustee despite the instructions from Petitioners;
- l. Intentionally disregarding the purpose of the CRT; and
- m. In other ways set forth herein and in such ways as shall be proven by the evidence presented by the parties.

46. Delaney's actions, individually and collectively, set forth above have caused and threaten to cause irreparable harm for which there is no adequate legal remedy.

47. As a result of Delaney's breach of trust and breach of fiduciary duty and his failure to keep Wells Fargo informed of key developments regarding the CRT, as set forth herein below, Wells Fargo has concluded that there is a dispute over who are the rightful trustees of the CRT, and, as such, froze the CRT account until the dispute between the Parties is resolved.

48. Because the CRT account has been frozen, the Surviving Settlor cannot receive the monthly Unitrust Payment.

49. The Surviving Settlor depends on the Unitrust Payment for her maintenance and care. If the Surviving Settlor does not receive her Unitrust Payment each month, she will default on her financial obligations and suffer damage to her credit and her reputation.

50. Due to her declining health, the Surviving Settlor requires ongoing and expensive medical care and treatment. She also depends on the Unitrust Payment to pay for her medical care and treatment.

51. It is necessary for the Court to enjoin Delaney from any further access to the CRT and CRT assets, and furthermore, it is necessary for the Court to appoint a receiver to serve as interim trustee to administer the CRT until the dispute between the Parties is resolved.

52. Carol Ruff, Esq., an attorney in good standing in Beaufort County, South Carolina, has agreed to serve as the receiver, upon approval by the Court, and to administer the CRT according to the terms set forth in the CRT documents.

53. The Surviving Settlor has no adequate remedy at law, in that monetary damages are incapable of protecting her.

54. Unless this Court enjoins Delaney and appoints a receiver to serve as interim trustee to administer the CRT, the Surviving Settlor will be irreparably harmed.

55. Petitioners have a reasonable likelihood of success on the merits.

56. The balance of harms if the Court were to award equitable relief favors Petitioners.
57. The public interest is served in appointing a receiver to serve as interim trustee to administer the CRT so that the Surviving Settlor is not irreparably harmed by her inability to receive the Unitrust Payment, to which she is entitled regardless of who serves as the trustee of the CRT.
58. Petitioners are willing to post a reasonable bond.
59. Petitioners have verified the allegations contained in the Petition, including but not limited to the cause of action for Temporary Restraining Order/Preliminary Injunction.
60. For all of the foregoing reasons, Petitioners are entitled to a temporary restraining order against Delaney as follows:
- a. Enjoining Delaney from any access to the CRT or the CRT assets;
 - b. Appointing Carol Ruff as receiver to serve as the interim trustee to administer the CRT; and
 - c. Ordering the receiver to make and continue making the Unitrust Payment into an account for the Surviving Settlor as directed by Denise Suddes, the Guardian for the Surviving Settlor.

ALTERNATIVE RELIEF REQUESTED:
REMOVAL OF TRUSTEE BASED ON A SUBSTANTIAL CHANGE OF CIRCUMSTANCES

61. Petitioners reallege paragraphs 1 through 60 as if fully set forth verbatim herein.
62. If there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the Probate Court has authority to remove the trustee of a trust if the Court finds that removal of the trustee best serves the interests of all of the beneficiaries, is not inconsistent with a material purpose of the trust, and a suitable co-trustee or successor trustee is available (S.C. Code Ann. § 62-7-706(b)(4)).
63. There has been a substantial change of circumstances with regards to the CRT insofar as having an individual trustee and a corporate or independent trustee has proved unmanageable and has resulted in overly burdensome cost to the CRT.
64. Removal of Delaney will best serve the interests of the Beneficiaries for the reasons alleged herein.
65. Removal of Delaney is not inconsistent with a material purpose of the CRT as the applicable purpose is to have a third party trustee who is unrelated to the Beneficiaries.
66. As alleged herein, a suitable third party institutional successor trustee, Raymond James Trust (the "Successor Trustee"), is willing and able to serve as trustee of the CRT.

ALTERNATIVE RELIEF REQUESTED:
REMOVAL OF TRUSTEE FOR CAUSE

67. Petitioners reallege paragraphs 1 through 66 as if fully set forth verbatim herein.

68. The Probate Court has authority to remove the trustee of a trust because of a serious breach of trust (S.C. Code Ann. § 62-7-706(b)(1)), lack of cooperation among the trustees substantially impairs the administration of the trust (S.C. Code Ann. § 62-7-706(b)(2)), or the unfitness, unwillingness, or persistent failure of the current trustee to administer the trust effectively (S.C. Code Ann. § 62-7-706(b)(3)).

69. Petitioners have made reasonable requests for Delaney to provide information and documentation relating to the administration of the CRT and, citing various pretextual excuses, Delaney has materially failed to do so.

70. Delaney has committed various serious breaches of trust, as set forth in Paragraph 46 and in other such ways as shall be proved by the evidence presented by Petitioners.

71. The successor individual trustee disagrees with Delaney's administration of the CRT, and, accordingly, there is a lack of cooperation among the trustees as a result.

72. The actions and omissions alleged herein, and others to be proven at trial of this matter, constitute serious breaches of trust and demonstrate an unfitness, unwillingness, or persistent failure of Delaney to administer the CRT effectively such that the Court should remove Delaney as a trustee of the CRT.

73. Removal of Delaney will best serve the interests of the Beneficiaries.

74. Petitioners request that Delaney, in connection with his removal as Trustee, provide within thirty (30) days of the Court's Order: (i) an updated accounting for the CRT; and (ii) a list of all assets and liabilities, including copies of the most recent statements from the financial institutions where such assets are domiciled or to which such debts are owed, for the CRT.

75. Petitioners request that Delaney in connection with his removal as trustee be denied trustee compensation and be denied reimbursement for his private attorneys' fees in connection with this dispute.

ALTERNATIVE RELIEF REQUESTED:
APPOINTMENT OF SUCCESSOR TRUSTEE

76. Petitioners reallege paragraphs 1 through 75 as if fully set forth verbatim herein.

77. Petitioners request the Court to appoint the Successor Trustee of the CRT. The Successor Trustee and its trust officers have significant experience and expertise in trust administration, and Successor Trustee is currently serving as trustee of numerous trusts materially similar in nature and value to the CRT.

78. The CRT (in Article III, Section 4) provides that no bond or other security be required of any trustee serving thereunder, and a trustee is generally not required to post a bond unless required by the terms of the CRT (S.C. Code Ann. § 62-7-702).

79. As compensation for its services as trustee under the CRT, the Successor Trustee shall receive an amount which shall be determined by its standard fee schedule in effect and applicable at the time of the performance of such services; if no such schedule shall be in effect at that time, the Successor Trustee shall be entitled to reasonable compensation for the services rendered (the "Successor Trustee Compensation").

80. Petitioners desire that the Successor Trustee, upon acceptance of the CRT and property for the CRT, succeed to and possess all the rights, powers, duties, authority, and responsibility conferred upon the trustees originally named in the CRT, and, unless requested to in writing by the Beneficiaries within ninety (90) days of acceptance of the CRT property, that the Successor Trustee not be liable for or be required to investigate or review the acts or omissions of any previous trustee of the CRT and shall not be required to seek any redress against Delaney or any other previous trustee of the CRT.

ALTERNATIVE RELIEF REQUESTED:
BREACH OF TRUST

81. Petitioners reallege paragraphs 1 through 81 as if fully set forth verbatim herein.

82. In serving as trustee of the CRT, Delaney breached his duty owed to Petitioners, which breach amounts to a breach of trust pursuant to S.C. Code Ann. §§ 62-7-1001 and 62-7-1002.

83. Delaney committed a breach of trust by engaging in the acts alleged in Paragraph 46 and in other such ways as shall be proved by the evidence presented by Petitioners.

84. Delaney's breaches of trust proximately caused financial injury to Petitioners in that Delaney's conduct has adversely affected the value of the CRT and that he has failed to recognize and, otherwise, compromised Petitioners' interests in the CRT as set forth herein and in such way and such amounts as shall be proven by the evidence presented by the parties.

85. As a result of Delaney's breaches of trust, Petitioners are entitled to reduce or deny compensation to Delaney and such other relief as this Court deems appropriate.

ALTERNATIVE RELIEF REQUESTED:
BREACH OF FIDUCIARY DUTY

86. Petitioners reallege paragraphs 1 through 85 as if fully set forth verbatim herein.

87. In serving as a trustee of the CRT, Delaney owed Petitioners a fiduciary duty in his performance of any and all actions related to the CRT, and Petitioners relied on that fiduciary duty and special relationship of trust.

88. Delaney breached his fiduciary duty to Petitioners in failing to act with good faith or in due regard to the interests of Petitioners and in such ways as are set forth in Paragraph 46 and in other such ways as shall be proved by the evidence presented by Petitioners.

89. Delaney's breaches of fiduciary duty to Petitioners proximately caused financial injury to Petitioners in that Delaney's conduct has adversely affected the value of the CRT and that he has failed to recognize and, otherwise, compromised Petitioners' interests in the CRT as set forth herein and in such way and such amounts as shall be proven by the evidence presented by the parties.

NOW, THEREFORE, Petitioners respectfully request this Court to enter one (1) or more orders:

1. Removing Delaney as the successor independent trustee to the corporate trustee of the CRT and commanding him to take all actions necessary or appropriate to deliver all property of the CRT to the Successor Trustee promptly;

2. Denying any Trustee fees or other compensation to Delaney from the CRT as of April 29, 2013;

3. Commanding Delaney to provide a complete accounting through the date of his removal for the CRT;

4. Commanding Delaney to provide a list of all the CRT's assets and liabilities, including copies of the most recent statements from the financial institutions where such assets are domiciled or to which such debts are owed, within thirty (30) days of the Court's Order;

5. Approving the modification of the CRT Agreement pursuant to the amendment attached hereto as Exhibit B;

6. Naming Raymond James Trust as the Successor Trustee of the CRT without being required to post a bond or other security;

3. Approving the Successor Trustee Compensation;

4. Reducing or denying compensation to Delaney and awarding damages in favor of Petitioners for the breach of trust and breach of fiduciary duty committed by Delaney;

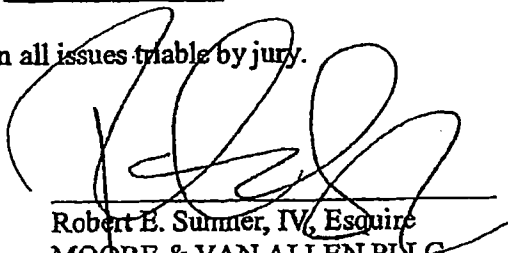
5. Taxing the costs of this proceeding, including reasonable attorneys' fees as allowed by applicable law, against Delaney individually;

6. Granting the injunctive relief as set forth herein above, restraining Delaney from access to the CRT and appointing a receiver for the CRT, first in the manner of a temporary restraining order and then as a temporary injunction; and

12. Granting Petitioners such other and further relief as shall be just and proper.

JURY DEMAND

Petitioners request trial by jury on all issues triable by jury.



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July 17th, 2014

Exhibit "A"

**JOHN M. AND MARILYN W. BUNN
CHARITABLE REMAINDER TRUST
DATED December 16, 1993**

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JOHN M. AND MARILYN W. BUNN FAMILY CHARITABLE REMAINDER TRUST

THIS AGREEMENT is made this 16 day of December, 1993, between JOHN M. BUNN and MARILYN W. BUNN (hereinafter individually and collectively referred to as the "settlor" and "settlers", respectively), SECURITY INVESTMENT MANAGEMENT AND TRUST CO., an Arizona corporation (the "corporate trustee") and JOHN M. BUNN and MARILYN W. BUNN (the "individual trustees") (the corporate trustee and the individual trustees are hereinafter individually and collectively referred to as the "trustees").

The settlors hereby transfer to the trustees the property listed in the attached Exhibit A. That property and all investments and reinvestments thereof and additions thereto shall constitute the trust estate and shall be held upon the following terms and conditions:

ARTICLE I

PROVISIONS DURING TERM OF TRUST

The trust estate shall be held and disposed of as follows:

Section 1. Unitrust Amount. In each taxable year of the trust, the trustees shall pay a unitrust amount in equal monthly installments on the last day of each month, first from income and, to the extent that income is insufficient, from principal, a unitrust amount equal to ten and 87/100 percent (10.87%) of the net fair market value of the trust assets as valued on the first day of the taxable year. Any income of the trust in excess of the unitrust amount shall be added to principal in the taxable year received.

Section 2. Term of Payment of Unitrust Amount and Trust Beneficiary. The unitrust amount shall be paid in equal shares to the settlors or all to the then living survivor of the settlors for their lifetime. Payment of the unitrust amount shall terminate as of the end of the month preceding the death of the survivor of the settlors.

Section 3. Distribution to Charitable Beneficiary. Upon termination of such payments, the trustees shall distribute the balance of the trust estate as follows:

(a) Distributing Charity. The trustees shall distribute the trust estate to the National Foundation for Charitable Giving, Inc.; a Delaware not-for-profit corporation (hereinafter referred to as the "Distributing Charity"). In consideration for the services provided by the Distributing Charity, two percent (2%) of the trust estate shall be distributed to it. The Distributing Charity shall distribute the balance of the trust estate pursuant

to the recipient charities named in the permanent allocations ("Permanent Allocations") and the temporary allocations ("Revocable Allocations") detailed on the attached Exhibit B. Any portion designated as a Permanent Allocation shall be irrevocable and may not be amended at any time or times by the settlors. Any portion designated as a Revocable Allocation may be amended or revised by the settlors by delivering a new Revocable Allocation in the manner described in paragraph (b) below. The charities must satisfy the requirements of Sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Code.

(b) Revocable Allocation. The Revocable Allocation may be amended by the settlors or the survivor of them. The settlors or the survivor of them may make a new Revocable Allocation by delivering written notice to the trustees and the Distributing Charity. The charities named in the Revocable Allocation must satisfy the requirements of Sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Code.

(c) Failure to Designate Beneficiaries. If the Distributing Charity or any charity is not an organization described in Sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Code at the time when any property of the trust estate is to be distributed to it, or if the settlors have not designated beneficiaries for the entire balance of the trust estate, the Distributing Charity (or if the Distributing Charity is not a qualified organization under the Code, then the trustees) shall distribute the property otherwise undistributable to such one or more organizations, each of which is engaged in comparable activities and satisfies the requirements described in the above Code sections.

Section 4. Short Tax Years. Except as provided herein, the unitrust amount for a short taxable year of the trust shall be prorated on a daily basis, and in the case of the taxable year of the death of the survivor of the settlors, the proration shall be to the end of the month preceding such event.

Section 5. Valuation. The determination of the net fair market value of the trust assets for each taxable year shall be made solely by the corporate trustee (or the successor independent trustee, as the case may be). If the net fair market value of the trust estate is incorrectly determined for any year, then within a reasonable period after the final determination of the correct value, the trustees shall pay to the settlors in case of undervaluation or shall recover from the settlors in case of overvaluation an amount equal to the difference between the unitrust amount properly payable and the unitrust amount actually paid.

Section 6. Additions. No additions may be made to the trust estate.

Section 7. Prohibited Transactions. The trust is intended to qualify as a charitable remainder unitrust as defined in Section

664 and is to be administered so as to qualify for the exemption from taxation provided therein for a charitable remainder unitrust. In furtherance of that intent, the trustees may amend the terms of the trust for the sole purpose of complying with the requirements of that section and the regulations issued thereunder. The trustees are prohibited from engaging in any act of self-dealing as defined in Section 4941(d), from retaining any excess business holdings as defined in Section 4943(c) which would subject the trust to tax under Section 4943, from making any investments which would subject the trust to tax under Section 4944 and from making any taxable expenditures as defined in Section 4945(d). The trustees shall make distributions at such times and in such manner as not to subject the trust to tax under Section 4942. Nothing in this agreement shall be construed to restrict the trustees from investing the trust estate in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of trust assets.

Section 8. Prevailing Provisions. Any act which would affect the tax-exempt status of this trust shall be prohibited notwithstanding any provision in this agreement inconsistent therewith. The trust estate shall not be diminished by any estate or inheritance taxes assessed by reason of the death of the settlors. If any such taxes nevertheless are charged or apportioned against this trust, the surviving settlor's estate shall furnish the funds for payment of those taxes for which the trust is liable or otherwise he or she shall be deemed not to have survived the deceased settlor.

ARTICLE II

TRUST ADMINISTRATION

The following provisions shall apply to the trust estate held under this agreement:

Section 1. Facility of Payment. If any amount becomes payable to a person under legal disability or to a person who, by reason of illness or mental or physical disability, is in the opinion of the trustees unable properly to manage his or her affairs, then that amount shall be paid or expended only in such of the following ways as the trustees deem best: (a) to the settlors directly; (b) to the legally appointed guardian or conservator of the settlors or an agent of the settlors acting pursuant to a durable power of attorney; (c) by the trustees directly for the benefit of the settlors; or (d) to an adult relative or friend in reimbursement for amounts properly advanced for the benefit of the settlors.

Section 2. Spendthrift Provisions. The interest of the settlors shall not be subject to the claims of any creditor, any spouse for alimony or support, or others, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered.

Section 3. Consolidation. The trustees may consolidate the trust with any other trust with similar provisions for the same settlor.

Section 4. Trustee Powers. The trustees shall hold, manage, care for and protect the trust property and, except as provided in Article III below, shall have the following powers and those now or hereafter conferred by law:

(a) To retain any property originally constituting the trust or subsequently added thereto, although not of a type, quality or diversification considered proper for trust investments;

(b) To invest and reinvest the trust property in bonds, stocks, mortgages, notes, bank deposits, common trust funds, options, shares of registered investment companies, or other property of any kind, real or personal, domestic or foreign, suitable for the investment of trust funds, and life insurance and deferred annuity contracts;

(c) To cause any property, real or personal, belonging to the trust to be held or registered in the trustees' names or in the name of a nominee or in such other form as the trustees deem best without disclosing the trust relationship;

(d) To vote in person or by general or limited proxy, or refrain from voting, any corporate securities for any purpose, except that any security as to which the trustees' possession of voting discretion would subject the issuing company or the trustees to any law, rule or regulation adversely affecting either the company or the trustees' ability to retain or vote company securities, shall be voted as directed by the beneficiaries then entitled to receive payments from the trust; to exercise or sell any subscription or conversion rights; to consent to and join in or oppose any voting trusts, reorganizations, consolidations, mergers, foreclosures and liquidations and in connection therewith to deposit securities and accept and hold other property received therefor;

(e) To lease trust property for any period of time though commencing in the future or extending beyond the term of the trust;

(f) To borrow money, extend or renew any existing indebtedness and mortgage or pledge any property in the trust;

(g) To sell at public or private sale, contract to sell, convey, exchange, transfer and otherwise deal with the trust property and any reinvestments thereof, and to sell put and covered call options, from time to time for such price and upon such terms as the trustees see fit;

(h) To employ agents, attorneys and proxies and to delegate to them such powers as the trustees consider desirable;

(i) To compromise, contest, prosecute or abandon claims in favor of or against the trust;

(j) To make distributions in cash or in kind, or partly in each, and to allocate or distribute undivided interests or different assets or disproportionate interests in assets, and no adjustment shall be made to compensate for a disproportionate allocation of unrealized gain for federal income tax purposes; to value the trust property and to sell any part or all thereof in order to make allocation or distribution; no action taken by the trustees pursuant to this paragraph shall be subject to question by any beneficiary;

(k) To establish out of income and credit to principal reasonable reserves for depletion, but reserves for depreciation shall not be established except to the extent the trustees determine that readily marketable assets in the principal of the trust will be insufficient for any renovation, major repair, improvement or replacement of trust property which the trustees deem advisable; and

(l) To perform other acts necessary or appropriate for the proper administration of the trust, execute and deliver necessary instruments and give full receipts and discharges.

Section 5. Investment Advisers. The individual trustees may retain an investment adviser and consult with such advisor relative to any matter or thing whatsoever pertaining in any way to the retention, sale, purchase, investment or reinvestment of any assets constituting the trust estate, or otherwise pertaining to the management or administration of the trust estate, and pay such investment adviser out of the principal of the trust estate such compensation as the individual trustees shall deem reasonable, such payments to be independent of and in addition to the compensation of which the trustees are entitled. The individual trustee hereby exercises this power by appointing THOMAS H. BELL and JEFFREY FORREST as the investment advisers. The individual trustees retain the power to remove either or both of the investment advisers at any time, with or without cause, and appoint new investment advisers. In exercising any of the powers and discretion conferred upon the individual trustees hereunder with respect to any of the matters as to which the individual trustees are authorized to obtain the advice of the investment advisers, the individual trustees may be guided by and act pursuant to such advice, and shall be fully protected in so doing, and shall be relieved from liability for loss incurred by the trust estate for anything done or omitted pursuant to such advice.

Section 6. Compensation. The trustees shall be reimbursed for all reasonable expenses incurred in the management of the trust and shall receive reasonable compensation for their services; provided, however, that any corporate trustee shall receive compensation for its services in accordance with the trustees' regular schedule of fees for that period of time. The amount of

compensation will be binding upon all persons even though unborn or unascertained who may have any interest in any trust created hereunder.

ARTICLE III

CORPORATE AND INDIVIDUAL TRUSTEES

Section 1. Division of Duties. The duties of the trustees shall be divided between the corporate trustee and the individual trustees as follows:

(a) Corporate Trustee's Primary Duties. The corporate trustee will collect all income of the trust, and will maintain and have custody of the records of the trust. After the end of each income tax year for the trust, the corporate trustee will prepare a statement showing how the property of the trust is invested and all transactions relating to the trust for the preceding tax year and the corporate trustee will furnish a copy of such statements to the settlors if then living or to each beneficiary of the trust who is eligible to receive distributions prior to the termination of the trust estate. If no written protest is received by the corporate trustee within sixty (60) days of the delivery of such statement, it will be presumed that such statement has been approved by all parties to whom such statement is delivered.

The corporate trustee shall not be under any obligation or duty to question any directions of any person to whom investment management responsibilities have been delegated, nor to review any securities or other property of the trust constituting assets thereof with respect to which the investment advisers have responsibility, nor to make any suggestions to the individual trustee or the investment advisers appointed by the individual trustee. The corporate trustee has no obligations or duties with respect to the acquisition, retention or disposition of any securities or other property of the trust with respect to which another person has investment management responsibility.

The corporate trustee shall not be liable, in any manner or for any reason, for the making or retention of any investment pursuant to investment directions of a person appointed as an investment adviser authorized to make such directions. The corporate trustee shall not be liable for its failure to invest any or all of the assets of the trust in the absence of such directions.

The corporate trustee, to the extent it is subject to direction by another person, shall not be liable for any failure to exercise conversion, redemption, exchange, subscription or other rights with respect to trust assets subject to such person's investment direction unless such person notifies the corporate trustee of the existence of the right and instructs it to exercise such right within a reasonable time prior to the expiration of such right.

The corporate trustee shall have the sole responsibility for the following decisions:

(i) in the event the trust (1) holds any asset which does not have a readily ascertainable fair market value, including, but not limited to, real estate, stock in a closely-held corporation, patents (or similar intangible property); or (2) holds an option to purchase or hold any real or personal property; the corporate trustee shall make all valuations of such trust assets, and, except as specifically provided, to make all investment decisions regarding such assets, including, but not limited to, the determination of whether to dispose of such asset and, if so, under what terms. The valuation of these assets and the exercise of such powers and duties with respect to such investment decisions shall be made solely by the corporate trustee, and any other trustee then serving shall have no power, duty, right, or obligation with respect thereto; and

(ii) whenever the trust acquires (by gift or purchase) a deferred annuity contract of any type (hereinafter the "Annuity Contract"), any discretion provided to the owner thereof shall be exercised by the corporate trustee, including

(1) partially or totally surrendering the Annuity Contract at any time or from time to time;

(2) making partial withdrawals from the Annuity Contract taking into consideration any withdrawal or partial surrender penalties that may be imposed and what is in the best interest of all trust beneficiaries;

(3) selecting any annuity option therein granted; provided, however, that the option so elected guarantees the payment to the trust upon the death of the annuitant an amount at least equal to the consideration paid for the Annuity Contract by the trust and/or the donor who gifted the same;

(4) designating the annuity starting date; and

(5) the allocation of any payments of any type received from the Annuity Contract between principal and income as is required by this Article III and the state law governing this trust.

In the event there is no corporate trustee acting hereunder, the decision set forth in subparagraph (i) and (ii) above shall be made by the independent trustee (as hereinafter defined).

(b) Investment Advisers' Duties. The investment advisers shall have the sole duty and responsibility to direct the investment of all assets of the trust and will give directions to the corporate trustee from time to time with respect to same. The

corporate trustee, upon direction of both of the investment advisers, will perform all acts necessary to give effect to the investment directions delivered by both of the investment advisers, including, but not limited to, the signing and endorsement of checks, receipts, stock certificates and other instruments. The corporate trustee need not review or inquire into the propriety of the investment directions given by both of the investment advisers and shall be fully protected in doing so, and shall be relieved from liability for loss incurred by the trust estate in complying with investment directions given by both of the investment advisers. No person dealing with the trustees need inquire into compliance with the provisions of this paragraph. If no investment adviser is acting hereunder, the individual trustee shall (except as specifically prohibited hereunder) assume any investment responsibilities hereunder.

(c) Individual Trustee's Duties. The individual trustees will not participate in the exercise of any discretion which affects his or her interest or the interest of any person to whom he or she is legally obligated or any discretion to determine the propriety or amount of payments or distributions to himself or herself or to any person to whom he or she is legally obligated, or to determine the valuation of any closely held business interest, real property or personal property, and the corporate trustee alone shall exercise the discretion in any such situation. Except where otherwise expressly provided or prohibited, all other discretionary decisions not otherwise delineated under this agreement may be performed by the individual trustees.

Section 2. Successors. In case of the resignation, refusal or inability to act of either individual trustee, the survivor shall act as the sole individual trustee hereunder. In case of resignation, refusal or inability to act of the survivor of the individual trustees, MARGARET MARY BUNN and KELLY KATHLEEN BUNN shall act as the successor individual co-trustees hereunder. In case of resignation, refusal or inability to act of either MARGARET MARY BUNN or KELLY KATHLEEN BUNN, the survivor of MARGARET MARY BUNN or KELLY KATHLEEN BUNN shall act as the successor individual trustee hereunder. In case of resignation, refusal or inability to act of both MARGARET MARY BUNN and KELLY KATHLEEN BUNN, the beneficiary or a majority in interest of the beneficiaries then entitled to receive payments from the trust shall appoint a successor individual trustee but no person legally obligated to a beneficiary shall be a successor trustee. In the event that no successor individual trustee is appointed within thirty (30) days of the death, resignation, refusal or inability to act of the then acting individual trustee, the corporate trustee shall appoint a successor individual trustee.

In case of the resignation, refusal or inability to act of the corporate trustee, the settlors during their lifetime, otherwise the beneficiary or a majority in interest of the beneficiaries then entitled to receive payments from the trust shall appoint an individual or a corporation as successor independent trustee, but

no corporation controlled by the settlors or controlled by any person legally obligated to the settlors or no person legally obligated to the settlors or subservient to the settlors shall be a successor independent trustee hereunder.

The term "trustee" or "trustees" shall mean the individual trustee or trustees, the corporate trustee and the independent special trustee from time to time acting hereunder.

Section 3. Removal. So long as any closely held stock or real property is held as part of the trust estate, the corporate trustee may not be removed. Otherwise, the settlors during their lifetime, the survivor of them after one of their deaths, or the individual trustee, may remove the corporate trustee at any time or times, with or without cause, and appoint an individual or a corporation as successor independent trustee but no corporation controlled by the settlors or controlled by any person legally obligated to the settlors or no person legally obligated to the settlors or subservient to the settlors shall be a successor independent trustee hereunder.

Section 4. Powers, Authority and Duties. Any trustee may resign at any time by written notice to the settlors during their lifetime and thereafter to each beneficiary then entitled to receive or have the benefit of the income from the trust. Upon such resignation, the trustees shall transfer any and all assets of the trust to the successor trustee and deliver an accounting of such assets. If no written protest to such accounting is received by the trustee within sixty (60) days, such accounting will presume to have been approved by the successor trustee.

Every successor trustee shall have all the powers given the originally named trustees. No successor trustee shall be personally liable for any act or omission of any predecessor. With the approval of the settlors during their lifetime, otherwise the beneficiary or a majority in interest of the beneficiaries then entitled to receive payments from the trust, a successor trustee may accept the account rendered and the property received as a full and complete discharge to the predecessor trustee without incurring any liability for so doing.

The guardian or conservator of a settlor under disability or an agent of the settlors acting pursuant to a durable power of attorney shall receive notice and have authority to act for settlors under this article.

No trustee wherever acting shall be required to give bond or surety or be appointed by or account for the administration of any trust to any court.

Section 5. Ancillary Trustee. If for any reason the trustees are unwilling or unable to act as to any property, such person or qualified corporation as the trustees shall from time to time designate in writing shall act as special trustee as to that

property. Any person or corporation acting as special trustee may resign at any time by written notice to the trustees. Each special trustee shall have the powers granted to the trustees by this agreement, to be exercised only with the approval of the trustees, to which the net income and the proceeds from sale of any part or all of the property shall be remitted to be administered under this agreement.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 1. Governing Law. The operation of the trust shall be governed by the laws of the State of South Carolina (or if no beneficiary or trustee resides in South Carolina, the law of the state of the situs of the corporate trustee). However, the trustees are prohibited from exercising any power of discretion granted under said laws that would be inconsistent with the qualification of the trust under Section 664(d)(2) of the Code and corresponding regulations.

Section 2. References to Internal Revenue Code. The section references and references to the Code are to the Internal Revenue Code of 1986, as amended, and shall be deemed to refer to corresponding provisions of the Code and subsequent revisions thereto.

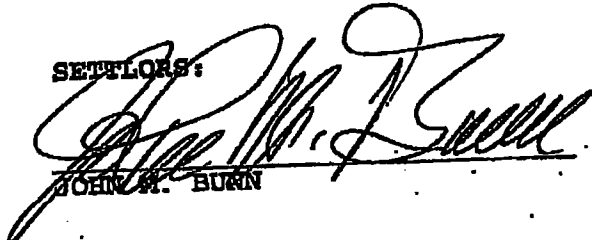
Section 3. Captions and Gender. The number used on any article or section, or the heading of any article or section of this agreement is for convenient reference only and is not to be construed as affecting the meaning expressed therein. In addition, whenever the context requires or admits, the gender and number of words shall be interchangeable.

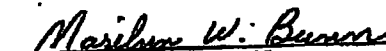
Section 4. Amendment. Except as expressly provided in Sections 3 and 7 of Article I, this Agreement shall not be subject to amendment.

Section 5. No Revocation. This agreement shall not be revocable.

IN WITNESS WHEREOF, JOHN M. BUNN, MARILYN W. BUNN and SECURITY INVESTMENT MANAGEMENT AND TRUST CO., an Arizona corporation, by its officers, have executed this Agreement on the date first written above.

SETTLORS:


JOHN M. BUNN


MARILYN W. BUNN

TRUSTEES:

SECURITY INVESTMENT MANAGEMENT
AND TRUST CO., an Arizona
corporation

By: [Signature]
Its: VP

By: [Signature]
Its: VP

[Signature]
JOHN M. BUNN

[Signature]
MARILYN W. BUNN

STATE OF South Carolina)
County of Beaufort) ss.

On this 16th day of December, 1993, before me appeared JOHN M. BUNN and MARILYN W. BUNN, settlors and trustees, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, personally appeared before me, a duly commissioned and sworn notary public, and acknowledged that they executed the instrument as their free and voluntary act.

In witness whereof, I have set my hand and affixed my official seal on the date set forth above.

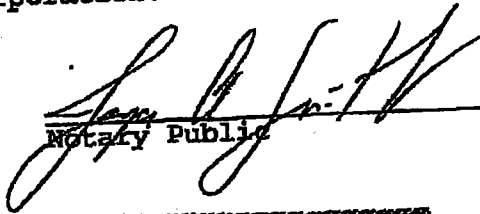
[Signature]
Notary Public

My Commission Expires:

My Commission Expires June 10, 2001

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 28th
day of December, 1993, by GRANT D. SEEGER and
MIKE FLIER, the President and Vice President
of SECURITY INVESTMENT MANAGEMENT AND TRUST CO., an Arizona
corporation, on behalf of the Corporation.



Notary Public

My Commission Expires:

Nov. 28, 1997



EXHIBIT A**BUNN
TRUST****TRANSFER DATE: DECEMBER 31, 1993
ASSETS CONTRIBUTED TO TRUST**

Asset	Fair Market Value	Cost Basis	ACQUISITION DATE
100,565 Shares Banc One Corporation	\$3,934,605.60	\$116,225.51	Exceeds One Year
50,000 Austin TX ISD 08/01/98	52,226.50	50,030.00	Exceeds One Year
50,000 City of Glendale AZ 07/01/99	50,444.00	50,030.00	Exceeds One Year
100,000 Dallas TX 02/15/97	104,428.39	101,505.00	Exceeds One Year
50,000 Douglas CO GA 01/01/98	50,181.88	50,030.00	Exceeds One Year
50,000 Hawaii GO 01/01/99	50,980.00	50,030.00	Exceeds One Year
50,000 Illinois GO Bonds 08/01/98	51,201.46	50,330.50	Exceeds One Year
50,000 King CO WA 12/01/96	50,406.42	50,030.00	Exceeds One Year
50,000 Manchester NH 10/01/97	51,032.50	49,711.50	Exceeds One Year
50,000 Mississippi St. 12/15/98	51,696.11	50,667.00	Exceeds One Year
50,000 Orlando FL Utl Comm 10/01/96	50,927.50	50,030.00	Exceeds One Year
50,000 Pennsylvania St. Univ 08/15/97	50,853.61	49,808.00	Exceeds One Year
50,000 St. Of Wisconsin 11/01/96	50,585.00	50,030.00	Exceeds One Year
Total	\$4,599,568.97	\$768,457.51	

EXHIBIT B

PERMANENT ALLOCATIONS

Option 1

Critical Needs

_____ % to agency programs that have the greatest impact on helping people in need. Volunteers research the needs of individuals and families and carefully select health and human service programs to meet those needs.

Option 2

Targeted Funds

_____ % to Health and Wellness
Includes Home health care, out-patient care, hospice care, alcohol/drug prevention, and health education.

_____ % to Elderly and Disabled
Includes home delivered meals, in-home living assistance and transportation. Promotes independent living for the elderly and disabled.

_____ % to Children and Youth
Includes youth in crisis, youth education and development and job training. Funding directed toward intervention and prevention for youth.

_____ % to Basic Needs
Includes food, clothing, shelter and legal assistance to low-income people and the homeless.

_____ % to Family Assistance
Includes family violence prevention, child care, employment, training and education, counseling, and literacy. Focus on building family strengths.

_____ % to Donor Identified fund _____
(Name of Donor)

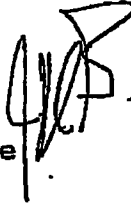
For: _____

EXHIBIT A

M.V.B. ASSETS CONTRIBUTED TO TRUST

~~102,897 shares of stock of Bank One~~

see attached schedule



Option 3

Specific Agencies

_____ % to _____
_____ % to _____
_____ % to _____
_____ % to _____

REVOCABLE ALLOCATIONS

Option 1

Critical Needs

_____ % to agency programs that have the greatest impact on helping people in need. Volunteers research the needs of individuals and families and carefully select health and human service programs to meet those needs.

Option 2

Specific Categories

_____ % to Health and Wellness
Includes Home health care, out-patient care, hospice care, alcohol/drug prevention, and health education.

_____ % to Elderly and Disabled
Includes home delivered meals, in-home living assistance and transportation. Promotes independent living for the elderly and disabled.

_____ % to Children and Youth
Includes youth in crisis, youth education and development and job training. Funding directed toward intervention and prevention for youth.

_____ % to Basic Needs
Includes food, clothing, shelter and legal assistance to low-income people and the homeless.

_____ % to Family Assistance
Includes family violence prevention, child care, employment, training and education, counseling, and literacy. Focus on building family strengths.

_____ % to Donor Identified fund _____
(Name of Donor)

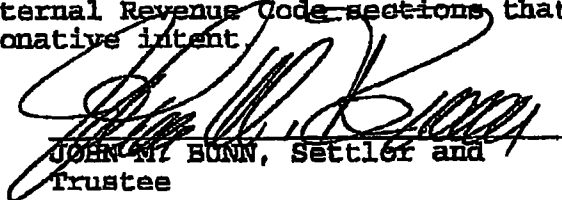
For: _____

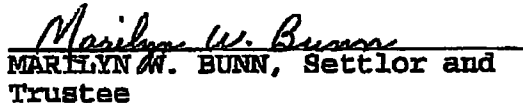
Option 3

Specific Agencies

_____ % to _____
_____ % to _____
_____ % to _____
_____ % to _____

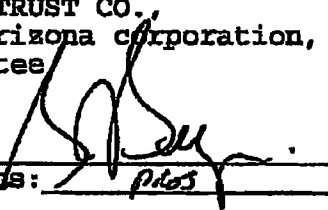
Any recipient hereunder must be an organization described in Sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Internal Revenue Code at the time when any property of the trust estate is distributed to it. The allocation made as a Revocable Allocation may be amended by the settlors at any time or times by delivering written notice to the Distributing Charity and the trustees. If the settlors have not made the direction as to the allocation of the entire trust estate, or if any one or more of the recipients determined by the settlors is not an organization described under the appropriate sections of the Internal Revenue Code, the Distributing Charity may allocate such part of the trust estate to any organizations determined by the Distributing Charity which meet the requirements of the above Internal Revenue Code sections that can best fulfill the settlors' donative intent.

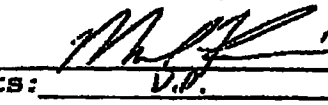

JOHN M. BUNN, Settlor and
Trustee


MARILYN W. BUNN, Settlor and
Trustee

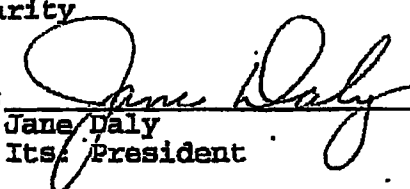
ACCEPTED BY:

SECURITY INVESTMENT MANAGEMENT
AND TRUST CO.,
an Arizona corporation,
Trustee

By: 
Its: plc

By: 
Its: v.p.

THE NATIONAL FOUNDATION FOR
CHARITABLE GIVING, INC., a
Delaware Not-for-Profit
corporation, Distributing
Charity

By: 
Jane Daly
Its: President

STATE OF South Carolina
County of Beaufort) ss.

On this 16th day of December, 1993, before me appeared JOHN M. BUNN and MARILYN W. BUNN, settlors and trustees, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, personally appeared before me, a duly commissioned and sworn notary public, and acknowledged that they executed the instrument as their free and voluntary act.

In witness whereof, I have set my hand and affixed my official seal on the date set forth above.

Sara J. Melholla
Notary Public

My Commission Expires:

My Commission Expires June 10, 2001

Exhibit "B"

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

MODIFICATION TO
CHARITABLE
REMAINDER TRUST

THIS MODIFICATION TO THE JOHN M. AND MARILYN W. BUNN CHARITABLE REMAINDER TRUST UNDER AGREEMENT DATED DECEMBER 16, 1993 is entered into by and among MARGARET BUNN LOCHMANDY, and DENISE SUDDER, GUARDIAN FOR SURVIVING SETTLOR MARILYN W. BUNN of Beaufort, South Carolina (the "Undersigned").

WHEREAS, under South Carolina Code of Laws Section 62-7-412, the administrative portions of a charitable trust may be modified due to circumstances not anticipated by the settlor such that modification will further the purposes of the trust and will be in accordance with the settlors' probable intention. Furthermore, the administrative portions of a charitable trust may be modified because administration under the current terms would be impracticable, wasteful, or impair the trust's administration.

WHEREAS, pursuant to such code section, the Undersigned wish to modify the following provisions of the Charitable Remainder Trust:

1. Article II, Section 5 is hereby removed in its entirety from the John M. And Marilyn W. Bunn Charitable Remainder Trust under Agreement dated December 16, 1993 (the "Trust").

2. Article III of the Trust shall be amended as follows:

(a) Section 1 of Article III is hereby removed in its entirety from the Trust.

(b) Section 2 of Article III shall be removed in its entirety and replaced with a new Section 2 which shall read as follows:

"Section 2. Appointment of Successor Trustee. If a Trustee gives notice of resignation, is given notice of removal, becomes incapacitated, dies or otherwise ceases to act as Trustee, a successor Trustee may be appointed as follows:

a. If Raymond James Trust or any successor Trustee resigns, is removed or for any other reason fails or ceases to act as Trustee, the following persons shall have the right to appoint a successor Trustee:

(i) A majority of the children of MARILYN W. BUNN who are then living, , and if none, then;

(ii) A majority of the beneficiaries to whom the income of the trust could then be paid. If a beneficiary is a minor or not competent, the appointment on his or her behalf may be made by a person who is (i) the guardian of the beneficiary's estate or, if none, (ii) a parent of the beneficiary or, if no such parent is living and competent, (iii) the guardian of the person of the beneficiary.

b. Any successor Trustee appointed pursuant to the foregoing provisions must be another bank or trust company qualified to do business in the state of domicile of any beneficiary."

(c) Section 3 of Article III shall be removed in its entirety from the Trust and replaced with a new Section 3 which shall read as follows:

"Section 3. Removal of Trustee. The following persons in the order named shall have the right to remove a Trustee:

a. A majority of the children of MARILYN W. BUNN who are then living, if any, and if none, then;

b. A majority of the beneficiaries to whom the income of the trust could then be paid. If a beneficiary is a minor or not competent, the appointment on his or her behalf may be made by a person who is (i) the guardian of the beneficiary's estate or, if none, (ii) a parent of the beneficiary or, if no such parent is living and competent, (iii) the guardian of the person of the beneficiary.

c. Upon removal, a Trustee shall be required within thirty (30) days of resignation or removal to:

(i) Deliver all property of the Trust to a successor Trustee promptly;

(ii) Provide a complete accounting through the date of the Trustee's resignation or removal to the successor Trustee, unless such accounting is waived by the successor Trustee;

(iii) Provide a list of all assets and liabilities to the successor Trustee.

(iv) Provide copies of all records, correspondence, documents related to the successor Trustee."

(d) Section 4 of Article III shall be removed in its entirety and replaced with a new Section 4 which shall read as follows:

"Section 4. Other Provisions Regarding Trustee.

a. No bond or other security shall be required from any Trustee. Any Trustee may act without qualifying before any court or filing with any court any inventory, accounting or other report relating to the administration of the trust unless otherwise required by law to do so.

b. No person or institution dealing with the Trustee shall be required to see to the application of any money or other property delivered to the Trustee or to inquire into the necessity or propriety of any action taken or not taken by the Trustee.

c. The Trustee shall furnish upon request, at least annually, accounts of receipts and disbursements of Trust property to each beneficiary to whom income of the trust could then be paid who is not under any legal disability and to each person (other than a governmental authority) having custody of any such beneficiary who is under a legal disability.

d. Upon resignation, a Trustee shall be required within thirty (30) days of resignation or removal to:

(i) Deliver all property of the Trust to a successor Trustee promptly;

(ii) Provide a complete accounting through the date of his or her resignation or removal to the successor Trustee, unless such accounting is waived by the successor Trustee;

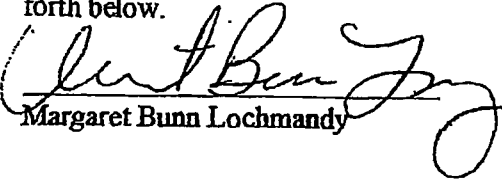
(iii) Provide a list of all assets and liabilities to the successor Trustee.

(iv) Provide copies of all records, correspondence, documents related to the successor Trustee."

3. Section 5 of Article III shall be removed in its entirety from the Trust.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

The Undersigned have signed and sealed this instrument in counterparts as of the dates set forth below.


Margaret Bunn Lochmandy

7-15-14
DATE

Denise Suddes, Guardian for Marilyn W. Bunn

DATE

The Undersigned have signed and sealed this instrument in counterparts as of the dates set forth below.

Margaret Bunn Lochmandy

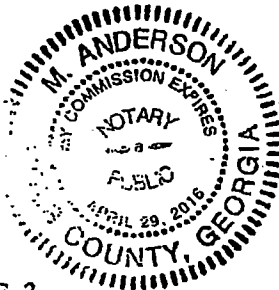
DATE

Denise Suddes

Denise Suddes, Guardian for Marilyn W. Bunn

7-16-14

DATE



M. Anderson / 7/16/14

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN RE:

JOHN M. AND MARILYN W. BUNN
CHARITABLE REMAINDER TRUST
UNDER AGREEMENT DATED
DECEMBER 16, 1993

MARILYN W. BUNN, A PERSON *NON*
COMPOS MENTIS BY AND THROUGH
HER GUARDIAN, DENISE SUDDER,
AND MARGARET BUNN LOCHMANDY

PETITIONERS,

v.

DOUGLAS S. DELANEY, AS TRUSTEE
AND IN HIS INDIVIDUAL CAPACITY,
AND ALAN WILSON, THE SOUTH
CAROLINA ATTORNEY GENERAL

RESPONDENTS.

IN THE PROBATE COURT

CASE NUMBER 2014-60700034

FILED

JUL 18 2014

PROBATE COURT
BEAUFORT COUNTY, SC

**MOTION FOR TEMPORARY
RESTRAINING ORDER/
INJUNCTION AND
APPOINTMENT OF A
RECEIVER/TRUSTEE *AD LITEM***

Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 15-65-10(A), Petitioners Marilyn W. Bunn, a person *non compos mentis* by and through her guardian, Denise Suddes, and Margaret Bunn Lochmandy ("Petitioners") move this Court for a Temporary Restraining Order or Temporary Injunction against Respondent Douglas S. Delaney ("Delaney") as Trustee and, in the alternative, to appoint a receiver to act as trustee *ad litem* for the John M. and Marilyn W. Bunn Charitable Remainder Trust Under Agreement Dated December 16, 1993 ("CRT"). In support of this Motion and as a recitation of the specific grounds for an Order granting the requested relief, Petitioners assert the following:

FACTS:

1. On July 16, 2014 Petitioners filed a Verified Petition seeking the following primary relief: (i) approval of Marilyn W. Bunn's (the "Surviving Settlor") and Margaret Bunn Lochmandy's removal of Douglas S. Delaney's ("Delaney") as the independent successor trustee to the corporate trustee under the terms of the CRT; (ii) (a) modification of the administrative provisions of the CRT due to circumstances not anticipated by the settlor such that modification will further the purposes of the CRT and will be in accordance with the settlors' probable intentions; (b) modification of the administrative terms of the CRT because administration under the existing terms is impracticable, wasteful, or impairs the CRT's administration; (iii) demand for an accounting (S.C. Code Ann. §§ 62-7-405, 62-7-412(a) and (b), 62-7-413(a), and 62-7-813); and (iv) Motion for a Temporary Restraining Order and/or Preliminary Injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure. A copy of the Verified Petition is attached hereto and incorporated herein as Exhibit A.

2. As set forth in the Verified Petition, on or about December 16, 1993, John M. Bunn and Marilyn W. Bunn, as Settlers ("Settlers"), and John M. Bunn, Marilyn W. Bunn, as the individual co-trustees (the "Individual Trustees"), and Security Investment Management and Trust Co., as the corporate trustee (the "Corporate Trustee") (the Individual Trustees and Corporate Trustee are collectively referred to herein as, the "Trustees" and individually as, a "Trustee", as applicable), entered into the CRT, thereby creating the CRT for the benefit of Settlers during their lives and then for the benefit of certain charities as set forth at Article I, Section 3 of the CRT. (Ver. Pet. ¶ 9).

3. Under Article I, Sections 1 and 2 of the CRT, during the lifetimes of settlors, the CRT is required to distribute the unitrust amount of 10.87% of the net fair market value of the

CRT's assets as valued on the first day of the taxable year in monthly installments on the last day of each month (the "Unitrust Payment"). (Ver. Pet. ¶ 12).

4. The Surviving Settlor is eighty-one (81) years old and resides in Gwinnett County, Georgia. (Ver. Pet. ¶ 15).

5. The Surviving Settlor is incapacitated, and on September 5, 2013, the Probate Court of Gwinnett County, Georgia, appointed Denise Suddes as the guardian for Surviving Settlor. (Ver. Pet. ¶ 16).

6. Following the incapacity of the Surviving Settlor, Margaret Bunn Lochmandy and Kelly Kathleen Bunn automatically became the successor Individual Trustees of the CRT. (Ver. Pet. ¶ 17).

7. Kelly Kathleen Bunn died on February 26, 2014. (Ver. Pet. ¶ 18).

8. Margaret Bunn Lochmandy is now the sole successor Individual Trustee of the CRT. (Ver. Pet. ¶ 19).

9. Delaney claims that he was appointed as successor independent trustee of the CRT. (Ver. Pet. ¶ 13).

10. The CRT assets are managed by Wells Fargo Bank. (Ver. Pet. ¶ 20).

11. The Surviving Settlor and Denise Suddes, as guardian for the Surviving Settlor, attempted to change the bank account into which the Unitrust Payment is transferred from Wells Fargo Bank because the Surviving Settlor's existing account on file was to be closed. (Ver. Pet. ¶ 21).

12. When Delaney learned of the requested account change, he objected and contacted Wells Fargo Bank. Upon information and belief, Delaney informed Wells Fargo Bank

that the Surviving Settlor, individually, and through Denise Suddes, lacked authority to effect such a change. (Ver. Pet. ¶¶ 22-23).

13. Because of the uncertainty about the requested change and the authority to make such a change, Wells Fargo Bank froze the CRT account and has ceased making the Unitrust Payment to the Surviving Settlor. (Ver. Pet. ¶ 24). In correspondence from Wells Fargo Bank, dated July 10, 2014 (attached as Exhibit B), Wells Fargo Bank notified counsel of the Surviving Settlor that it "will withhold acting upon any instructions regarding the [CRT] account until we are in receipt of a court order determining who the authorized party is for the above-referenced account. Additionally, as a result, we are unable to act upon the recent instructions received regarding a request to change the financial institution to where an automatic payment is sent." (Ex. B.)

14. The Surviving Settlor depends on the Unitrust Payment for her maintenance and care. (Ver. Pet. ¶ 49). If the Surviving Settlor does not receive her Unitrust Payment each month, she will default on her financial obligations and suffer damage to her credit and her reputation. Id. Due to her declining health, the Surviving Settlor requires ongoing and expensive medical care and treatment. (Ver. Pet. ¶ 50). She also depends on the Unitrust Payment to pay for her medical care and treatment. Id.

TEMPORARY RESTRAINING ORDER/INJUNCTION

In the present case, it is imperative that the Court enjoin Delaney and appoint a receiver to administer the CRT. Pursuant to the South Carolina Trust Code (the "Trust Code"), the Court has the authority to appoint a receiver for a trust during litigation. "Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under Section 62-7-1001(b) as may be necessary to protect the trust

property or the interests of the beneficiaries.” S.C. Code Ann. § 62-7-706(b). Section 62-7-1001(b)(5) specifically empowers the Court to “appoint a special fiduciary to take possession of the trust property and administer the trust.” S.C. Code Ann. § 62-7-1001(b)(5).

The Court’s authority extends to the power to grant an injunction restricting the actions of the trustee and appointing a receiver. The Comment to Section 62-7-706(c) states:

Subsection (c) authorizes the court to intervene pending a final decision on a request to remove a trustee. Among the relief that the court may order under Section 1001(b) is an injunction prohibiting the trustee from performing certain acts and the appointment of a special fiduciary to perform some or all of the trustee’s functions.

S.C. Code Ann. § 62-7-706(b) Comment. Furthermore, the Comment to Section 62-7-1001 explains:

Subsection (b)(5) makes explicit the court’s authority to appoint a special fiduciary also sometimes referred to as a receiver. See Restatement (Second) of Trusts Section 199(d) (1959). The authority of the court to appoint a special fiduciary is not limited to actions alleging breach of trust but is available whenever the court, exercising its equitable jurisdiction, concludes that an appointment would promote administration of the trust.

S.C. Code Ann. § 62-7-1001 Comment.

Under South Carolina law, a court can issue a temporary restraining order or injunction upon notice to the party to be enjoined if the moving party establishes that: (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. S.C. R. Civ. P., Rule 65(a); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43 (Ct. App. 2009). The trial court should also balance the equities by looking at the particular facts of each case and the equities of each party to determine which side, if any, is more entitled to equitable relief. *Id.*

In this case, Petitioners seek a temporary restraining order or injunction seeking (1) to enjoin Delaney from any access to the CRT and/or CRT assets; (2) the appointment of Carol

Ruff as a receiver to serve as the trustee *ad litem* to administer the CRT during in pendency of this action; and (3) an order directing the trustee *ad litem* to make and continue making the monthly Unitrust Payment into an account for the Surviving Settlor as directed by Denise Suddes, the Guardian for the Surviving Settlor. Petitioners can satisfy all three elements required for an injunction.

First, the Surviving Settlor will suffer irreparable harm if the relief requested in this Motion is not granted. The Surviving Settlor depends on the Unitrust Payment for her maintenance, care, and medical treatment, and she cannot receive the Unitrust Payment from Wells Fargo Bank while this matter is pending without the requested relief. (Ver. Pet. ¶¶ 49-50 and Ex. B.) If the Surviving Settlor does not receive her Unitrust Payment each month, she will default on her financial obligations, suffer damage to her credit and her reputation, and jeopardize her health. (Ver. Pet. ¶¶ 49-50).

Second, Petitioners will likely succeed on the merits of their action, particularly in seeking to remove Delaney as the independent successor trustee. Article III, Section 3 of the CRT states, "the settlors during their lifetime, the survivor of them after one of their deaths, or the individual trustee, may remove the corporate trustee." Article III, Section 4 of the CRT, reveals the intent of the Settlor was for the independent successor trustee to step into the shoes of the corporate trustee. Accordingly, all of the CRT provisions that apply to the corporate trustee also apply to the independent successor trustee, including the Surviving Settlor's and Individual Trustee's ability to remove the independent successor to the corporate trustee.

Petitioners also seek to remove Delaney as trustee for misconduct — based on his breaches of trust and breaches of fiduciary duty. Delaney committed breaches of trust and breached his fiduciary duty in one or more of the following ways:

- a. Authorizing and receiving unreasonable and excessive trustee's fees without proper notice to or consent of the Surviving Settlor, successor individual trustees, and the Beneficiaries;
- b. Failing to keep the Surviving Settlor, successor individual trustees, Wells Fargo Bank, and the Beneficiaries properly informed (S.C. Code Ann. § 62-7-813);
- c. Providing erroneous or misleading information to the Surviving Settlor, successor individual trustees, Wells Fargo Bank, and the Beneficiaries;
- d. Failing to administer the CRT in good faith in accordance with the terms and purposes of the CRT and the interests of the Beneficiaries (S.C. Code Ann. § 62-7-101);
- e. Failing to comply with his duty of loyalty (S.C. Code Ann. § 62-7-802);
- f. Failing to comply with his duty of impartiality (S.C. Code Ann. § 62-7-803);
- g. Failing to comply with his duty to keep proper records (S.C. Code Ann. § 62-7-810);
- h. Demonstrating a lack of knowledge about the documents and property of the CRT;
- i. Failing to prudently administer the CRT (S.C. Code Ann. §§ 62-7-804 and 62-7-903);
- j. Attempting to remove and replace the successor independent trustee without adequate grounds or authority for the removal;
- k. Wrongfully refusing to accept his removal as the independent successor to the Corporate Trustee despite the instructions from Petitioners;
- l. Intentionally disregarding the purpose of the CRT; and

(Ver. Pet. ¶ 45). In light of the breaches of duty set forth in this Motion and the Verified Petition, along with the explicit contractual authority given to the Surviving Settlor to remove Delaney under Article III of the CRT, Petitioners will likely prevail in obtaining its primary relief of removing Delaney as trustee.

Third, there is no adequate remedy at law to prevent the Surviving Settlor from suffering the irreparable harm that will result from the cessation of Unitrust Payments. Although the Court

may later remove Delaney as trustee of the CRT and award damages to the Surviving Settlor for any lost Unitrust Payments, these remedies cannot prevent her from defaulting on her financial obligations or being deprived of her essential needs and medical care during the period in which the Unitrust Payments are not being made. Injuries to an individual's reputation, credit, and health are precisely the types of irreparable harms that courts seek to prevent through the imposition of a TRO.

Finally, the balancing of the equities also favors Petitioners. As discussed above, the Surviving Settlor will suffer serious, irreparable harm if the relief requested is not granted. In contrast, Delaney will suffer little harm, if any, because Wells Fargo Bank has indicated that it will take no action regarding the CRT until this dispute is resolved or the Court appoints an authorized trustee. Accordingly, Delaney's powers as the independent successor trustee of the CRT are significantly diminished at present. Thus, the benefits obtained by the Surviving Settlor greatly outweigh any potential harm Delaney will suffer if this Motion is granted.

ALTERNATIVE RELIEF REQUESTED
APPOINTMENT OF RECEIVER/ TRUSTEE AD LITEM

In addition to Petitioners' Motion for TRO/Injunction, Petitioners alternatively seek the appointment of a receiver to serve as trustee *ad litem* to preserve and protect the CRT assets. This alternative relief is based upon the same factual scenario set forth in this Motion and the Verified Petition, but the relief can be awarded by the Court without requiring compliance with the strict elements necessary for an injunction.

The Court has the inherent equitable authority to appoint a receiver or trustee *ad litem* to perform certain administrative functions and transactions in cases where the removal of a trustee is in dispute. Restatement (Third) of Trusts § 37(g) (stating that appointment of trustee *ad litem* may be appropriate to handle "specific, sensitive transaction" in certain cases); Restatement

(Third) of Trusts § 78(c)(1) (noting that the "interests of sound administration may be better served if the court were to appoint a trustee *ad litem* to reach a decision on" a controversial or complex matter). As the Restatement (Third) of Trust § 78(c)(1) explains, "In essence, a trustee *ad litem* is appointed by the court (without removing or otherwise displacing the trustee) to consider and perhaps handle a specific controversy or transaction(s) when it is inappropriate for the trustee for the trustee to do so. The trustee *ad litem* has (except as limited or modified by the court) such powers and duties of the trusteeship as are appropriate to the matters involved; the duties would ordinarily also include the normal duties of a trustee under §§ 82 and 83 to inform and report not only to the beneficiaries but also to the court and the trustee." See also, *Getty v. Getty*, 205 Cal. App. 3d 134, 252 Cal. Rptr. 342 (Cal. App. 1988) (appointing trustee *ad litem* to conduct litigation where it was necessary to preserve trust assets).

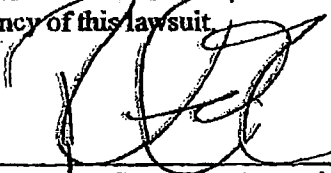
Under S.C. Code Ann. § 15-65-10(A), a receiver may be appointed by a judge of a circuit court on application of a party who "establishes an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired." Appointment of a receiver to act as trustee *ad litem* to administer the CRT and to make Unitrust Payments is appropriate under S.C. Code Ann. § 15-65-10(A).

Petitioners seek the appointment of Carol Ruff as the receiver to act as trustee *ad litem* to administer the CRT during the pendency of this action and to make and continue making the monthly Unitrust Payment into an account for the Surviving Settlor, as directed by Denise Suddes, the Guardian for the Surviving Settlor. The Surviving Settlor has the undisputed right to the Unitrust Payment, which is a subject of this action, pursuant to Article I, Sections 1 and 2 of the CRT. Because of the actions of Delaney, who is the adverse party in this action, Wells Fargo

has refused to recognize any changes to the CRT account. Because the Surviving Settlor's bank account on file with Wells Fargo is closed, the Surviving Settlor's rights to the Unitrust Payments have been impaired and the Unitrust Payments are in danger of being directed or deposited into an account that is no longer open. Accordingly, Petitioners can establish the conditions required under S.C. Code Ann. § 15-65-10(A) needed for the appointment of a receiver to act as trustee *ad litem* during the pendency of this action.

WHEREFORE, Petitioners respectfully move the Court to issue an Order to provide for the following:

- a. Enjoining Delaney from any access to the CRT or the CRT assets;
- b. Appointing Carol Ruff as receiver to serve as the interim trustee *ad litem* to administer the CRT; and
- c. Ordering the receiver to make and continue making the Unitrust Payment into an account for the Surviving Settlor as directed by Denise Suddes, the Guardian for the Surviving Settlor; and/or
- d. Or, in the alternative, appoint a receiver to act as trustee *ad litem* to administer the CRT during the pendency of this lawsuit.



Robert E. Sumner, IV, Esquire
MOORE & VAN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000

Attorney for Petitioners

July 17th 2014



Law Department
One North Jefferson Avenue
St. Louis, MO 63103

July 10, 2014

VIA Email: robertsumner@mvalaw.com

Mr. Robert E. Sumner, IV, Esq.
Moore & Van Allen PLLC
78 Wentworth St.
Charleston, SC 29401-1428

RE: James M. Bunn & Marilyn W. Bunn Charitable Remainder Trust u/a/d 12/16/93

Dear Mr. Sumner:

Wells Fargo Advisors (WFA) is in receipt of correspondence and documentation regarding the currently authorized parties on the above-referenced account. As you may be aware, your client's assertion of a claim to the account or any other party's assertion of a claim to the account does not impose a duty that WFA make any legal judgments about the validity of such claims or claims and WFA may require a judicial determination regarding any conflicting assertions, disputes or claims regarding the account.

Therefore, based on the conflicting assertions that we have received regarding the current authorized parties on the account, WFA will withhold acting upon any instructions regarding the account until we are in receipt of a court order determining who the authorized party is for the above-referenced account. Additionally, as a result, we are unable to act upon the recent instructions received regarding a request to change the financial institution to where an automatic payment is sent.

If you have any questions or wish to discuss this matter further, please contact me.

Sincerely,

Danielle Thompson
Counsel
Wells Fargo Law Department
314-955-2325

Together we'll go far



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

JOHN M. AND MARILYN W. BUNN
CHARITABLE REMAINDER TRUST

MARILYN W. BUNN, A PERSON *NON*
COMPOS MENTIS BY AND THROUGH
HER GUARDIAN, DENISE SUDDER,
AND MARGARET BUNN LOCHMANDY,

PLAINTIFFS,

v.

DOUGLAS S. DELANEY, AS TRUSTEE
AND IN HIS INDIVIDUAL CAPACITY,
ALAN WILSON, THE SOUTH CAROLINA
ATTORNEY GENERAL, SACRED HEART-
GRIFFIN HIGH SCHOOL, ST. JOSEPH'S
HOME, QUINCY UNIVERSITY, NOTRE
DAME, THE LAWRENCEVILLE SCHOOL,
ALL SAINTS CATHOLIC CHURCH, AND
HABITAT FOR HUMANITY c/o ALL
SAINTS CATHOLIC CHURCH,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NUMBER 2014-CP-07-1732

AMENDED SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Amended Complaint on the Plaintiff at the following address: Moore & Van Allen, PLLC, 78 Wentworth Street, Charleston, South Carolina 29401, within thirty (30) days after the

service hereof; exclusive of the day of such service; and if you fail to do so, the Plaintiffs in this action will apply to the court for the relief demanded in the Amended Complaint.



Robert E. Summer, IV, Esquire
MOORE & VAN ALLEN PLLC
78 Wentworth Street
Charleston, SC 29401
(843) 579-7000

Attorney for Plaintiffs

Charleston, South Carolina

August 19th, 2014

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

JOHN M. AND MARILYN W. BUNN
CHARITABLE REMAINDER TRUST

MARILYN W. BUNN, A PERSON *NON*
COMPOS MENTIS BY AND THROUGH
HER GUARDIAN, DENISE SUDDER,
AND MARGARET BUNN LOCHMANDY,

PLAINTIFFS,

v.

DOUGLAS S. DELANEY, AS TRUSTEE
AND IN HIS INDIVIDUAL CAPACITY,
ALAN WILSON, THE SOUTH CAROLINA
ATTORNEY GENERAL, SACRED HEART-
GRIFFIN HIGH SCHOOL, ST. JOSEPH'S
HOME, QUINCY UNIVERSITY, NOTRE
DAME, THE LAWRENCEVILLE SCHOOL,
ALL SAINTS CATHOLIC CHURCH, AND
HABITAT FOR HUMANITY c/o ALL
SAINTS CATHOLIC CHURCH,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NUMBER 2014-CP-07-1732

AMENDED COMPLAINT

Plaintiffs, through counsel, respectfully allege:

1. This Amended Complaint seeks the following primary relief: (i) approval of Marilyn W. Bunn's (the "Surviving Settlor") and Margaret Bunn Lochmandy's removal of Douglas S. Delaney's ("Delaney") as the independent successor trustee to the corporate trustee under the terms of the John M. And Marilyn W. Bunn Charitable Remainder Trust under Agreement dated December 16, 1993 (the "CRT"); (ii) (a) modification of the administrative provisions of the CRT due to circumstances not anticipated by the settlor such that modification will further the purposes of the CRT and will be in accordance with the settlors' probable intentions; (b) modification of the administrative terms of the CRT because administration under the existing terms is impracticable, wasteful, or impairs the CRT's administration; (iii) demand for an

accounting (S.C. Code Ann. §§ 62-7-405, 62-7-412(a) and (b), 62-7-413(a), and 62-7-813); and (iv) Motion for a Temporary Restraining Order/ Preliminary Injunction and Appointment of a Receiver.

2. This Amended Complaint seeks the following alternative relief: (i) removal and replacement of the trustee by the settlor, individual trustee, and income beneficiary because of a serious breach of trust (S.C. Code Ann. § 62-7-706(b)(1)), lack of cooperation among the trustees substantially impairs the administration of the trust (S.C. Code Ann. § 62-7-706(b)(2)), the unfitness, unwillingness, or persistent failure of the current trustee to administer the trust effectively (S.C. Code Ann. § 62-7-706(b)(3)), and due to a substantial change of circumstances (S.C. Code Ann. § 62-7-706(b)(4)); (ii) appointment of a suitable successor trustee (S.C. Code Ann. § 62-7-704(c)(3)); and (iii) damages and other appropriate relief with regard to Delaney's breach of trust and breach of fiduciary duty.

JURISDICTION AND VENUE

3. This case was removed to the Beaufort County Court of Common Pleas pursuant to §§ 62-1-302 and 62-1-303 of the Code of Laws of South Carolina (as amended, 2009).

4. Delaney resides in Beaufort County, South Carolina.

5. Article IV, Section 1 of the CRT provides the following:

"The operation of the trust shall be governed by the laws of the State of South Carolina (or if no beneficiary or trustee resides in South Carolina, the law of the state of the situs of the corporate trustee)."

6. Venue for this proceeding is proper because the principal place of administration for the CRT is in Beaufort County as that is the location of the usual place of business of Delaney, the successor independent trustee to the corporate trustee (S.C. Code Ann. §§ 62-7-108 and 62-7-204).

7. Jurisdiction and venue for this case, which was originally removed from the Beaufort County Probate Court, are properly found in the Beaufort County Court of Common Pleas.

THE CHARITABLE REMAINDER TRUST AND ITS SETTLOR, TRUSTEES AND BENEFICIARIES

8. On or about December 16, 1993, John M. Bunn and Marilyn W. Bunn, as Settlers ("Settlers"), and John M. Bunn, Marilyn W. Bunn, as the individual co-trustees (the "Individual Trustees"), and Security Investment Management and Trust Co., as the corporate trustee (the "Corporate Trustee") (the Individual Trustees and Corporate Trustee are collectively referred to herein as, the "Trustees" and individually as, a "Trustee", as applicable), entered into the CRT, a copy of which is attached hereto and incorporated herein as Exhibit A, thereby creating the CRT for the benefit of Settlers during their lives and then for the benefit of certain charities as set forth at Article I, Section 3 of the CRT.

9. Article III, Section 1(a) of the CRT describes the duties of the corporate trustee. Section 1(a) states that the corporate trustee has the responsibility for collecting all income, maintaining all records, and preparing annual reports for the CRT.

10. Article III, Section 1(c) of the CRT describes the duties the individual trustee. Section 1(c) states, "Except where otherwise expressly provided or prohibited, all other discretionary decisions not otherwise delineated under this agreement may be performed by the individual trustees." Section 1(c) restricts individual trustee's duties, mandating that the "individual trustee will not participate in the exercise of any discretion which affects his or her interest or the interest of any person to who he or she is legally obligated."

11. Under Article I, Sections 1 and 2 of the CRT, during the lifetimes of Settlers, the CRT is required to distribute the unitrust amount of 10.87% of the net fair market value of the CRT's assets as valued on the first day of the taxable year in monthly installments on the last day of each month (the "Unitrust Payment") to the Settlers or the survivor of them for the remainder of their lives.

12. Delaney claims that he was appointed as successor independent trustee of the CRT, replacing the Corporate Trustee. Delaney is an attorney licensed to practice in the State of South Carolina. Upon further information and belief, Delaney advised and counseled Settlers on tax and estate planning matters, including the CRT.

13. John M. Bunn is deceased; thus, the Surviving Settlor is now entitled to the Unitrust Payment for the rest of her life.

14. The Surviving Settlor is eighty-one (81) years old and resides in Gwinnett County, Georgia.

15. The Surviving Settlor is incapacitated, and on September 5, 2013, the Probate Court of Gwinnett County, Georgia, appointed Denise Suddes as the guardian for Surviving Settlor.

16. Following the incapacity of the Surviving Settlor, Margaret Bunn Lochmandy and Kelly Kathleen Bunn automatically became the successor Individual Trustees of the CRT.

17. Kelly Kathleen Bunn died on February 26, 2014.

18. Margaret Bunn Lochmandy is now the sole successor Individual Trustee of the CRT.

19. The CRT assets are managed by Wells Fargo Bank.

20. The Surviving Settlor and Denise Suddes, as guardian for the Surviving Settlor, attempted to change the bank account into which the Unitrust Payment is transferred from Wells Fargo Bank because the Surviving Settlor's existing account on file was to be closed.

21. When Delaney learned of the requested account change, he objected and contacted Wells Fargo Bank.

22. Upon information and belief, Delaney informed Wells Fargo Bank that the Surviving Settlor, individually, and through Denise Suddes lacked authority to effect such a change.

23. Because of the questions about the requested change and the authority to make decisions regarding the CRT account, Wells Fargo Bank froze the CRT account.

24. Wells Fargo Bank will continue to authorize the Unitrust Payment, but only to the Surviving Settlor's bank account currently on file with the CRT, which has been closed and cannot be re-opened.

25. On June 17, 2014, Delaney executed a document titled, "Appointment of Successor Individual Trustee," improperly attempting to remove Margaret Bunn Lochmandy as the successor individual trustee of the CRT and naming himself as the successor individual trustee of the CRT.

26. The Surviving Settlor and Margaret Bunn Lochmandy refused to recognize Delaney's attempt to remove and replace the successor individual trustee.

27. Thereafter, the Surviving Settlor and Margaret Bunn Lochmandy served Delaney with a Notice of Removal of Trustee. The Notice of Removal of Trustee informed Delaney that the Surviving Settlor and successor individual trustee were exercising their rights under Article III, Section 3 of the CRT to remove the independent successor to the corporate trustee. Delaney refused to sign the Acknowledgement of Receipt of Notice of Removal of Trustee and has refused to resign as the independent successor to the corporate trustee.

28. Certain charities, named as Defendants in this Petition, are the remainder beneficiaries of the CRT as set forth in Article I, Section 3. Those charities are as follows

- a. Sacred Heart-Griffin High School, a school located in Springfield, Illinois;
- b. St. Joseph's Home, a charitable organization located in Springfield, Illinois;
- c. Quincy University, a school located in Quincy, Illinois;
- d. Notre Dame, a school located in South Bend, Illinois;
- e. The Lawrenceville School, a school located in Lawrenceville, New Jersey;
- f. All Saints Catholic Church, a church located in Dunwoody, Georgia; and
- g. Habitat for Humanity c/o All Saints Catholic Church, a charitable organization

located in Dunwoody, Georgia.

29. Alan Wilson is the Attorney General for the State of South Carolina.

PRIMARY RELIEF REQUESTED:
REMOVAL OF TRUSTEE BY SURVIVING SETTLOR
AND SUCCESSOR INDIVIDUAL TRUSTEE

30. Plaintiffs reallege paragraphs 1 through 30 as if fully set forth verbatim herein.

31. Article III, Section 3 of the CRT states, "the settlors during their lifetime, the survivor of them after one of their deaths, or the individual trustee, may remove the corporate trustee."

32. Article III, Section 4 of the CRT, reveals the intent of the Settlor was for the independent successor trustee to step into the shoes of the corporate trustee. Accordingly, all of the CRT provisions that apply to the corporate trustee also apply to the independent successor trustee, including the Surviving Settlor and Individual Trustee's ability to remove the independent successor to the corporate trustee.

33. Pursuant to the terms of the CRT, Plaintiffs demand that Delaney be removed as the independent successor trustee to the corporate trustee and that the Court appoint a successor independent successor trustee to the corporate trustee.

PRIMARY RELIEF REQUESTED:
MODIFICATION OF SUCCESSOR TRUSTEE PROVISIONS

34. Plaintiffs reallege paragraphs 1 through 34 as if fully set forth verbatim herein.

35. The Probate Court has authority to modify the administrative provisions of the CRT due to circumstances not anticipated by the settlor such that modification will further the purposes of the CRT which modification, to the extent practicable, will be in accordance with the Settlor's probable intention (S.C. Code Ann. §§ 62-7-412(a)).

36. The Probate Court has authority to modify the administrative terms of the CRT because administration under the existing terms would be impracticable, wasteful, or impair the CRT's administration. (S.C. Code Ann. §§ 62-7-412(b)).

37. The Settlor did not anticipate that having both an individual trustee and a corporate or independent trustee would be unmanageable or result in overly burdensome cost to the CRT, thereby substantially reducing the value of the remainder interest of the charitable beneficiaries.

38. In light of the nature of the CRT and the interests of the income beneficiary and the remainder beneficiaries (collectively, the "Beneficiaries"), Plaintiffs desire that the administrative provisions of the CRT be amended to incorporate new provisions for the removal and appointment of Trustees under Article III as provided at Exhibit B.

39. Modification will further the purposes of the CRT by ensuring that an institutional third party successor trustee is the sole trustee with a reasonable fee such that the assets ultimately passing to the charitable remainder beneficiaries are preserved to the maximum extent possible and not depleted by excessive trustee fees. Additionally, the power to remove such successor trustee will ensure that the CRT is properly managed.

40. In light of the nature of the CRT's and its Beneficiaries' interests, Plaintiffs desire that the administrative provisions of the CRT be amended to incorporate new provisions for the removal and appointment of trustees under Article III as provided in the amendment attached hereto as Exhibit B.

PRIMARY RELIEF REQUESTED:
DEMAND FOR ACCOUNTING

41. Plaintiffs reallege paragraphs 1 through 41 as if fully set forth verbatim herein.

42. Plaintiffs request, pursuant to S.C. Code Ann. § 62-7-813 and other applicable sections of the South Carolina Trust Code, that Delaney provide within thirty (30) days of the Court's Order: (i) an updated accounting for the CRT, including all CRT documents, amendments, executed trustee resignation documents, appointment of successor trustee documents, and other documents related to the administration of the CRT; and (ii) a list of all assets and liabilities for the CRT.

PRIMARY RELIEF REQUESTED:
**TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION AND
APPOINTMENT OF RECEIVER**

43. Plaintiffs reallege paragraphs 1 through 43 as if fully set forth verbatim herein.

44. Delaney committed a breach of trust and fiduciary duty in one or more of the following ways:

- a. Authorizing and receiving unreasonable and excessive trustee's fees without proper notice to or consent of the Surviving Settlor, successor individual trustees, and the Beneficiaries;
- b. Failing to keep the Surviving Settlor, successor individual trustees, Wells Fargo Bank, and the Beneficiaries properly informed (S.C. Code Ann. § 62-7-813);
- c. Providing erroneous or misleading information to the Surviving Settlor, successor individual trustees, Wells Fargo Bank, and the Beneficiaries;

- d. Failing to administer the CRT in good faith in accordance with the terms and purposes of the CRT and the interests of the Beneficiaries (S.C. Code Ann. § 62-7-101);
- e. Failing to comply with his duty of loyalty (S.C. Code Ann. § 62-7-802);
- f. Failing to comply with his duty of impartiality (S.C. Code Ann. § 62-7-803);
- g. Failing to comply with his duty to keep proper records (S.C. Code Ann. § 62-7-810);
- h. Demonstrating a lack of knowledge about the documents and property of the CRT;
- i. Failing to prudently administer the CRT (S.C. Code Ann. §§ 62-7-804 and 62-7-903);
- j. Attempting to remove and replace the successor independent trustee without adequate grounds or authority for the removal;
- k. Wrongfully refusing to accept his removal as the independent successor to the Corporate Trustee despite the instructions from Plaintiffs;
- l. Intentionally disregarding the purpose of the CRT; and
- m. In other ways set forth herein and in such ways as shall be proven by the evidence presented by the parties.

45. Delaney's actions, individually and collectively, set forth above have caused and threaten to cause irreparable harm for which there is no adequate legal remedy.

46. As a result of Delaney's breach of trust and breach of fiduciary duty and his failure to keep Wells Fargo informed of key developments regarding the CRT, as set forth herein below, Wells Fargo has concluded that there is a dispute over who are the rightful trustees of the CRT, and, as such, froze the CRT account until the dispute between the Parties is resolved.

47. Because the CRT account has been frozen, the Surviving Settlor cannot receive the monthly Unitrust Payment.

48. The Surviving Settlor depends on the Unitrust Payment for her maintenance and care. If the Surviving Settlor does not receive her Unitrust Payment each month, she will default on her financial obligations and suffer damage to her credit and her reputation.

49. Due to her declining health, the Surviving Settlor requires ongoing and expensive medical care and treatment. She also depends on the Unitrust Payment to pay for her medical care and treatment.

50. It is necessary for the Court to enjoin Delaney from any further access to the CRT and CRT assets, and furthermore, it is necessary for the Court to appoint a receiver to serve as interim trustee to administer the CRT until the dispute between the Parties is resolved.

51. Carol Ruff, Esq., an attorney in good standing in Beaufort County, South Carolina, has agreed to serve as the receiver, upon approval by the Court, and to administer the CRT according to the terms set forth in the CRT documents.

52. The Surviving Settlor has no adequate remedy at law, in that monetary damages are incapable of protecting her.

53. Unless this Court enjoins Delaney and appoints a receiver to serve as interim trustee to administer the CRT, the Surviving Settlor will be irreparably harmed.

54. Plaintiffs have a reasonable likelihood of success on the merits.

55. The balance of harms if the Court were to award equitable relief favors Plaintiffs.

56. The public interest is served in appointing a receiver to serve as interim trustee to administer the CRT so that the Surviving Settlor is not irreparably harmed by her inability to receive the Unitrust Payment, to which she is entitled regardless of who serves as the trustee of the CRT.

57. Plaintiffs are willing to post a reasonable bond.

58. Plaintiffs have verified the allegations contained in the Petition, including but not limited to the cause of action for Temporary Restraining Order/Preliminary Injunction.

59. For all of the foregoing reasons, Plaintiffs are entitled to a temporary restraining order against Delaney as follows:

- a. Enjoining Delaney from any access to the CRT or the CRT assets;
- b. Appointing Carol Ruff as receiver to serve as the interim trustee to administer the CRT; and
- c. Ordering the receiver to make and continue making the Unitrust Payment into an account for the Surviving Settlor as directed by Denise Suddes, the Guardian for the Surviving Settlor.

ALTERNATIVE RELIEF REQUESTED:
REMOVAL OF TRUSTEE BASED ON A SUBSTANTIAL CHANGE OF
CIRCUMSTANCES

60. Plaintiffs reallege paragraphs 1 through 60 as if fully set forth verbatim herein.

61. If there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the Probate Court has authority to remove the trustee of a trust if the Court finds that removal of the trustee best serves the interests of all of the beneficiaries, is not inconsistent with a material purpose of the trust, and a suitable co-trustee or successor trustee is available (S.C. Code Ann. § 62-7-706(b)(4)).

62. There has been a substantial change of circumstances with regards to the CRT insofar as having an individual trustee and a corporate or independent trustee has proved unmanageable and has resulted in overly burdensome cost to the CRT.

63. Removal of Delaney will best serve the interests of the Beneficiaries for the reasons alleged herein.

64. Removal of Delaney is not inconsistent with a material purpose of the CRT as the applicable purpose is to have a third party trustee who is unrelated to the Beneficiaries.

65. As alleged herein, a suitable third party institutional successor trustee, Raymond James Trust (the "Successor Trustee"), is willing and able to serve as trustee of the CRT.

ALTERNATIVE RELIEF REQUESTED:
REMOVAL OF TRUSTEE FOR CAUSE

66. Plaintiffs reallege paragraphs 1 through 66 as if fully set forth verbatim herein.

67. The Probate Court has authority to remove the trustee of a trust because of a serious breach of trust (S.C. Code Ann. § 62-7-706(b)(1)), lack of cooperation among the trustees substantially impairs the administration of the trust (S.C. Code Ann. § 62-7-706(b)(2)), or the unfitness, unwillingness, or persistent failure of the current trustee to administer the trust effectively (S.C. Code Ann. § 62-7-706(b)(3)).

68. Plaintiffs have made reasonable requests for Delaney to provide information and documentation relating to the administration of the CRT and, citing various pretextual excuses, Delaney has materially failed to do so.

69. Delaney has committed various serious breaches of trust, as set forth in Paragraph 46 and in other such ways as shall be proved by the evidence presented by Plaintiffs.

70. The successor individual trustee disagrees with Delaney's administration of the CRT, and, accordingly, there is a lack of cooperation among the trustees as a result.

71. The actions and omissions alleged herein, and others to be proven at trial of this matter, constitute serious breaches of trust and demonstrate an unfitness, unwillingness, or persistent failure of Delaney to administer the CRT effectively such that the Court should remove Delaney as a trustee of the CRT.

72. Removal of Delaney will best serve the interests of the Beneficiaries.

73. Plaintiffs request that Delaney, in connection with his removal as Trustee, provide within thirty (30) days of the Court's Order: (i) an updated accounting for the CRT; and (ii) a list of all assets and liabilities, including copies of the most recent statements from the financial institutions where such assets are domiciled or to which such debts are owed, for the CRT.

74. Plaintiffs request that Delaney, in connection with his removal as trustee, be denied trustee compensation and be denied reimbursement for his private attorneys' fees in connection with this dispute.

ALTERNATIVE RELIEF REQUESTED:
APPOINTMENT OF SUCCESSOR TRUSTEE

75. Plaintiffs reallege paragraphs 1 through 75 as if fully set forth verbatim herein.

76. Plaintiffs request the Court to appoint the Successor Trustee of the CRT. The Successor Trustee and its trust officers have significant experience and expertise in trust administration, and Successor Trustee is currently serving as trustee of numerous trusts materially similar in nature and value to the CRT.

77. The CRT (in Article III, Section 4) provides that no bond or other security be required of any trustee serving thereunder, and a trustee is generally not required to post a bond unless required by the terms of the CRT (S.C. Code Ann. § 62-7-702).

78. As compensation for its services as trustee under the CRT, the Successor Trustee shall receive an amount which shall be determined by its standard fee schedule in effect and applicable at the time of the performance of such services; if no such schedule shall be in effect at that time, the Successor Trustee shall be entitled to reasonable compensation for the services rendered (the "Successor Trustee Compensation").

79. Plaintiffs desire that the Successor Trustee, upon acceptance of the CRT and property for the CRT, succeed to and possess all the rights, powers, duties, authority, and responsibility conferred upon the trustees originally named in the CRT, and, unless requested to in writing by the Beneficiaries within ninety (90) days of acceptance of the CRT property, that the Successor Trustee not be liable for or be required to investigate or review the acts or omissions of any previous trustee of the CRT and shall not be required to seek any redress against Delaney or any other previous trustee of the CRT.

ALTERNATIVE RELIEF REQUESTED:
BREACH OF TRUST

80. Plaintiffs reallege paragraphs 1 through 81 as if fully set forth verbatim herein.

81. In serving as trustee of the CRT, Delaney breached his duty owed to Plaintiffs, which breach amounts to a breach of trust pursuant to S.C. Code Ann. §§ 62-7-1001 and 62-7-1002.

82. Delaney committed a breach of trust by engaging in the acts alleged in Paragraph 46 and in other such ways as shall be proved by the evidence presented by Plaintiffs.

83. Delaney's breaches of trust proximately caused financial injury to Plaintiffs in that Delaney's conduct has adversely affected the value of the CRT and that he has failed to recognize and, otherwise, compromised Plaintiffs' interests in the CRT as set forth herein and in such way and such amounts as shall be proven by the evidence presented by the parties.

84. As a result of Delaney's breaches of trust, Plaintiffs are entitled to reduce or deny compensation to Delaney and such other relief as this Court deems appropriate.

ALTERNATIVE RELIEF REQUESTED:
BREACH OF FIDUCIARY DUTY

85. Plaintiffs reallege paragraphs 1 through 85 as if fully set forth verbatim herein.

86. In serving as a trustee of the CRT, Delaney owed Plaintiffs a fiduciary duty in his performance of any and all actions related to the CRT, and Plaintiffs relied on that fiduciary duty and special relationship of trust.

87. Delaney breached his fiduciary duty to Plaintiffs in failing to act with good faith or in due regard to the interests of Plaintiffs and in such ways as are set forth in Paragraph 46 and in other such ways as shall be proved by the evidence presented by Plaintiffs.

88. Delaney's breaches of fiduciary duty to Plaintiffs proximately caused financial injury to Plaintiffs in that Delaney's conduct has adversely affected the value of the CRT and that he has failed to recognize and, otherwise, compromised Plaintiffs' interests in the CRT as set forth herein and in such way and such amounts as shall be proven by the evidence presented by the parties.

NOW, THEREFORE, Plaintiffs respectfully request this Court to enter one (1) or more orders:

1. Removing Delaney as the successor independent trustee to the corporate trustee of the CRT and commanding him to take all actions necessary or appropriate to deliver all property of the CRT to the Successor Trustee promptly;

2. Denying any Trustee fees or other compensation to Delaney from the CRT as of April 29, 2013;

3. Commanding Delaney to provide a complete accounting through the date of his removal for the CRT;

4. Commanding Delaney to provide a list of all the CRT's assets and liabilities, including copies of the most recent statements from the financial institutions where such assets are domiciled or to which such debts are owed, within thirty (30) days of the Court's Order;

5. Approving the modification of the CRT Agreement pursuant to the amendment attached hereto as Exhibit B;

6. Naming Raymond James Trust as the Successor Trustee of the CRT without being required to post a bond or other security;

3. Approving the Successor Trustee Compensation;

4. Reducing or denying compensation to Delaney and awarding damages in favor of Plaintiffs for the breach of trust and breach of fiduciary duty committed by Delaney;

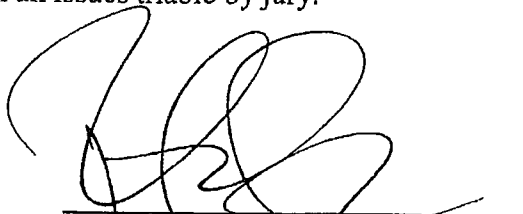
5. Taxing the costs of this proceeding, including reasonable attorneys' fees as allowed by applicable law, against Delaney individually;

6. Granting the injunctive relief as set forth herein above, restraining Delaney from access to the CRT and appointing a receiver for the CRT, first in the manner of a temporary restraining order and then as a temporary injunction; and

12. Granting Plaintiffs such other and further relief as shall be just and proper.

JURY DEMAND

Plaintiffs request trial by jury on all issues triable by jury.



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Charleston, SC 29401
(843) 579-7000

Attorney for Plaintiffs

Charleston, South Carolina

August 19th, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
IN THE MATTER OF:)
JOHN M. AND MARILYN W. BUNN)
CHARITABLE REMAINDER TRUST)
)

MARILYN W. BUNN, a person *non*
compos mentis by and through her
guardian, DENISE SUDDER, and
MARGARET BUNN LOCHMANDY,)

Plaintiffs,)

v.)

DOUGLAS S. DELANEY, as Trustee)
and in his individual capacity, ALAN)
WILSON, THE SOUTH CAROLINA)
ATTORNEY GENERAL, SACRED)
HEART-GRIFFIN HIGH SCHOOL,)
ST. JOSEPH'S HOME, QUINCY)
UNIVERSITY, NOTRE DAME, THE)
LAWRENCEVILLE SCHOOL, ALL)
SAINTS CATHOLIC CHURCH, AND)
HABITAT FOR HUMANITY c/o ALL)
SAINTS CATHOLIC CHURCH,)

Defendants.)
)

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-07-1732

DEFENDANT DOUGLAS S.
DELANEY'S ANSWER TO
PLAINTIFFS' AMENDED
COMPLAINT AND
COUNTERCLAIM

2014 SEP -2 AM 9:34

Defendant Douglas S. Delaney (hereinafter, "Delaney"), by way of Answer to the Plaintiffs' Amended Complaint, dated August 19, 2014, and by way of counterclaim against the said Plaintiffs, would show the following unto this Honorable Court:

1. Except as otherwise specifically admitted herein, Delaney denies each and every allegation contained within the Plaintiffs' Amended Complaint and demands strict proof thereof.

2. Paragraphs 1 and 2 of the Amended Complaint contain no allegations against Delaney and, therefore, no response to the same is required; to the extent such paragraphs are intended as allegations against Delaney he denies the same and demands strict proof thereof.
3. Paragraph 3 contains a legal conclusion which requires no response from Delaney.
4. Delaney admits the allegations contained in paragraph 4.
5. Paragraph 5 contains no allegations against Delaney and, therefore, no response to the same is required; to the extent a response is required, Delaney would assert that the CRT speaks for itself and craves reference to such document for relevant terms.
6. Paragraphs 6 and 7 contain legal conclusions which require no response from Delaney.
7. Delaney admits the allegations contained in paragraph 8.
8. Paragraphs 9, 10 and 11 contain no allegations against Delaney and, therefore, no response to the same is required; to the extent a response is required, Delaney would assert that the CRT speaks for itself and craves reference to such document for relevant terms.
9. With regard to the allegations contained in paragraph 12, Delaney admits that he is the successor independent trustee of the CRT, that he is an attorney licensed to practice in this State, and that he has previously counseled the Settlers on tax and estate planning matters on occasion.
10. Paragraphs 13 and 14 contain no allegations against Delaney and, therefore, no response to the same is required.
11. Delaney denies, upon information and belief, so much of the allegations contained in paragraph 15 as assert that the Surviving Settlor is incapacitated and demands strict proof thereof. In further answering, Delaney would assert that, even after a guardian was appointed for her, the Surviving Settlor, upon information and belief, personally took steps to address her financial affairs, including the execution of one or more documents.

12. Delaney denies the allegations contained in paragraph 16 and demands strict proof thereof. In further answering, Delaney would specifically assert that neither Margaret Bunn Lochmandy nor Kelly Kathleen Bunn nor Denise Suddes actually accepted the position of successor individual trustee of the CRT, nor did they take any steps to assume such position and, therefore, waived appointment to such position.
13. Paragraph 17 contains no allegations against Delaney and, therefore, no response to the same is required; to the extent a response is required, Delaney admits the same, upon information and belief.
14. Delaney denies the allegations contained in paragraph 18 and demands strict proof thereof. In further answering, Delaney would specifically assert that, as reflected in the Appointment of Successor Individual Trustee, dated June 17, 2014, as a result of the waiver by Margaret Bunn Lochmandy and Denise Suddes, Delaney is both the sole successor individual trustee and successor independent trustee.
15. With regard to the allegations contained in paragraph 19, Delaney admits that Wells Fargo Advisors is currently charged with management of the CRT assets at the direction of the successor independent trustee and, further, that Wells Fargo has, since June of 2014, wrongfully exerted control over the CRT account in contravention of the successor independent trustee's direct instructions.
16. Delaney denies the allegations contained in paragraph 20 and demands strict proof thereof. In further answering, as Denise Suddes testified in her affidavit dated June 26, 2014, Suddes initially refused to change the bank account, and ultimately signed the necessary change of account forms only after Marilyn Bunn already signed one.
17. Delaney denies the allegations contained in paragraphs 21 and 22 and demands strict proof thereof. In further answering, Delaney would specifically assert that neither Suddes nor Marilyn Bunn (nor Margaret Bunn Lochmandy) informed him – the successor independent trustee – that Marilyn Bunn had attempted to change the bank account; when Delaney learned of the change from Wells Fargo, he merely pointed out that a guardian had been appointed for Bunn and requested a copy of the letter of authorization, which request was denied.

18. Delaney admits so much of paragraph 23 as alleges that Wells Fargo has frozen certain aspects of the CRT account, and lacks information sufficient to either admit or deny the remainder. In further answering, Delaney would specifically assert that, upon information and belief, as a direct result of the duplicity surrounding the Plaintiffs' efforts to change the account, Wells Fargo has unilaterally and without justification decided to freeze some payments and not others, and to verbally communicate with certain persons and ignore Delaney, while nevertheless continuing to send Delaney monthly trust statements, reports, proxies and prospectuses.
19. Delaney lacks information sufficient to either admit or deny the allegations contained in paragraph 24 and therefore denies the same and demands strict proof thereof. In further answering, Delaney would assert that, ever since the change of account attempt, Wells Fargo refuses to either verbally communicate with Delaney or provide him with requested information about the CRT account, although Wells Fargo continues to send Delaney monthly trust statements, reports, proxies and prospectuses.
20. Delaney admits so much paragraph 25 as alleges that he executed the Appointment of Successor Individual Trustee, denies the remainder and demands strict proof thereof. In further answering, Delaney would specifically assert that such appointment was entirely proper and expressly contemplated under the terms of the CRT, and that such action was warranted by the refusal of Margaret Bunn Lochmandy and Denise Suddes to accept the position of successor individual trustee and waive appointment to same.
21. Delaney admits, upon information and belief, the allegations contained in paragraph 26.
22. Delaney admits so much of paragraph 27 as alleges that the Plaintiffs sent him a document styled "Notice of Removal of Trustee" which he did not sign, and denies the remainder and demands strict proof thereof. In further answering, Delaney would specifically assert that the Plaintiffs do not have either the power or authority under the terms of the CRT to remove him as successor independent trustee and,

furthermore, Margaret Bunn Lochmandy has no relationship to the CRT at all, as either guardian for Marilyn Bunn or successor individual trustee.

23. Paragraphs 28 and 29 contain no allegations against Delaney and, therefore, no response to the same is required.
24. To the extent the realleging of prior allegations contained in paragraph 30 requires a response, Delaney repeats and reiterates the responses contained in paragraphs 1 through 23 above as if fully repeated herein verbatim.
25. Paragraph 31 contains no allegations against Delaney and, therefore, no response to the same is required; to the extent a response is required, Delaney would assert that the CRT speaks for itself and craves reference to such document for relevant terms.
26. Delaney denies the allegations contained in paragraphs 32 and 33 and demands strict proof thereof.
27. To the extent the realleging of prior allegations contained in paragraph 34 requires a response, Delaney repeats and reiterates the responses contained in paragraphs 1 through 26 above as if fully repeated herein verbatim.
28. Paragraphs 35 and 36 contain legal conclusions which require no response from Delaney; to the extent a response is required, Delaney denies the same and demands strict proof thereof.
29. Paragraphs 37, 38, 39 and 40 contain no allegations against Delaney and, therefore, no response to the same is required; to the extent a response is required, Delaney denies the same and demands strict proof thereof.
30. To the extent the realleging of prior allegations contained in paragraph 41 requires a response, Delaney repeats and reiterates the responses contained in paragraphs 1 through 29 above as if fully repeated herein verbatim.
31. Delaney denies the allegations contained in paragraph 42 and demands strict proof thereof. In further answering, Delaney would specifically assert that the Plaintiffs, their bookkeeper, attorney and/or agents have regularly received comprehensive trust accounting statements, tax returns and any other document requested from Delaney

for the past 12 years, and that they are already in possession of the documents they purport to demand.

32. To the extent the realleging of prior allegations contained in paragraph 43 requires a response, Delaney repeats and reiterates the responses contained in paragraphs 1 through 31 above as if fully repeated herein verbatim.
33. Delaney denies the allegations contained in paragraph 44, 45, 46 and 47 and demands strict proof thereof. In further answering, Delaney would assert that Wells Fargo's actions were, upon information and belief, the direct result of the duplicity surrounding the Plaintiffs' efforts to change the account.
34. Delaney lacks information sufficient to either admit or deny the allegations contained in paragraphs 48 and 49, and therefore denies the same and demands strict proof thereof.
35. Delaney denies the allegations contained in paragraphs 50, 51, 52, 53, 54, 55, 56, 57, 58 and 59 and demands strict proof thereof.
36. To the extent the realleging of prior allegations contained in paragraph 60 requires a response, Delaney repeats and reiterates the responses contained in paragraphs 1 through 35 above as if fully repeated herein verbatim.
37. Paragraph 61 contains legal conclusions which require no response from Delaney; to the extent a response is required, Delaney denies the same and demands strict proof thereof.
38. Delaney denies the allegations contained in paragraph 62, 63, 64 and 65 demands strict proof thereof.
39. To the extent the realleging of prior allegations contained in paragraph 66 requires a response, Delaney repeats and reiterates the responses contained in paragraphs 1 through 38 above as if fully repeated herein verbatim.
40. Paragraph 67 contains legal conclusions which require no response from Delaney; to the extent a response is required, Delaney denies the same and demands strict proof thereof.

41. Delaney denies the allegations contained in paragraphs 68, 69, 70, 71, 72, 73 and 74 demands strict proof thereof.
42. To the extent the realleging of the Amended Complaint's prior allegations contained in paragraph 75 requires a response, Delaney repeats and reiterates the responses contained in paragraphs 1 through 41 above as if fully repeated herein verbatim.
43. Paragraph 76 contains no allegations against Delaney and, therefore, no response to the same is required; to the extent a response is required, Delaney denies the same and demands strict proof thereof.
44. Paragraphs 77 and 78 contain no allegations against Delaney and, therefore, no response to the same is required; to the extent a response is required, Delaney would assert that the CRT speaks for itself and craves reference to such document for relevant terms.
45. Paragraph 79 contains no allegations against Delaney and, therefore, no response to the same is required; to the extent a response is required, Delaney denies the same and demands strict proof thereof.
46. To the extent the realleging of prior allegations contained in paragraph 80 requires a response, Delaney repeats and reiterates the responses contained in paragraphs 1 through 45 above as if fully repeated herein verbatim.
47. Delaney denies the allegations contained in paragraph 81, 82, 83 and 84 and demands strict proof thereof.
48. To the extent the realleging of prior allegations contained in paragraph 85 requires a response, Delaney repeats and reiterates the responses contained in paragraphs 1 through 47 above as if fully repeated herein verbatim.
49. Delaney denies the allegations contained in paragraph 86, 87 and 88 and demands strict proof thereof.
50. Delaney denies that the Plaintiffs are entitled to the relief prayed for in the final paragraph of the Amended Complaint beginning with "NOW, THEREFORE" and demands strict proof of any entitlement to such relief.

AS A FIRST DEFENSE

(Dismissal for Failure to State a Claim)

- 51. Each and every response contained in paragraphs 1 through 50 above is reaffirmed as if fully repeated herein verbatim.
- 52. The Amended Complaint both fails to state facts sufficient to constitute a cause of action against Delaney and fails to state a claim for which relief can be granted, and should accordingly be dismissed.

AS A SECOND DEFENSE

(Release)

- 53. Each and every response contained in paragraphs 1 through 52 above is reaffirmed as if fully repeated herein verbatim.
- 54. Delaney is informed and believes that some or all of the Plaintiffs' claims are barred by the doctrine of release.

AS A THIRD DEFENSE

(Statute of Limitations)

- 55. Each and every response contained in paragraphs 1 through 54 above is reaffirmed as if fully repeated herein verbatim.
- 56. Delaney is informed and believes that some or all of the Plaintiffs' claims are barred by the applicable statute(s) of limitations.

AS A FOURTH ALTERNATIVE DEFENSE

(Laches)

- 57. Each and every response contained in paragraphs 1 through 56 above is reaffirmed as if fully repeated herein verbatim.
- 58. Delaney is informed and believes that some or all of the Plaintiffs' claims are barred by the doctrine of laches.

AS A FIFTH DEFENSE

(Waiver)

- 59. Each and every response contained in paragraphs 1 through 58 above is reaffirmed as if fully repeated herein verbatim.
- 60. Delaney is informed and believes that some or all of the Plaintiffs' claims are barred by the doctrine of waiver.

AS AN SIXTH DEFENSE

(Unclean Hands)

- 61. Each and every response contained in paragraphs 1 through 60 above is reaffirmed as if fully repeated herein verbatim.
- 62. Delaney is informed and believes that some or all of the Plaintiffs' claims are barred by the doctrine of unclean hands.

AS A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM

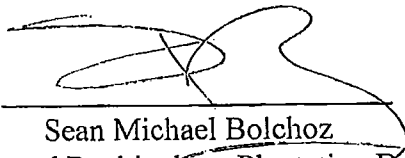
(Violation of the S.C. Frivolous Civil Proceedings Sanctions Act)

- 63. Each and every response contained in paragraphs 1 through 62 above is reaffirmed as if fully repeated herein verbatim.
- 64. The Plaintiffs have violated the S.C. Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. Section 15-36-10, *et seq.*, in several respects, including but not limited to the following particulars:
 - a. By filing frivolous pleadings and motions;
 - b. By making frivolous arguments that a reasonable party would not believe were reasonably supported by the facts;
 - c. By making frivolous arguments that a reasonable party would not believe were warranted under existing law;
 - d. By filing a lawsuit which, upon information and belief, the Plaintiffs knew was baseless and unsupportable by the law or facts, in order to intentionally

and willfully harass, intimidate and persecute Delaney, and force him to incur considerable attorney's fees and costs in the defense of this action.

65. Delaney is informed and believes that this Court should accordingly impose sanctions on the Plaintiffs, by ordering the Plaintiffs to pay Delaney's attorney's fees and costs incurred in his defense of this matter, as well as any additional, consequential expenses incurred by Delaney in his defense of this matter.

BOLCHOZ LAW FIRM, PA

By: 

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Bluffton, South Carolina

August 29, 2014

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IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NUMBER 2014-CP-07-1732

as such, require no response from the Plaintiffs. To the extent a response is required, the allegations contained in Paragraph 1 through 62 of the Answer are denied.

AS TO DEFENDANT'S SEVENTH DEFENSE AND COUNTERCLAIMS

2. In answering Paragraph 63 of Defendant's Answer to Plaintiffs' Amended Complaint contained within the section titled "Counterclaim" (the "Counterclaim"), Plaintiffs reallege each and every allegation and answer contained in the preceding paragraphs as if fully set forth therein.

3. The allegations contained in Paragraph 64 of Defendant's Counterclaim are denied.

4. The allegations contained in Paragraph 65 of Defendant's Counterclaim are denied.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof where such burden properly rests with Defendant, Plaintiffs hereby assert the following as and for affirmative defenses to the claims asserted in the Counterclaim:

FIRST AFFIRMATIVE DEFENSE **Rule 12(b)(6) Failure to State a Claim**

5. Defendant's Counterclaim fails to state a claim upon which relief can be granted against Plaintiffs pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

SECOND AFFIRMATIVE DEFENSE **Unclean Hands**

6. Defendant's Counterclaim is barred in whole or in part because Defendant appears before this Court with unclean hands. Defendant's conduct constituting unclean hands includes, but is not limited to his intentional refusal to provide information and documentation

relating to the administration of the Charitable Remainder Trust, his various serious breaches of trust, and authorizing and receiving unreasonable and excessive trustee's fees without proper notice to or consent.

FOURTH AFFIRMATIVE DEFENSE

Good Faith Basis for Petition (S.C. Code Ann. § 15-36-10)

7. Defendants counterclaim is barred in whole or in part because Plaintiffs certify the following:

- (a) counsel for Plaintiffs has read the Petition;
- (b) a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law or, if his claim or defense is not warranted under the existing law, a good faith argument exists for the extension, modification, or reversal of existing law;
- (c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and
- (d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

FIFTH AFFIRMATIVE DEFENSE

Reservation of Rights

8. Plaintiffs do not knowingly or intentionally waive any applicable affirmative defenses. Plaintiffs currently lack sufficient knowledge or information on which to form a

belief as to whether they may have additional, as yet unstated, affirmative defenses, and reserves the right to assert such additional defenses.

WHEREFORE, having fully responded to Defendant's Counterclaim and having set forth affirmative defenses thereto, Plaintiffs pray for the following relief:

1. Dismissal of counterclaim with prejudice;
2. Such other and further relief as the Court deems just and proper.



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Charleston, South Carolina

September 23rd, 2014

In The Matter Of:

Bunn, et al. v.

Delaney, et al.

March 16, 2015

Janice D. Hayward, RMR
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1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS 2 COUNTY OF BEAUFORT) 14JUDICIAL CIRCUIT 3 IN THE MATTER OF:) CASE NO. 2014-CP-07-1732 4 JOHN M. AND MARILYN W. BUNN CHARITABLE REMAINDER TRUST) 5 MARILYN W. BUNN, A PERSON NON COMPOS MENTIS, BY AND THROUGH 6 HER GUARDIAN, DENISE SUDDER, AND MARGARET BUNN LOCHMANDY, 7 8 Plaintiffs, 9 10 -versus- 11 12 DOUGLAS S. DELANEY, AS TRUSTEE AND IN HIS INDIVIDUAL CAPACITY, 13 AND ALAN WILSON, THE SOUTH CAROLINA ATTORNEY GENERAL, 14 SACRED HEART-GRIFFIN HIGH SCHOOL, ST. JOSEPH'S HOME, QUINCY UNIVERSITY, NOTRE DAME, THE LAWRENCEVILLE SCHOOL, ALL SAINTS CATHOLIC CHURCH, HABITAT FOR HUMANITY, C/O ALL SAINTS CATHOLIC CHURCH, 15 16 Defendants. 17 18 BEFORE: Hon. Marvin H. Dukes, III 19 DATE: Monday, March 16, 2015 20 TIME: 3:55 p.m. 21 LOCATION: Beaufort County Courthouse 102 Ribaut Road Beaufort, South Carolina 29901 22 REPORTED BY: Janice D. Hayward, RMR NCRA Registered Merit Reporter 101 Dorchester Court Charleston, South Carolina 29418 843.478.6756 JanHayward1@gmail.com 25	1 INDEX 2 3 Introduction by the Court 4 4 Argument by Mr. Sumner 4 5 Argument by Mr. Bolchoz 22 6 Argument by Mr. Sumner 43 7 Argument by Mr. Bolchoz 48 8 Argument by Mr. Sumner 51 9 Comments by the Court 52 10 Certificate of Court Reporter 56 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
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1 Any Court, party, or person who has purchased a transcript, may, without paying a further fee 2 to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to Court order 3 or rule or for internal use, but shall NOT otherwise provide or sell a copy or copies to 4 any other party or person. 5 6 APPEARANCES 7 For Plaintiffs Robert E. Sumner, IV and Phyllis Walker Ewing 8 Moore & Van Allen, PLLC 78 Wentworth Street Charleston, South Carolina 29401 9 10 For Mr. Delaney Sean Michael Bolchoz Bolchoz Law Firm, PA 11 6 Buckingham Plantation Drive Suite B Bluffton, South Carolina 29910 12 13 For Defendant Lydia E. Turnier 14 Asst. Deputy Attorney General Rembert Dennis Building 15 1000 Assembly Street, Room 519 Columbia, South Carolina 29201 16 17 18 19 20 21 22 23 24 25	1 THE COURT: All right then. Good 2 afternoon. We're here in Case 3 2014-CP-07-1732. This is in the matter of 4 Bunn, Bunn versus Delaney, et al. And 5 this is plaintiffs' motion for partial 6 summary judgment. 7 Happy to hear from you, sir. 8 MR. SUMNER: Thank you, Judge. We've 9 moved for summary judgment in this case 10 based on two separate arguments, 11 alternatively. 12 The first argument is that the 13 plain and unambiguous terms of the trust 14 document authorize the settlor of the 15 trust and the individual trustee to remove 16 the trustee who is represented by 17 Mr. Bolchoz, and that trustee is 18 Doug Delaney. So the first argument is 19 based purely on the language of the trust. 20 The second argument is based on 21 the South Carolina Trust Code, Section 22 412. And under Section 412 it's the 23 plaintiffs' position or opinion that we -- 24 that the settlor of the trust can modify 25 the trust, as we are seeking to do, to

1 address issues that arise or that may
2 arise in this particular case to prevent
3 waste.

4 So in essence, to boil this
5 down, we are seeking to, under the first
6 argument for summary judgment, remove
7 Doug Delaney as trustee based on the terms
8 of the trust; and under the second
9 argument, we're seeking to modify the
10 terms of the trust so that we can remove
11 Mr. Delaney and replace him with a single
12 institutional trustee.

13 THE COURT: All right.

14 MR. SUMNER: Now, by way of
15 background -- and you've heard a motion or
16 two on this case before so some of this
17 may ring familiar.

18 This is a trust that was entered
19 into back in 1993 by John and Marilyn Bunn
20 as settlors of the trust. And this
21 particular trust is a charitable remainder
22 trust.

23 And the purpose of the trust was
24 to make monthly distributions to Mr. and
25 Mrs. Bunn over the course of their

1 and duties of the trustees of the trust.

2 Now, this trust is unique
3 because there are two different categories
4 of trustees. And at the time of
5 inception, there was the first category
6 which is the individual trustee. And at
7 the time of inception the individual
8 trustee or trustees were the settlors.

9 And so John and Marilyn Bunn
10 were the individual trustees, and then
11 when John died, Marilyn became the sole
12 individual trustee.

13 Now, also at the time of
14 inception there was a -- the second
15 category of trustee called the corporate
16 trustee. And at the time that corporate
17 trustee was Security Investment Management
18 & Trust Company. Basically it was a
19 professional trust company.

20 And the trust goes through and
21 talks about the division of labor. But in
22 essence, the corporate trustee was
23 required to maintain the books and records
24 and the individual trustee was required to
25 do everything else.

1 lifetime, and then at the end of their
2 lives, whatever money is left over goes to
3 charity.

4 Under this particular trust,
5 this monthly payment, and we call it a
6 unitrust payment, is equal to
7 10.87 percent of the value of the trust as
8 taken on January 1st of that year.

9 And so what you do is you take
10 your 10.87 percent and divide it by 12 and
11 then you have 12 equal monthly payments
12 that are made to the settlors.

13 John Bunn is no longer living
14 and so Marilyn Bunn is the sole surviving
15 settlor of the trust so she is the
16 recipient of these monthly unitrust
17 payments.

18 And the trust, as I stated
19 earlier, is a very straightforward trust.
20 Article -- the first article of the trust
21 sets forth some very general provisions.
22 The second article of the trust sets forth
23 what can be accomplished through trust
24 administration. And the third article of
25 the trust talks about the actual powers

1 As a, sort of a third leg of the
2 administration of this trust, the
3 charitable remainder trust also recognizes
4 and authorizes the appointment of an
5 investment advisor. So you really had the
6 individual trustee, the corporate trustee,
7 and the investment advisor.

8 When -- and you may recall that
9 in 2013 Miss Bunn became incapacitated.
10 And so when she became incapacitated, the
11 Court in Gwinnett County, Georgia
12 appointed a guardian named Denise Suddes
13 to serve as her guardian.

14 At that time it is our position
15 that the trust automatically transitioned
16 the individual trusteeship from Miss Bunn,
17 on account of her incapacity, to her
18 daughters. And we'll look at the language
19 of the trust. But the language of the
20 trust is mandatory. There is no
21 requirement that any action take place.
22 It simply states that they shall become
23 the successor trustees upon her death or
24 incapacity.

25 And unfortunately, one of

1 Mrs. Bunn's daughters died and so Margaret
2 Lochmandy, Margaret Bunn Lochmandy is the
3 surviving daughter of Mrs. Bunn. And it's
4 our contention that she is the sole
5 successor individual trustee of the trust.

6 Now, switching gears back to the
7 second category of trustee, in 2001 this
8 trust company, Security Investment
9 Management & Trust Company, was removed
10 and Doug Delaney was appointed as a
11 successor to the corporate trustee. And
12 the nomenclature is important, it's
13 confusing, he is the independent successor
14 to the corporate trustee.

15 So at the time when this lawsuit
16 was filed, we no longer have the original
17 individual trustee, we no longer have the
18 original corporate trustee. And it's our
19 position that Margaret Bunn Lochmandy is
20 the successor individual trustee and
21 Mr. Delaney is the successor to the
22 corporate trustee.

23 And so that brings us to where
24 we are today. And through the filing of
25 this lawsuit, this family is seeking to

1 rid themselves of Mr. Delaney as they have
2 sought to do in other lawsuits. There are
3 various reasons why they want to get rid
4 of him. But in this particular case at
5 the top of the list is the fact that
6 Mr. Delaney is charging over four percent
7 of -- a trustee fee of over four percent
8 of the value of the trust. In 2014 it was
9 4.08 percent which, from where I come
10 from, that's an incredibly high fee.

11 But that's not what this motion
12 is about. The first argument is that
13 Article 3, Section 3 of the trust
14 authorizes either the guardian for the
15 settlor or the individual trustee to
16 remove the corporate trustee or its
17 successor without cause.

18 So this is a without-cause
19 removal based on the language of the
20 trust. And I'll give you a minute to look
21 at the actual trust language.

22 THE COURT: Is there any closely held
23 stock or real property being held as a
24 part of the trust estate?

25 MR. SUMNER: There is not. That is

1 not at issue. And so we're really dealing
2 with that second sentence.

3 And I'll point you out, while
4 you're looking at the language of the
5 trust, down to the second to last
6 paragraph of Section 3. Because that
7 paragraph specifically -- and it starts
8 with, the guardian or conservator.

9 MS. EWING: Section 4.

10 MR. SUMNER: Excuse me, under
11 Section 4, I apologize.

12 THE COURT: I see it there, yeah.

13 MR. SUMNER: Yeah. It states that
14 the guardian or the conservator has the
15 ability, the authority to act for the
16 settlors under this article.

17 So as a starting point, the
18 trust recognizes that any guardian or
19 conservator appointed for the settlors can
20 take action as the settlors would under
21 the trust.

22 And in this particular case you
23 might remember there was some discussion
24 at the last hearing about the appointment
25 of Miss Suddes as the guardian.

1 But I think under the full faith
2 and credit clause, it is beyond reproach.
3 And no one has taken issue with the
4 Georgia courts regarding this appointment.
5 And I don't believe based on the
6 memorandum that I received from Sean or
7 the affidavit from Mr. Delaney, that
8 they're taking issue with the appointment
9 of Miss Suddes.

10 So I think from a starting
11 point, at least the threshold question
12 about who can act and who can remove, I
13 believe that the language that I pointed
14 out under Section 4 of the trust and the
15 appointment of Miss Suddes as settlor at
16 least permits Miss Suddes to act as a
17 settlor in this case.

18 Now, the second part to who can
19 act is a question of whether Margaret Bunn
20 Lochmandy is actually the successor
21 individual trustee or not.

22 As I alluded to earlier, it's
23 our position that she became the successor
24 individual trustee automatically and that
25 there was no requirement that she take any

1 action.

2 Mr. Delaney takes the position
3 that she needed to do something in order
4 to become a successor trustee and so they
5 argue that there's a vacancy.

6 But if you'll look to the --
7 it's Article 3, Section 2, so just turn a
8 page back, it's on page eight of the
9 trust, in that first paragraph, and I'll
10 direct you to the second sentence there,
11 it says, in case of resignation, refusal
12 or inability to act of the survivor of the
13 individual trustees -- being one of the
14 settlors -- Margaret Mary Bunn and Kelly
15 Kathleen Bunn shall act as successor
16 individual co-trustees.

17 And so it's our position that
18 this mandatory language didn't require
19 them to do anything. They didn't have to
20 jump through any hoops. They didn't have
21 to send any letters. They just became the
22 successor individual trustees.

23 And then as you move on, there's
24 a certain rhythm to this paragraph and it
25 states that the survivor of Margaret Mary

1 Miss Lochmandy did not take sufficient
2 steps to accept the trusteeship, that
3 there was a vacancy.

4 But if you look under
5 Subsection A, it talks about when a
6 vacancy occurs. And under Subsection A,
7 the trustee must either reject the
8 trusteeship, not able to be identified,
9 resign, be disqualified, or dies, or a
10 guardian or a conservator be appointed.

11 So in this situation I don't
12 believe any of those applies to the
13 successor trustee, being Margaret
14 Lochmandy. In other words, there was no
15 vacancy of trusteeship in this case. She
16 simply became the individual trustee and
17 assumed all of the rights and the duties
18 of the individual trustee thereunder.

19 And then furthermore, you know,
20 just to belie the fact that both the
21 guardian for Miss Bunn and Margaret
22 Lochmandy as a successor individual
23 trustee have the right to remove the
24 corporate trustee, there is a section
25 under Article 3, Section 4, that

1 Bunn or Kelly Kathleen Bunn shall then act
2 as the successor individual trustee. So
3 when Kelly died, Margaret automatically
4 became the single successor individual
5 trustee.

6 And so, you know, as you look at
7 the language of the trust, and we've
8 conducted some research into this issue
9 and found a Texas case that deals with --
10 the Landrum case, that deals with the use
11 of the word "shall" in a trust document.

12 And, you know, it seems every
13 resource and every source we can find
14 within this trust context views the word
15 "shall" as mandatory and does not require
16 any additional steps to be taken. So
17 under the clear language of the trust, we
18 believe that this automatic transition
19 took place.

20 I'll also point you to the fact,
21 Judge, that under Section 704 of the trust
22 code -- and 704 deals with vacancies and
23 trusteeships. And I really think that's
24 what Mr. Delaney is trying to establish
25 here, that because he believes that

1 specifically states that every successor
2 trustee shall have all the powers given to
3 the originally named trustees.

4 And I think this is a very
5 important provision and one we'll circle
6 back to in a minute.

7 But there is no restriction or
8 qualification on the rights and duties and
9 obligations that fall upon a successor
10 trustee.

11 So that really brings us to --
12 back to the removal provision. And the
13 removal provision, I'll point out to you,
14 states that the settlors during their
15 lifetime, the survivor of them after one
16 of their deaths, or the individual
17 trustees may remove the corporate trustee
18 at any time.

19 Now, it's the plaintiffs'
20 position, and I believe this firmly based
21 on a reading of this trust all together,
22 that when this trust speaks of the
23 corporate trustee, it's speaking of the
24 corporate trustee and any successors to
25 the corporate trustee.

1 It's Mr. Delaney's position that
2 because this section does not say, may
3 remove the corporate trustee and any
4 successors, that we lack the ability to
5 remove him except for cause and under the
6 removal provisions of the trust code.

7 And, you know, I think when we
8 look at the language of this document, you
9 have to apply the rules for trust
10 construction and trust interpretation.
11 And at the essence of that is the Court is
12 required to determine what was the intent
13 of the settlor. That is really the, at
14 the end of the day, that is the \$10,000
15 question.

16 So, you know, when you look at
17 the language of this trust, which I
18 believe both sides have agreed is clear
19 and unambiguous -- I don't think anyone is
20 arguing ambiguity -- the question is does
21 this renewal provision that applies to a
22 corporate trustee, does it also apply to
23 the successor to the corporate trustee.

24 And we've cited a number of
25 cases in our brief that stand for this

1 proposition, that the construction depends
2 on the settlor's intent at the time.

3 And so what you really have to
4 do is when you have a clear and
5 unambiguous trust like this, you have to
6 go and look at other provisions of the
7 trust and read them together to make sense
8 of this provision.

9 And we'd argue that, you know,
10 taking the position that a successor to
11 the corporate trustee becomes a permanent
12 trustee who cannot be removed except for
13 cause, I think that flies in the face of
14 all the other provisions of this trust.
15 And I don't think there's anywhere else in
16 this trust that would support a reading
17 that restrictive.

18 When you look at it, you know,
19 this trust, you know, initially or at its
20 inception, it did name this corporate
21 trustee institution, but it also included
22 the ability to remove them. And so in
23 other words, when you look at this trust,
24 there was no significance placed on the
25 identity of the corporate trustee. It was

1 recognized on day one that the corporate
2 trustee may and very well could be
3 removed. And the trust accounted for
4 that.

5 Similarly, the CRT, the trust
6 that you're looking at, it does not
7 specifically speak to the identity of the
8 independent successor to the corporate
9 trustee.

10 You know, when you look at this,
11 the only restriction that's placed on the
12 independent successor to the corporate
13 trustee is that it can't be a company or
14 person controlled by the settlors.

15 You know, it doesn't say
16 Doug Delaney's name. This trust doesn't
17 mention Doug Delaney. There's nothing
18 special about Doug Delaney being named as
19 a successor beyond the fact that he was
20 named as a successor.

21 Getting back to that language
22 that I said was important that we would
23 circle back to, I think the operative
24 sentence as it relates to this motion on
25 this particular argument is under

1 Section 4, it's the second paragraph and
2 the first sentence, every successor
3 trustee shall have all the powers given to
4 the originally named trustees.

5 When you read that provision,
6 Judge, in concert with the removal
7 provision under Section 3, it only stands
8 to reason that the successors to the
9 corporate trustee, they stand in the shoes
10 of the corporate trustee. They have the
11 same powers. They have the same duties to
12 the trust. And they can be removed just
13 like the corporate trustee could be
14 removed.

15 And I don't believe it's a
16 question of fact. I believe it's one of
17 law. It's one simply of reading this
18 document all together as a whole.

19 To try to come to some
20 conclusion that would be contrary to that
21 reading would seem artificial and surely
22 would not comport with the intent of the
23 settlors.

24 Now, Mr. Delaney has produced an
25 affidavit in opposition to this motion and

1 he speaks in a couple of paragraphs about
2 the settlor's intent in recognition of the
3 fact that that is the key, you know, what
4 did the settlor intend.

5 And rather than point to the
6 language of the document, he states in his
7 affidavit, I'm informed and I believe that
8 it was Marilyn Bunn's intent that I serve
9 as the independent trustee and that I not
10 be subject to removal except for cause. I
11 am informed and I believe that it was not
12 Marilyn Bunn's intent that I be subject to
13 the removal provisions.

14 He doesn't state what he bases
15 this on. And I think what he's trying to
16 do here is trying to inject parol evidence
17 into a scenario where we don't need the
18 Court to look at parol evidence. All we
19 need to do is look at the four corners of
20 the document.

21 And while there may be fact
22 issues at hand in this case about whether
23 we're entitled to an award of damages for
24 misconduct, I don't think there are any
25 questions of material fact as they relate

1 appropriate. I think there are questions
2 of material fact here.

3 First of all, we do have a
4 dispute about the vacancy. We have a
5 different reading, obviously, of Section
6 62-7-704.

7 It's our position that the
8 vacancy was created upon the appointment
9 of Denise Suddes as guardian for Marilyn
10 Bunn. And I think that's borne out by the
11 facts here.

12 And we also have a scenario
13 where, as indicated by the affidavit from
14 Mr. Delaney, the putative successor
15 individual trustees did not act. They
16 didn't do anything. They didn't do
17 anything for, actually for several months
18 which resulted in a huge snafu last summer
19 when the settlor, who had previously been
20 declared incapacitated, signed some
21 documents on her own to change the payee
22 bank for her monthly unitrust payment.

23 And when that transaction,
24 notice of that transaction was given to my
25 client as successor independent trustee,

1 to the settlor's intent. And that is that
2 the settlor and the individual trustees be
3 permitted to remove the corporate trustee
4 and any successor to the corporate trustee
5 without cause.

6 THE COURT: All right. Thanks.

7 MR. SUMNER: Now, do you want me to
8 go into argument two or would you rather
9 hear from Sean on this issue and then we
10 can go into argument number two?

11 THE COURT: Let me hear from Sean on
12 this one so I don't get totally confused.

13 MR. SUMNER: Okay. That makes sense.

14 THE COURT: So, happy to hear from
15 you, sir.

16 MR. BOLCHOZ: Thanks, Judge.

17 You should have a copy, Robert
18 mentioned the affidavit from my client,
19 and you should also have a copy of the --
20 of Delaney's return to the summary
21 judgment motion and memorandum in support.

22 You know, I think there are --
23 this is obviously a motion for summary
24 judgment so if there are any questions of
25 material fact, summary judgment isn't

1 he reached out to the investment advisor,
2 Wells Fargo, to find out who actually made
3 that change and was informed it was
4 Marilyn Bunn, because Wells Fargo did not
5 know that Marilyn Bunn had been declared
6 incapacitated. And, of course, that set
7 in motion a chain of events that we're
8 still dealing with in this case.

9 But as a result of --

10 THE COURT: I mean, isn't this
11 language automatic, though? Page eight,
12 Section 2. Again, this would be -- I'm
13 sorry, the section is going to be wrong.

14 MR. BOLCHOZ: Right, the trust.

15 THE COURT: Yeah, Article 3,
16 Section 2. I'm looking at successors. In
17 the case of resignation, refusal or,
18 what's important here, inability to act,
19 and then we go on down the line, I mean,
20 isn't that what happened? Wasn't there an
21 inability to act?

22 And so the only remaining
23 survivor was Margaret. It doesn't seem to
24 indicate that she has to do anything. It
25 just happens, doesn't it?

1 I mean, is there something in
2 this -- obviously there must be -- that
3 you're reading that requires her to take
4 some affirmative step?

5 MR. BOLCHOZ: Well, I think there you
6 go into Section 62-7-701 which sets out in
7 Subsection A that a person accepts the
8 trustee position by substantially
9 complying with the method of acceptance
10 provided in the terms of the trust.

11 As Robert points out, there is
12 nothing in the trust that specifically
13 requires -- or that requires them to do
14 something specific or formal. But then
15 62-7-701 goes on to establish that if
16 there is no formal method, the successor
17 trustee can accept by accepting delivery
18 of trust property, by exercising powers or
19 performing duties as trustee, or otherwise
20 indicating acceptance of the trusteeship.

21 And that's important because
22 this same section goes on to point out
23 that a putative successor trustee can
24 reject, they can reject the position.

25 And I cited in my return the

1 and then go on with the remainder of
2 62-7-701, it points out that a trustee can
3 reject it which, in fact, is in line with
4 the Regions Bank case. It says that it
5 can't be imposed on somebody.

6 THE COURT: Now, are you asserting
7 that they did reject it?

8 MR. BOLCHOZ: Yes. That is our
9 position that they did reject it. They
10 rejected it -- and I think 701 -- wait a
11 second.

12 A person, I'm reading from 701,
13 Subsection (b). A person designated as
14 trustee who has not yet accepted the
15 trusteeship may reject the trusteeship. A
16 designated trustee who does not accept the
17 trusteeship within a reasonable time after
18 knowing of the designation is deemed to
19 have rejected the trusteeship.

20 Well, as Mr. Delaney lays out in
21 his affidavit, I mean, it had been about
22 270 days with no acceptance from either
23 the plaintiff, Margaret Lochmandy, or
24 Kelly Bunn, which is why he executed the
25 appointment of himself as successor

1 Regions Bank v. Schmauch case, if I'm
2 saying that right, that a fiduciary
3 obligation cannot be unilaterally imposed
4 on somebody.

5 That's what this is. I mean, I
6 don't think anybody would dispute that.
7 It's a trusteeship. It's a fiduciary
8 obligation. I mean, I don't think that
9 the trust can unilaterally impose on
10 somebody who doesn't accept it or who
11 isn't going to accept it, I don't think it
12 can automatically make them a trustee.

13 And I think that's the reason
14 for the language in 62-7-701, specifically
15 laying out that, okay, so there's no
16 formal way that you accept the trusteeship
17 laid out in the CRT, and we all agree that
18 there is not, but here are ways that, if
19 it's not laid out, that you manifest your
20 intent to accept the position.

21 And, I mean, it's clear that
22 they didn't, that neither Margaret did nor
23 Kelly before she passed away. I mean,
24 they just didn't do anything.

25 And so if you read that language

1 individual trustee that's attached to his
2 affidavit.

3 So I think, reading, you know,
4 South Carolina state law, that you can't
5 force a fiduciary obligation onto somebody
6 unilaterally without their acceptance of
7 it, combined with the clear language of
8 62-7-701, I think we have a situation here
9 where, after the vacancy was created, that
10 position was not filled by anybody.

11 And that does not -- this
12 section, it's important to note that this
13 section does not run counter to the terms
14 of the CRT. It augments them. I mean, it
15 supplements them. Okay. There's nothing
16 in the CRT that specifically set forth a
17 formal action that you have to take to
18 accept the position. Here are ways, if
19 it's not formally laid out, here are ways
20 that you accept it, and again, going on to
21 assert that if it's not accepted, it can
22 be rejected. In fact, it can be rejected
23 if you just don't do anything for a
24 reasonable amount of time.

25 And we would submit that, you

1 know, 270 days is more than reasonable or
2 sufficient time to assume that they
3 haven't accepted the position, especially
4 considering the trouble it caused with the
5 whole Wells Fargo mess.

6 So we submit that there was a
7 vacancy and that Mr. Delaney filled it
8 because certainly the daughters rejected
9 it. I mean, obviously, you know, to point
10 out again, this is a summary judgment
11 motion. To the extent that that's
12 disputed, that's a very material issue of
13 fact.

14 THE COURT: Does his affidavit
15 indicate they rejected it or that was --

16 MR. BOLCHOZ: It does.

17 THE COURT: Again, forgive me for not
18 knowing trust law like all of you do, but,
19 I mean, it looks like if you're correct,
20 if Margaret rejected it, doesn't it just
21 go on downstream and her children or the
22 other beneficiaries then get to choose?
23 Is that what this says?

24 MR. BOLCHOZ: After awhile -- let's
25 see, I'm looking at Section 2, successors,

1 the last sentence of that first paragraph.
2 In the event that no successor individual
3 trustee is appointed within 30 days of the
4 death, resignation, refusal or inability
5 to act of the then acting individual
6 trustee, the corporate trustee shall
7 appoint a successor individual trustee.

8 Well, the corporate trustee is
9 gone and Doug Delaney is the successor
10 independent trustee. And in that
11 capacity, having that power, he made the
12 appointment pursuant to the terms of the
13 trust.

14 THE COURT: But he was the successor
15 to the corporate trustee.

16 MR. BOLCHOZ: That's right. He was.
17 Has the same powers as the corporate
18 trustee.

19 THE COURT: But he appointed himself?

20 MR. BOLCHOZ: He did. And a copy of
21 his appointment is attached to his
22 affidavit, Judge. It kind of lays out
23 the --

24 THE COURT: I figured there would be
25 paperwork somewhere.

1 MR. SUMNER: Yeah. And attached to
2 our complaint we actually sought -- we
3 actually filed a document intending to
4 remove him as the corporate trustee and
5 naming ourselves as the replacement
6 individual trustee around the same time.
7 So, I mean, we did take action. It was
8 just, as Sean pointed out, it was later.

9 MR. BOLCHOZ: And we think that's a
10 critical fact here, your Honor, certainly
11 for purposes of the motion here today.

12 THE COURT: I mean, is it undisputed
13 that Margaret took no action for --
14 neither accepted it nor rejected it or did
15 nothing for the 270 days, or?

16 MR. SUMNER: We filed a lawsuit and
17 sought to remove Delaney as the corporate
18 trustee. And, you know, this argument
19 that she didn't notify Wells Fargo, you
20 know, we have continued to receive
21 statements from Wells Fargo throughout the
22 pendency of this, obviously have been
23 reviewing them carefully.

24 THE COURT: When was the lawsuit
25 filed -- and I guess this is all probably

1 in the record somewhere -- but when was
2 the lawsuit filed relative to Mrs. Bunn
3 becoming incapacitated?

4 MR. BOLCHOZ: It was -- I'm sorry.
5 Go ahead.

6 MR. SUMNER: We filed it July of
7 2014.

8 MR. BOLCHOZ: That's right.

9 MR. SUMNER: We could get hung up,
10 and perhaps Sean has established a
11 question of fact over the appointment of
12 Margaret as the individual, but I don't
13 think anybody is stating that Denise
14 Suddes was not a duly appointed guardian.
15 She was appointed in September of 2013.

16 And so I don't think there's any
17 question either through the memorandum or
18 the affidavit from Mr. Delaney that
19 Miss Suddes has the same powers as the
20 settlor under this document.

21 So if you look at the removal
22 provision, just setting aside Margaret
23 Lochmandy altogether, the settlor has the
24 right to remove the corporate trustee.

25 THE COURT: All right. How about

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1 that, Sean?

2 MR. BOLCHOZ: What part are you

3 looking at here, Robert? What section?

4 MR. SUMNER: It's the same removal

5 section. My point is --

6 MR. BOLCHOZ: Are we still in

7 Section 2?

8 MR. SUMNER: It's Section 3. My

9 point is just disregard the individual

10 trustee from Section 3. The settlor has

11 the right to remove the corporate trustee

12 without cause.

13 You know, I liked how, when Sean

14 was reading Section 2, Section 2 only

15 speaks about the corporate trustee. But

16 Sean and Doug Delaney used Section 2 as a

17 reference to corporate trustee as the

18 basis for Delaney naming himself as the

19 successor individual.

20 So, you know, I'd argue that the

21 same, that the same logic applies to

22 Section 3. So the settlor or her guardian

23 can remove the corporate trustee or a

24 successor without cause. And I think that

25 is as clear as it can be.

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1 THE COURT: Any thoughts on that one,

2 Sean?

3 MR. BOLCHOZ: I mean, I think I'm --

4 I might be unclear on what Robert is

5 arguing here on Section 3. But it seems

6 to me that Section 3 once again says that

7 the settlor can remove the corporate

8 trustee.

9 I mean, we don't necessarily

10 have a dispute with that. I mean, that's

11 laid out in my return as well, Judge. I

12 mean, the argument that they are making is

13 that the successor independent trustee is

14 the exact same as the corporate trustee.

15 And, I mean, to respond to

16 Robert's point about the powers, we don't

17 dispute the fact that the successor

18 independent trustee, Mr. Delaney, has the

19 same powers as those of the corporate

20 trustee. It's just we dispute that the

21 removal provisions for the corporate

22 trustee also apply to him.

23 And the fact of the matter is

24 the CRT does not say they do. It just

25 doesn't say that. I mean, I understand

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1 that, you know, that the plaintiffs want

2 to read it that way or they want to

3 interpret it that way. But it doesn't say

4 that. And it still doesn't say that. I

5 mean, it says that the settlor can remove

6 the corporate trustee. I mean, we don't

7 dispute that. I mean, that's not a part

8 of our dispute here. But he's not the

9 corporate trustee, he's the successor

10 independent trustee.

11 MR. SUMNER: Your Honor, that is the

12 crux of the fight here. We argue that

13 when you read the trust together as a

14 whole document, it only makes sense that

15 if he has the same powers and the same

16 duties, and when you read this, every

17 successor trustee shall have all the

18 powers given to the originally named

19 trustee, it only stands to reason that the

20 settlor intended to have the ability to

21 remove the corporate trustee and any

22 successor.

23 Otherwise, this trust would read

24 that if you replace the corporate trustee

25 with an individual trustee, you're stuck

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1 with him forever, even if he steals from

2 you or takes advantage of you, because you

3 can't get rid of him under this trust.

4 MR. BOLCHOZ: Well, but that's not

5 the case, though. He can be removed, like

6 any other trustee, he can be removed for

7 cause. They've sued to remove Mr. Delaney

8 for cause, for removal for cause, for

9 breach of trust, breach of fiduciary duty,

10 I mean, a truckload of allegations I know.

11 I mean, they are already trying to do

12 that.

13 I mean, let me make another

14 point too about intent. I think intent

15 here is a question of fact. You know,

16 there's a lot of talk about, I mean, you

17 know, of course, Mr. Delaney's affidavit,

18 he sets out his belief as to what Marilyn

19 Bunn's intent was.

20 But, I mean, there's nothing

21 from the -- filed with the plaintiff's

22 motion for summary judgment, no affidavits

23 or anything that lays out this issue of

24 intent. There's a lot of talk about what

25 her intent must be from the reading the

Page 37	Page 39
1 CRT. 2 THE COURT: Well, I mean, I think as 3 you pointed out, and I guess you've agreed 4 with, I mean, if intent is the issue here, 5 then I couldn't possibly grant summary 6 judgment. But I mean, but the question is 7 can I take the undisputed facts and look 8 at the contract and sort of decide what it 9 means. 10 And Sean, let me ask you, if 11 corporate trustee isn't what he became, I 12 mean, is it Mr. Delaney's belief, or 13 interpretation, rather, of this trust that 14 if, in fact, they switched from the 15 corporate trustee to him and he was a 16 different entity -- and I understand he 17 was a different entity -- but he had 18 different rules that governed him, that 19 they couldn't get rid of him except for 20 cause? 21 MR. BOLCHOZ: The removal provisions 22 applicable to the corporate trustee is set 23 forth in the CRT. It is his position that 24 they do not apply to him. And there's 25 nothing in the CRT that says that they do.	1 So if at some point Security Investment 2 Management & Trust was merged into 3 J. P. Morgan or something, I think they're 4 actually associated here, some other 5 financial entity, then the same would 6 apply, right? We would be dealing with a 7 corporate trustee that was no longer 8 Security Investment Management & Trust and 9 they couldn't be removed. 10 Is it the terminology that 11 you're saying, because he's not defined as 12 the corporate trustee, he's the 13 corporate -- or the independent, 14 whatever -- how did you describe him? I'm 15 sorry. 16 MR. BOLCHOZ: He's the successor 17 independent trustee. And that's 18 referenced -- that's referenced at various 19 times throughout this. I'm looking at 20 page nine. I mean, actually it's all over 21 the place in here. 22 THE COURT: I mean, the term 23 successor seems to make it sound like he's 24 just another corporate trustee. I don't 25 know whether independent makes any
Page 38	Page 40
1 But he can be removed, like I said, for 2 cause or for, I mean -- 3 THE COURT: But, I mean, why would 4 that make sense? Why would you have it 5 where you could remove the corporate 6 trustee, but if you switched out to 7 somebody else, you couldn't remove them? 8 That doesn't seem to make any sense to me. 9 But maybe you can explain it to me. 10 MR. BOLCHOZ: I mean, you know, I 11 think that as Doug indicated in his 12 affidavit, Marilyn Bunn handpicked him, 13 personally chose him to be the independent 14 trustee. Maybe it's got something to do 15 with the fact that there are charities 16 that are remainder beneficiaries. I mean, 17 maybe he wanted somebody outside of the 18 family. You know, I don't know. 19 I mean, and at this stage, at 20 the summary judgment stage, I don't know 21 that, you know, that, you know, with all, 22 you know -- 23 THE COURT: But, I mean, the way this 24 is written, the corporate trustee is 25 Security Investment Management & Trust.	1 difference. But, I mean, he definitely 2 stands in the shoes of the corporate 3 trustee, right? 4 MR. BOLCHOZ: He has the same powers 5 as the corporate trustee. I mean, you 6 know, that's the same terminology that 7 Robert has used, I mean, standing in the 8 shoes. I mean, I think he has the same 9 powers as the corporate trustee, but -- 10 THE COURT: I mean, he has no more, 11 no less powers than the corporate trustee 12 had. 13 MR. BOLCHOZ: I think that's right. 14 I mean, it's not laid out any differently 15 that way in the CRT, which is what we're 16 going by. 17 THE COURT: So I guess I'm trying to 18 figure out the logic of having the removal 19 be any different since the powers are 20 exactly the same. Logically it would seem 21 like it wouldn't make a whole lot of 22 sense, but. 23 MR. BOLCHOZ: I think it could have 24 been drafted that way, Judge. And by the 25 way, I'd point out, my client did not

Page 41	Page 43
1 draft this document. 2 THE COURT: Oh, yeah. I figured 3 that. 4 MR. BOLCHOZ: I mean, that certainly 5 could have been, it could have been 6 drafted that way, but it wasn't. And as I 7 said, there might have been -- you know, 8 the reason for him being personally chosen 9 as the independent trustee, I mean, you 10 know, you know, we haven't had any -- I 11 don't know that we've exchanged any 12 discovery in this case, haven't had any 13 depositions. You know, are there reasons 14 beyond, you know, her just personally 15 choosing him? You know, I'm not sure. 16 THE COURT: Well, the question is do 17 I even have to go outside of the bounds of 18 the trust. I don't know. 19 MR. SUMNER: And Judge, you know, 20 when we're talking about intent, we're 21 talking about intent in 1993. John Bunn's 22 dead. Marilyn Bunn's incapacitated. We 23 don't know who drafted this trust; he's no 24 longer with us. So how is discovery going 25 to shed any more light. I think we've got	1 incapacitated. Your own guardian signed 2 an affidavit saying that she executed 3 these documents. I mean, that's -- 4 THE COURT: Let's -- we'll probably 5 worry about that maybe another day. I 6 don't know. 7 All right. Well, what was the 8 second argument? I'm sorry. Go ahead. 9 MR. SUMNER: Well, the second 10 argument is an argument regarding 11 modification of this trust. And make no 12 bones about it, the modification that 13 we're seeking to impose here will remove 14 certain sections of this trust, get rid of 15 the individual trustee, get rid of the 16 independent successor to the corporate 17 trustee, and appoint a single successor 18 trustee, being Raymond James. 19 THE COURT: Now, in your preamble you 20 indicated that it was going to be based on 21 reasonableness or unreasonableness or 22 something. Did I understand that right? 23 MR. SUMNER: Well, based on -- and 24 this is a statutory cause of action. This 25 is under Section 412. And under Section
Page 42	Page 44
1 to look at the document and construe the 2 language together, the four corners of the 3 trust document to determine the intent of 4 the settlor. 5 MR. BOLCHOZ: Why can't we depose 6 Marilyn Bunn? I mean, she's still with 7 us. 8 MR. SUMNER: She's incapacitated. 9 MR. BOLCHOZ: Well, she wasn't 10 incapacitated when she signed those 11 documents last year. 12 MR. SUMNER: Well, I mean, you can go 13 petition the Georgia Court if you want to 14 take her deposition. But we're entitled 15 to full faith and credit. 16 MR. BOLCHOZ: I don't think the 17 Georgia Court, I mean, I don't think their 18 order can bind the rights to discovery for 19 somebody in this state and prevent us, 20 essentially prevent us from trying to 21 prove up our defenses. I don't think 22 it has the ability to do that. 23 MR. SUMNER: You think you can depose 24 an incapacitated person in South Carolina? 25 MR. BOLCHOZ: I don't know that she's	1 412, the Court has the ability to modify a 2 trust where its terms would be 3 impracticable or wasteful or they would 4 impair the trust administration. 5 And -- 6 THE COURT: Those just seem like they 7 have certain levels of factual 8 determination in them, but -- 9 MR. SUMNER: Well, they certainly do 10 at first blush. But I think what we have 11 to look to is what are the material facts 12 that come into play. And in this case 13 what we tried to do, Judge, in the second 14 part of the argument is set forth through 15 affidavit the fees that are being charged 16 today versus the fees that would be 17 charged by Raymond James. 18 Right now Doug Delaney is 19 charging north of four percent for his 20 trustee fee. And that does not include 21 the 1.25 percent fee, the management fee 22 being charged by Wells Fargo. 23 That comes to a combined total 24 percentage of 5.27 percent of the CRT. 25 THE COURT: What's that work out to

Page 45	Page 47
1 in dollars, though? 2 MR. SUMNER: Well, I'll tell you, it 3 comes out to \$42,000 a year in fees. And 4 if you look at Raymond James' affidavit, 5 William Slaughter signed, they're going to 6 charge .8 percent which would come down to 7 \$6,000. And so this would represent a 8 savings for the trust of \$36,000. 9 And so I don't think we need to 10 argue questions of fact here. I think it 11 is -- there is not a scintilla of evidence 12 that could sway the Court that \$36,000 of 13 savings, if you don't go for it, is waste. 14 I mean, you know, and I 15 understand that Doug Delaney's tried to 16 inject some questions of fact about 17 whether Wells Fargo -- or excuse me, 18 whether Raymond James is going to down the 19 road employ some hidden fees or buy some 20 annuity, other type investment vehicles. 21 But the point is that that's just 22 speculation. It's not based on anything. 23 We've got their fees based on an 24 affidavit what they're going to charge. 25 And, you know, this is the quintessential	1 shortchange the charities. 2 But I think that Section 412 3 recognizes that at some point the Court 4 has to step in and say, if there is clear 5 waste, we're going to allow you to modify 6 the trust so you can avoid it. 7 And so this isn't even close. 8 If we were talking a couple hundred 9 dollars or a couple thousand dollars, but 10 \$36,000 a year is substantial. And I 11 don't know how Doug Delaney can argue that 12 that's not wasteful. 13 And so it's on that basis, it's 14 on this clear basis of just a straight up 15 mathematical comparison that you do have 16 waste. And I think it does comply with 17 the authority that's vested in the Court 18 to modify the trust for a wasteful 19 situation. And that really, that's the 20 gist of our argument. 21 And we cited the In Re DMV case 22 which is a situation where the Court sui 23 sponte modified trust provisions because 24 it found that the trustee's fees were 25 wasteful. And the facts were not on all
Page 46	Page 48
1 case of waste. 2 I'm not suggesting that 3 trustees' fees per se are wasteful or 4 investment fees. But when you're talking, 5 we can get the same job done and save this 6 trust \$36,000 a year, how can we not 7 authorize the modification here? 8 You know, this does not equate 9 to more money in my client's pocket. 10 She's going to continue to get 11 10.87 percent. At the end of the day the 12 money we're trying to save is for the 13 charities that are the remainder 14 beneficiaries. 15 Marilyn Bunn will live until she 16 dies and she will continue to get 17 10.87 percent, whatever that is. But this 18 lawsuit is about maximizing what is left 19 over for the charities. 20 And so if we're forced to, in 21 the face of these clear and unambiguous 22 facts, I mean, this obvious waste, to just 23 go litigate this just because, we can burn 24 through the value of the trust. We can 25 devalue this trust and ultimately	1 fours with this. 2 But I think it exemplifies the 3 fact that under an application of the 4 Uniform Trust Code, which that case was a, 5 I think it was a Washington, DC case, but 6 they've adopted the UTC, that when you 7 apply the UTC and Sections 412, there is a 8 time when the Court can say, no, enough's 9 enough, this is clear, unambiguous waste, 10 there is no question of fact about this. 11 You know, what you're charging 12 now versus what you can charge tomorrow if 13 we allow the modification will eliminate 14 waste. And so that's the basis for this 15 second argument. We want to modify this 16 so we can avoid the waste which is really 17 at the heart of this lawsuit. 18 THE COURT: All right. How about 19 that one, Sean? 20 MR. BOLCHOZ: Your Honor, as a 21 preliminary matter, I mean, I find it very 22 interesting that the plaintiffs are 23 complaining about the fees from Wells 24 Fargo given that we have, you know, tried 25 desperately six months ago to remove Wells

Page 49	Page 51
1 Fargo and send this -- the trust assets to 2 another investment advisor and the 3 plaintiffs refused to let us. They wanted 4 to stay with Wells Fargo. So to find out 5 now that they're unhappy about the fees 6 being charged is interesting. 7 You know, the criteria set forth 8 at 412, I think that's -- I think it's 9 highly fact sensitive. And again, you 10 know, I mention again, we are here on a 11 motion for summary judgment. And, you 12 know, the fees -- you know, the trustee 13 fees and the fees from the investment 14 advisor, I mean, those aren't waste. I 15 mean, you know, they might not like them 16 and might think that, you know, they don't 17 like the math that much, but that doesn't, 18 I don't think that, and there's no legal 19 support for the idea that that 20 automatically becomes waste because that's 21 how they characterize it. 22 My client has received trustee 23 fees for -- up until last summer when 24 Wells Fargo unilaterally stopped paying 25 them, received trustee fees for 13 years	1 But, you know, I don't think 2 that they've carried the burden under 3 Section 412. And I think those are very 4 fact-sensitive criteria. 5 THE COURT: All right. Anything 6 else? 7 MS. TURNIER: Your Honor, we're just 8 going to defer to the Court. 9 THE COURT: Okay. All right. 10 Anything else on that one? 11 MR. SUMNER: Your Honor, I just think 12 that, you know, that there comes a time 13 when a trust should be able to demonstrate 14 clear and unambiguous waste. We ought to 15 be able to object to fees when they're too 16 high, regardless of when the objection was 17 raised. 18 I don't think you can argue with 19 the math here. And as much as they want 20 to call it a question of fact, there's not 21 a question of a material fact as it goes 22 to the ultimate question of waste. If 23 there's waste, this Court has the 24 authority to modify this trust. 25 And I think there's lots of
Page 50	Page 52
1 without any complaint from any of the 2 plaintiffs or anybody on that side. 3 As Robert said himself, Raymond 4 James is going to, they're going to get 5 trustee fees. Okay. Right now they're 6 saying this is the amount they're going to 7 take. I mean, they're not married to 8 that. I mean, they can change that later 9 on. Plus, they're going to be taking out 10 their moneys in other hidden fees and 11 costs. 12 I think that the question of 13 waste is clearly an issue of fact. And we 14 haven't established, I mean, we haven't 15 done anything in this case by way of 16 discovery to bear that out. 17 You know, as Mr. Delaney's 18 affidavit states, it's just not, it's not 19 waste. I mean, they object to it now, 20 although they didn't object to it for 21 years and years before but they object to 22 it now and they object to Wells Fargo's 23 fees now even though they wouldn't let us 24 change out investment advisors six months 25 ago.	1 questions here. I mean, we're going to go 2 after Mr. Delaney for damages and other 3 things. But here what we're trying to do 4 is stop the bleeding so we can stop the 5 waste so that we can maximize the amount 6 of money that's left over for charity. 7 It seems that Mr. Delaney wants 8 to just ignore that fact. He wants to be 9 able to continue to charge whatever he 10 wants to charge, and there's no way we can 11 get rid of him. Under his reading of the 12 trust, we can't even remove him. 13 So it's a convenient argument I 14 think that misses the nuance that any 15 questions of fact that may still exist, 16 they're not material to this point, and 17 this point being, is there waste. And I 18 think the waste is clear and unambiguous. 19 THE COURT: All right. Well, let me 20 do this. Is it possible -- I don't have 21 that book. I guess it's probably on the 22 computer. But if you could -- could you 23 possibly email me a copy, Sean, of those 24 sections, or Sean, send them to me or 25 somehow --

Page 53 1 MR. BOLCHOZ: What book? 2 THE COURT: The Probate -- well, of 3 course, it's just the probate code. Never 4 mind. Of course I have it. You all were 5 first referring to just the last three 6 digits. I was thinking it was one of 7 those special probate codes books. 8 MR. BOLCHOZ: Oh, sorry, that's 9 62-7-412. 10 THE COURT: Okay. I've got those. 11 MR. SUMNER: I'd be more than happy 12 to send you the reference sections. 13 THE COURT: Yeah, that would be 14 great. 15 MR. SUMNER: I'll just do that. That 16 will be easy. 17 THE COURT: Copy Sean on anything. 18 You know, I mean, my initial thought is 19 just because something is more expensive 20 doesn't necessarily mean, to the exclusion 21 of any scintilla of material fact, that 22 it's wasteful. And that seems to be the 23 argument, it's more expensive because it's 24 wasteful. It may be, I don't know. But I 25 don't know if that excludes any	Page 55 1 opportunity to get through most of this by 2 then. 3 MR. SUMNER: When we email Heather, 4 I'll go ahead and talk to Sean beforehand 5 and come up with some times that work and 6 try to schedule it up. 7 THE COURT: That will be great. 8 Let's do it by telephone. 9 MR. BOLCHOZ: That's fine. 10 THE COURT: All right. You all have 11 a good day. 12 MR. SUMNER: Thank you. 13 MR. BOLCHOZ: Thanks, Judge. 14 (The hearing was concluded at 4:51 p.m.) 15 ---oOo--- 16 17 18 19 20 21 22 23 24 25
Page 54 1 possibility of factual dispute. 2 Now, on the other hand, your 3 first argument, I mean, I've had an 4 opportunity to read the trust and I can't 5 imagine it could be interpreted in any way 6 other than the plaintiff seeks to 7 interpret it. But I'm not ready to rule 8 on it right now. Let me take a look at 9 it. And I'll look at that as well if you 10 want to send it to me. 11 MR. SUMNER: We'll email those to you 12 and send them to Sean as well. 13 THE COURT: Maybe we can, if you all 14 would, Heather's not here right now, but 15 maybe we can just try to set up a 16 conference call, a follow-up just to keep 17 the fire under me on this thing so I can 18 tell you what I'm thinking. 19 MR. SUMNER: What kind of timeframe 20 would you like for us to shoot for? 21 THE COURT: You know, maybe in a week 22 or something 'cause I've got motions all 23 week so I've got to do this all day long 24 all week, but, you know, next week at some 25 point would be great. I'll have the	Page 56 1 STATE OF SOUTH CAROLINA) 2 COUNTY OF DORCHESTER) CERTIFICATE 3 I, Janice D. Hayward, Registered Merit 4 Reporter and Notary Public, certify that I was 5 authorized to and did stenographically report the 6 foregoing deposition, and that the transcript is 7 a true record of the testimony given by the witness. 8 I further certify that the witness was 9 duly sworn and cautioned by me to tell the truth, 10 the whole truth and nothing but the truth. I 11 certify that the same was reduced to typewritten 12 form from my original stenograph notes by 13 computer-aided transcription. 14 I further certify that I am not of 15 counsel or kin to any of the parties to this cause 16 of action, nor am I interested in any manner in 17 its outcome. 18 IN WITNESS WHEREOF I have hereunto set 19 my hand and seal this the 14th day of September, 20 2015. 21 22 23 24 Janice D. Hayward, RMR Notary Public, South Carolina My Comm. Expires 10-10-22 25

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Master-in-Equity

Case No. 2014-CP-07-1732

Douglas S. Delaney..... Appellant,

v.

Marilyn W. Bunn, a Person *Non Compos Mentis* By and Through Her Guardian,
Denise Suddes, and Margaret Bunn Lochmandy, ... Respondents.

NOTICE OF APPEAL

Appellant Douglas S. Delaney appeals the Order of the Honorable Marvin H. Dukes, III,
dated July 21, 2015. Appellant received written notice of this Order on July 21, 2015.

August 20, 2015


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STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL
CIRCUIT

COUNTY OF BEAUFORT

)
) CASE NUMBER 2014-CP-07-1732

IN THE MATTER OF:

JOHN M. AND MARILYN W. BUNN
CHARITABLE REMAINDER TRUST

2014 NOV -3 PM 2:45
JENNIFER RUSSEAU
BEAUFORT COUNTY S.C.
CLERK OF COURT

MARILYN W. BUNN, A PERSON *NON*
COMPOS MENTIS BY AND THROUGH
HER GUARDIAN, DENISE SUDDER,
AND MARGARET BUNN LOCHMANDY,

PLAINTIFFS,

v.

MOTION FOR SUMMARY
JUDGMENT

DOUGLAS S. DELANEY, AS TRUSTEE
AND IN HIS INDIVIDUAL CAPACITY,
ALAN WILSON, THE SOUTH CAROLINA
ATTORNEY GENERAL, SACRED HEART-
GRIFFIN HIGH SCHOOL, ST. JOSEPH'S
HOME, QUINCY UNIVERSITY, NOTRE
DAME, THE LAWRENCEVILLE SCHOOL,
ALL SAINTS CATHOLIC CHURCH, AND
HABITAT FOR HUMANITY c/o ALL
SAINTS CATHOLIC CHURCH,

DEFENDANTS.

Now come the Plaintiffs, Marilyn W. Bunn, a person *non compos mentis* by and through her guardian, Denise Sudder, and Margaret Mary Bunn Lochmandy (collectively referred to as the "Plaintiffs"), by and through counsel, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, and hereby move for summary judgment on (i) the removal of Douglas S. Delaney ("Delaney") as the successor independent trustee to the corporate trustee under the clear

and unambiguous terms of the John M. And Marilyn W. Bunn Charitable Remainder Trust under Agreement dated December 16, 1993 (the "CRT"); and (ii) (a) modification of the administrative provisions of the CRT due to circumstances not anticipated by the settlor such that modification will further the purposes of the CRT and will be in accordance with the settlors' probable intentions; and (b) modification of the administrative terms of the CRT because administration under the existing terms is impracticable, wasteful, or impairs the CRT's administration. In support of this Motion, the Plaintiffs present the following:

Removal of Trustee by Surviving Settlor and Successor Individual Trustee

1. The Plaintiffs consist of (1) the surviving settlor – Marilyn Bunn ("Bunn" or "Settlor"); (2) the guardian for Bunn – Denise Suddes ("Suddes" or the "Gaurdian"); and (3) the sole successor Individual Trustee of the CRT – Margaret Bunn Lochmandy ("Lochmandy" or "Individual Trustee").

2. Article III, Section 3 of the CRT states, "the settlors during their lifetime, the survivor of them after one of their deaths, or the individual trustee, may remove the corporate trustee."

3. Under Article III, Section 4 of the CRT, the successor independent trustee steps into the shoes of the corporate trustee. Accordingly, all of the CRT provisions that apply to the corporate trustee also apply to the successor independent trustee, including the Surviving Settlor and Individual Trustee's ability to remove the independent successor to the corporate trustee.

4. Thus, pursuant to the clear and unambiguous terms of the CRT, the Plaintiffs seek for Delaney to be removed as the successor independent trustee to the corporate trustee and appoint a successor independent successor trustee to the corporate trustee.

Modification of Successor Trustee Provisions

5. Under S.C. Code Ann. § 62-7-412(a), the Court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the CRT. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

6. Under S.C. Code Ann. § 62-7-412(b), the Court has authority to modify the administrative terms of the CRT because administration under the existing terms would be impracticable, wasteful, or impair the CRT's administration.

7. Furthermore, if a charitable purpose becomes wasteful, the Court "may deviate from the terms of a trust to modify the trust ... in a manner consistent with the settlor's charitable intent." S.C. Code Ann § 62-7-413(a)(3). "The power may be applied to modify an administrative or dispositive term." S.C. Code Ann § 62-7-413, Reporter's Comment, ¶2.

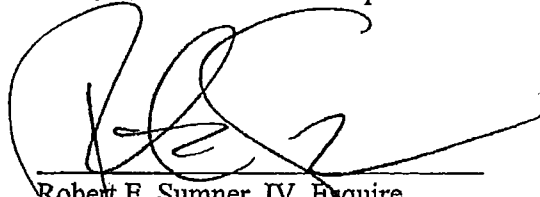
8. The Settlor did not anticipate that having both an individual trustee and a corporate or successor independent trustee would be unmanageable or result in overly burdensome cost to the CRT, thereby substantially reducing the value of the remainder interest of the charitable beneficiaries.

9. Modification will enhance the purpose of the CRT by ensuring that an institutional third party successor trustee is the sole trustee with a reasonable fee such that the assets ultimately passing to the charitable remainder beneficiaries are preserved to the maximum extent possible and not depleted by excessive trustee fees. Additionally, the power to remove such successor trustee will ensure that the CRT is properly managed.

10. In light of the nature of the CRT, the interests of the income beneficiary, and the interests of remainder beneficiaries (collectively, the "Beneficiaries"), Plaintiffs desire that the

administrative provisions of the CRT be amended to incorporate new provisions for the removal and appointment of Trustees under Article III as provided in the amendment attached to the Verified Petition as Exhibit A.

WHEREFORE, for the reasons stated herein, Plaintiffs move pursuant to Rule 56, SCRCF, that this Court rule, as a matter of law, that Delaney be removed as the independent successor trustee to the corporate trustee and the CRT be modified as requested.



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Attorney for Plaintiffs

Charleston, South Carolina

October 31ST, 2014

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF:

JOHN M. AND MARILYN W. BUNN
CHARITABLE REMAINDER TRUST

MARILYN W. BUNN, A PERSON *NON*
COMPOS MENTIS BY AND THROUGH
HER GUARDIAN, DENISE SUDDER,
AND MARGARET BUNN LOCHMANDY,

PLAINTIFFS,

v.

DOUGLAS S. DELANEY, AS TRUSTEE
AND IN HIS INDIVIDUAL CAPACITY,
ALAN WILSON, THE SOUTH CAROLINA
ATTORNEY GENERAL, SACRED HEART-
GRIFFIN HIGH SCHOOL, ST. JOSEPH'S
HOME, QUINCY UNIVERSITY, NOTRE
DAME, THE LAWRENCEVILLE SCHOOL,
ALL SAINTS CATHOLIC CHURCH, AND
HABITAT FOR HUMANITY c/o ALL
SAINTS CATHOLIC CHURCH,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NUMBER 2014-CP-07-1732

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

I. INTRODUCTION

Petitioners, MARILYN W. BUNN, A PERSON *NON COMPOS MENTIS* BY AND THROUGH HER GUARDIAN, DENISE SUDDER, AND MARGARET BUNN LOCHMANDY, file this Motion for Summary Judgment (the "Motion") seeking to remove Doug Delaney as the independent successor to the Corporate Trustee of the John M. and Marilyn W. Bunn Charitable Remainder Trust u/a/d December 16, 1993 ("CRT") and, in the alternative,

to modify the CRT. Petitioners seek to remove Delaney under the plain and unambiguous terms of Article III, Section 3 of the CRT. Petitioners seek to modify the CRT pursuant to S.C. Code Ann. 62-7-412(b) because the current fees being charged to the CRT are wasteful.

II. FACTS

On or about December 16, 1993, John M. Bunn and Marilyn W. Bunn, as Settlers ("Settlers"), created the CRT, a copy of which is attached hereto and incorporated herein as Exhibit A. The purpose of the CRT was to distribute monthly payments for the benefit of Settlers during their lives, and, upon their deaths, the balance of the trust estate would be distributed to certain charities as set forth at Article I, Section 3 of the CRT. John M. Bunn and Marilyn W. Bunn, were named as the individual co-trustees (the "Individual Trustees") of the CRT. (CRT, p. 1, ¶1.) Security Investment Management and Trust Co., was named as the corporate trustee (the "Corporate Trustee") (the Individual Trustees and Corporate Trustee are collectively referred to herein as, the "Trustees" and individually as, a "Trustee", as applicable). *Id.*

Article III, Section 1(a) of the CRT describes the limited duties of the Corporate Trustee. Section 1(a) states that the Corporate Trustee will "collect all income of the trust, maintain and have custody of all the records of the trust..." and "prepare a statement showing how the trust is invested..." The Individual Trustees' duties are also contained in the CRT. (CRT, Article III § 1.) One of those duties is the duty to remove the Corporate Trustee. (CRT, Article III, § 3.) Article III, Section 1(c) of the CRT states, "Except where otherwise expressly provided or prohibited, all other discretionary decisions not otherwise delineated under this agreement may be performed by the individual trustees." (CRT, Article III § 1.)

Under Article I, Sections 1 and 2 of the CRT, during the lifetimes of Settlers, the CRT is required to distribute to the Settlers or surviving Settlor a unitrust amount equal to 10.87% of the net fair market value of the CRT's assets as valued on the first day of the taxable year in monthly installments on the last day of each month (the "Unitrust Payment"). (CRT, Article I, §§1 & 2.) John M. Bunn is deceased; Marilyn W. Bunn is now entitled to the Unitrust Payment for the rest of her life. *Id.*

Marilyn W. Bunn is eighty-two (82) years old and resides in Gwinnett County, Georgia. On September 5, 2013, the Probate Court of Gwinnett County, Georgia found Marilyn W. Bunn to be incapacitated and appointed Denise Suddes as her guardian.

III. STANDARD

The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder. See George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002).

IV. LEGAL ANALYSIS

A. Article III, Section 3 of the CRT authorizes the Guardian for the Settlor or the Individual Trustee to remove the corporate trustee without cause.

1. Denise Suddes is a duly appointed Guardian for Marilyn Bunn.

Marilyn W. Bunn is the surviving Settlor of the CRT, but she is mentally incapacitated. On September 5, 2013, the Probate Court of Gwinnett County, Georgia, where she resides, ordered that Mrs. Bunn was incapacitated and appointed Denise Suddes as her guardian (the "Order"). (Exhibit B.) The Order states, "the guardian is expressly authorized to initiate or respond to litigation, as necessary, to modify the Trusts, remove and replace the current trustees

of the Trusts, and pursue damages arising out of the conduct of one or more of the trustees of the Trusts." *Id.* at p. 2, Section 3. The Order is entitled to full faith and credit by the courts of the State of South Carolina. The Full Faith and Credit Clause provides, in pertinent part, that "[f]ull faith and credit shall be given in each state to the ... judicial proceedings of every other state." U.S. Const. art. IV, § 1. Full faith and credit "generally requires every State to give to a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it." *Durfee v. Duke*, 375 U.S. 106, 109, 84 S.Ct. 242, 11 L.Ed.2d 186 (1963).

2. Margaret Lochmandy is the sole successor Individual Trustee.

As stated above, the Settlers were named as the original Individual Trustees of the CRT. The rules for Individual Trustee succession are set forth in the CRT. (CRT, Art. III, § 2.) The terms of succession are mandatory and automatic; the successor trustees are not required to take any formal steps to accept their position. *Id.* Upon the death of one of the Settlers, the surviving Settlor "shall act as the sole individual trustee hereunder." *Id.* at p. 8. Should the surviving spouse resign or be unable to serve as trustee, Margaret B. Lochmandy and her sister Kelly Kathleen Bunn, daughters of the Settlers, "shall act as the successor individual co-trustees hereunder." *Id.* If one of the daughters was unable to serve because of resignation, refusal or inability, the surviving daughter "shall act as the individual trustee hereunder." *Id.*

As noted above, John M. Bunn predeceased Marilyn W. Bunn, leaving her as the sole Individual Trustee. When Marilyn W. Bunn was declared incapacitated in 2013, she was no longer competent to act as Individual Trustee. Margaret B. Lochmandy and Kelly Kathleen Bunn automatically became the Individual Co-Trustees pursuant to the terms of the CRT. Kelly Kathleen Bunn died on February 26, 2014. Upon the death of Kelly Kathleen Bunn, Margaret B. Lochmandy became the sole Individual Trustee of the CRT.

Delaney maintains that neither Margaret Lochmandy nor Kelly Bunn succeeded to the position of successor individual trustee because they did not take any formal measures to accept the position. (Am. Compl., ¶ 16, Answer, ¶ 12.) Such an assertion is contrary to statutory law and the language of the CRT. “Unless directed otherwise by the court or the trust instrument, a successor trustee appointed by the court or the trust instrument succeeds to all the powers, duties and discretionary authority given to the predecessor trustee.” S.C. Code § 62-7-812 (Supp. 2014). As stated above, there are no requirements for a named successor trustee to take any steps to accept or immediately affirm her position. Under the South Carolina Trust Code, a named successor trustee must reject the trusteeship, resign or be disqualified or removed in order for a vacancy to occur. S.C. Code § 62-7-704(a) (Supp. 2014). Contrary to Delaney’s position, no vacancy occurred in the present case; Margaret Lochmandy is the sole successor Individual Trustee.

3. Successor trustees stand in the shoes of the original trustees.

Under the CRT, the successor trustees are treated the same as the original trustees. This applies to the Individual Trustee as well as the Corporate Trustee. Article III, Section 4 of the CRT governs the trustees’ “Powers, Authority, and Duties.” The CRT mandates that “[e]very successor trustee shall have all the powers given the originally named trustee.” (CRT, Art. III, § 4.) Applying this provision of the CRT, Margaret Lochmandy has the same powers, authorities, and duties as the original Individual Trustees of the CRT. Similarly, Delaney has the same powers, authorities, and duties given to the original Corporate Trustee.

4. Denise Suddes and Margaret Lochmandy have the power to remove Delaney without cause.

Under the CRT, the Settlor *or* the Individual Trustee may remove the Corporate Trustee without cause. Article III, Section 3 of the CRT governs the removal of trustees of the CRT.

Section 3 states in relevant part: “[T]he settlors during their lifetime, the survivor of them after one of their deaths, or the individual trustee, may remove the corporate trustee at any time or times, with or without cause, and appoint an individual or corporation as successor independent trustee . . .” (CRT, Art. III, § 3.) As it relates to the Settlers the CRT states, “The guardian or conservator of a settlor under disability or an agent of the settlors acting pursuant to a durable power of attorney shall receive notice and have *authority to act for settlors* under this article.” (CRT, Art. III, § 3.) Therefore, Denise Suddes, as Guardian, has the power to act for the surviving Settlor. As stated above, Delaney, as the successor independent trustee to the Corporate Trustee stands in the shoes of the original Corporate Trustee. It was the clear intention of the Settlers that the power to remove the Corporate Trustee applies equally to the removal of the successor independent trustee to the Corporate Trustee.

The primary consideration in interpreting and construing a trust is to discern the testator's intent. *Holcombe-Burdette v. Bank of America*, 371 S.C. 648, 657, 640 S.E.2d 480, 484 (Ct. App. 2006) (citing *Epworth Children's Home v. Beasley*, 365 S.C. 157, 166, 616 S.E.2d 710, 715; *Bowles v. Bradley*, 319 S.C. 377, 380, 461 S.E.2d 811, 813 (1995) (“The primary consideration in construing a trust is to discern the settlor's intent.”)). “In ascertaining a settlor's intent, if the language of the trust instrument is perfectly plain and capable of legal construction, such language determines the force and the effect of the instrument.” *Holcombe-Burdette v. Bank of America*, 371 S.C. at 658, 640 S.E.2d at 485 (citing *Chiles v. Chiles*, 270 S.C. 379, 384, 242 S.E.2d 426, 429 (1978); *Floyd v. Floyd*, 365 S.C. 56, 615 S.E.2d 465 (Ct.App.2005) (affirming trial court's construction of testamentary trust language relating to trustee's discretionary powers); *Univ. of S. Cal. v. Moran*, 365 S.C. 270, 617 S.E.2d 135 (Ct. App. 2005)(construing the plain language of trust specifically to authorize trustee to enter into settlements); and *Estate of*

Stevens v. Lutch, 365 S.C. 427, 617 S.E.2d 736 (Ct.App.2005) (relying on the trust language as most persuasive of settlor's intent regarding discretionary power of trustee)).

"[C]onstruction depends upon the trustor's intent at the time of execution as shown by the face of the document and not on any secret wishes, desires or thoughts after the event." *Chiles*, 270 S.C. at 384, 242 S.E.2d at 429 (quoting *Brock v. Hall*, 33 Cal.2d 885, 206 P.2d 360 (1949)). "Extrinsic evidence is not admissible to alter the plain language of a trust instrument." *Holcombe-Burdette v. Bank of America*, 371 S.C. at 658, 640 S.E.2d at 485 (citing *Bowles*, 319 S.C. at 380, 461 S.E.2d at 813).

It is also well-accepted in this state that the rules of construction for wills apply to the interpretation of trust documents. S.C. Code Ann. §62-7-112 (Supp. 2014); see also *Epworth Children's Home*, 365 S.C. at 166, 616 S.E.2d at 715 ("In fact, the law relating to discerning the drafter's intent is identical for wills and trusts.") (citing *All Saints Parish, Waccamaw v. Protestant Episcopal Church*, 358 S.C. 209, 224 n. 10, 595 S.E.2d 253, 262 n. 10 (Ct.App.2004)). "The paramount rule of will construction is to determine and give effect to the testator's intent." *Estate of Gill v. Clemson Univ. Found.*, 397 S.C. 419, 725 S.E.2d 516, (S.C. App. 2012) (citation omitted).

The plain and unambiguous language of the CRT proves the Settlers' intention for the Settlor and Individual Trustees to have the authority to replace the Corporate Trustee and any successors. The Settlers' intent is apparent in the following provisions. First, the CRT places no significance on the identity of the corporate trustee. Security Investment Management and Trust, Co. is named as the original Corporate Trustee, but the CRT contemplates removal for cause and without cause. (CRT, Art. III, § 3.) The CRT does not specify the identity of the independent successor to the Corporate Trustee, but leaves the discretion to select the successor to the Settlers

and the Individual Trustees. The only restriction on the selection of the independent successor to the Corporate Trustee is that it cannot be a company or person controlled by or legally obligated to the Settlers. (CRT, Art. III, § 2.) Second, the CRT does not state that the independent successor of the Corporate Trustee shall serve as a permanent trustee or that there is no way to remove the successor. To the contrary, the CRT states that the “every successor trustee shall have all the powers given the originally named trustees.” (CRT, Art. III, §4.) Reading the removal provision in conjunction with this provision on successor trustee powers leads to only one logical conclusion: the successor trustees step into the shoes of the original trustees and provisions applying to the removal original trustees also apply to the removal of successor trustees.

In the event that Delaney argues that the CRT does not expressly empower the Settlor or the Individual Trustee to remove the independent successor of the Corporate Trustee, the catchall provision for Individual Trustees provides the requisite authority. The CRT conferred “except where expressly prohibited, all other discretionary decisions not otherwise delineated under this agreement [to] the individual trustees.” (CRT, Art. III, § 1(c)). Lest there be any confusion as to the removal powers, the CRT ensures that the Individual Trustees and their successors are authorized to carry out the intention of the Settlers. Given that the Settlers clearly and unambiguously authorized the removal of the Corporate Trustee, it only follows reason that the Individual Trustees and their successors are authorized to remove the independent successor of the Corporate Trustee.

Finally, the rules for successor trustees in the S.C. Trust code support the clear position that the removal provision applies equally to the independent successor to the Corporate Trustee. SC Code Ann. § 62-7-812 states “Unless directed otherwise by the court or by the trust

instrument, a successor trustee appointed by the court or by the trust instrument succeeds to all the powers, duties, and discretionary authority given to the predecessor trustee". SC Code Ann. § 62-7-812 (Supp. 2014).

In the present case, the CRT plainly authorizes the Settlor's Guardian and the successor Individual Trustee to remove the independent successor of the Corporate Trustee without cause. The intent of the Settlor is clear in the CRT and any uncertainty is clarified by the catchall provision regarding the powers of the Individual Trustees. The Settlor's intent is consistent with and supported by the rules that apply to successor trustees under the S.C. Trust Code. Because there is no genuine question of material fact relating to the power to remove Delaney, it is appropriate for this court to grant partial summary judgment, permitting the Petitioners to remove Delaney under the terms of the CRT.

B. The South Carolina Uniform Trust Code authorizes the court to modify administrative provisions of the CRT where the continuation of the trust on its existing terms would be impracticable or wasteful.

1. The fees Delaney and Wells Fargo are changing are wasteful.

The Guardian for the Settlor and the Individual Trustee request a "Modification to Charitable Remainder Trust." (See Am. Compl. Exhibit "B".) The proposed modification removes Sections 1 and 5 of Article III in their entirety, and replaces Sections 2, 3 and 4 of Article III, thereby eliminating the positions of both Corporate Trustee and Individual Trustee in favor of a single Trustee, Raymond James. *Id.* The modification removes the Individual Trustee, but empowers the majority of the surviving children of Marilyn W. Bunn to remove and appoint a successor trustee to Raymond James and, if necessary, to any of its successors. *Id.* If none of Marilyn W. Bunn's children survive, the power to appoint and remove the trustee passes to a majority of the beneficiaries of the CRT. *Id.*

The South Carolina Trust Code authorizes the modification of the administrative terms of a trust when “continuation of the trust on its existing terms would be *impracticable or wasteful* or impair the trust’s administration.” S.C. Code § 62-1-412(b) (Supp. 2014)(emphasis added); see *Rowley v. Unity Life Ins. Co.*, 200 S.C. 174, 20 S.E.2d 383 (1942)(finding that “waste” and “bringing the property into danger” are adequate reasons to take the drastic measure of appointing a receiver to administer a trust). By extending the court’s power to modify the administrative terms of the trust, this provision allows the court to apply equitable deviation, as set forth in S.C. Code § 62-1-413, more broadly to effectuate the settlor’s broader purpose in establishing the trust. S.C. Code § 62-7-412, cmt. (Supp. 2014). The South Carolina Trust Code also authorizes the modification of the administrative terms of a trust when, because of circumstances unanticipated by the Settlor, the modification will further the purposes of the trust. S.C. Code § 62-7-412(a) (Supp. 2014). “Although the unanticipated circumstances . . . are likely to be circumstances that have changed since the creation of the trust, the rule . . . does not require changed circumstances. It is sufficient that the settlor was unaware of the circumstances in establishing the terms of the trust.” Restatement (Third) of Trusts § 66, cmt. a. .

The Court has the inherent power to modify a trust in order to avoid unnecessary and avoidable wasting of a trust’s assets. In the case of *In re D.M.B.*, 979 A.2d 15 (D.C. 2009), the District of Columbia Court of Appeals affirmed the trial court’s amendment of various administrative terms of a special needs trust, including provisions relating to trustee compensation. In that case, the special needs trust was approved by the court, and the trustee was required to file annual accounts with the court to support his requests for trustee’s fees. *Id.* at 17. Following the first and second years of administration, the trustee made requests for fees based on a flat percentage of the value of the trust assets, which the trial court found to be

unreasonable. In the third year of administration, the trial court found that the hourly fees sought by the trustee were unreasonable because most of the time charged represented time the trustee was working to appeal previous rulings related to his fees. *Id.* at 19. Based on the history of difficulties related to the trustee's requests for fees, the trial court amended various administrative provisions *sua sponte*. *Id.* The trial court concluded that the "continuation of the trust on its existing terms would be impractical or wasteful or impair the trust's administration." *Id.* at 26. The trustee appealed and argued that the trial court lacked the authority to amend or modify the special needs trust.

The Court of Appeals rejected the trustee's arguments, pointing out that under sections 412(a) and (b) of the Uniform Trust Code, courts have the authority to modify the terms of a trust to address unanticipated circumstances and avoid waste.¹ *Id.* at 25. In fact, the Court of Appeals commented, "contrary to appellant's assertion... the court need only find appropriate circumstances, including *avoiding waste* of the trust's assets in order to modify the trust." *Id.* (emphasis added). Applying the holding of *In re D.M.B.* to the present case supports the requested modification of the CRT.

The CRT, was created to provide for the Settlers during their lifetime and then to distribute the remaining assets to the charitable beneficiaries chosen by the settlers. Like the special needs trust in *In re D.M.B.*, there is an inherent need to preserve CRT assets so that the purpose of the CRT can be realized. The purpose of the proposed modification is to eliminate waste by streamlining the administration of the CRT, eliminate provisions that have promoted payment of more than one individual/entity for management of the CRT, and increase the

¹ The District of Columbia has adopted the Uniform Trust Code, and D.C. Code § 19-1304.12(a) and (b) are substantially similar to S.C. Code Ann. § 62-7-412 (a) and (b).

probability that the CRT will be able to provide a lifetime income to Marilyn W. Bunn and transfer assets to the Beneficiaries at its termination, as intended by the Settlers.

Since the CRT was funded in 1993 with approximately \$4,500,000.00, the value of the CRT has decreased to \$813,117.91 (as of December 31, 2014). The current assets of the CRT are the sole means of financial support for Marilyn W. Bunn, and they are decreasing rapidly, a consequence of the payment of annual fees to Delaney and Wells Fargo, combined with of a Unitrust Payment of 10.87% of the CRT. A breakdown of the CRT fees demonstrates the unnecessary wasting of the CRT's assets.

The CRT balance on December 31, 2013, was \$882,366.81. (Exhibit C, Lochmandy Affidavit, ¶7.) In 2014, Delaney charged a trustee fee of \$3,000.00 per month on the CRT, which equates to an annual trustee fee of \$36,000.00. (Lochmandy Affidavit, ¶¶8, 11.) Based on the 2013 CRT year-end balance of \$882,366.81, Delaney was charging an annual 2014 trustee's fee equal to 4.08% of the total value of the CRT. (Lochmandy Affidavit, ¶12.)

In addition to Delaney's trustee's fees, Wells Fargo charged the CRT a 1.25% "PIM Fee" (management fee) on the primary account (Account Number 5915-5195), calculated quarterly. (Lochmandy Affidavit, ¶13.) No PIM Fee was charged on the cash/sweeps account (Account Number 3970-9189). *Id.* The 2014 quarterly PIM Fees for Account Number 5915-5195 were charged as follows:

- a. \$2,684.57 on January 10, 2014 ($1.25\% \times \$859,067.69 \div 4$);
- b. \$2,606.28 on April 11, 2014 ($1.25\% \times \$834,014.58 \div 4$);
- c. \$2,657.07 on July 11, 2014 ($1.25\% \times \$850,264.11 \div 4$); and
- d. \$2,543.79 on October 10, 2014 ($1.25\% \times \$814,015.84 \div 4$).

\$10,491.71 TOTAL

(Lochmandy Affidavit, ¶13.) Based on the 2013 CRT year-end balance of \$882,366.81, Wells Fargo charged an actual annual PIM Fee for 2014 equal to 1.19% of the total value of the CRT in 2014. (Lochmandy Affidavit, ¶14.) If Delaney had received \$3,000.00 per month for 12 months, the combined annual trustee's fees and PIM Fees for 2014 would have been equal to 5.27% of the total value of the CRT. (Lochmandy Affidavit, ¶14.)

The Individual Trustee and the Guardian for the Settlor wish to name Raymond James Trust, N.A. as Successor Trustee and transfer the assets to the CRT to Raymond James. (Lochmandy Affidavit, ¶5.) Raymond James currently serves as the successor trustee of the Marilyn W. Bunn Revocable Trust u/a/d October 4, 1995 (the "Revocable Trust"). (Exhibit D, Slaughter Affidavit, ¶4.) Raymond James is also the named successor trustee of the Marilyn W. Bunn Irrevocable Trust u/a/d April 9, 2001 (the "Irrevocable Trust"). (Slaughter Affidavit, ¶5.) Raymond James is in the process of taking over as the successor trustee of the Irrevocable Trust and is expected to finalize the transfer of Irrevocable Trust assets to Raymond James by March 31, 2015. (Slaughter Affidavit, ¶6.)

If the court grants the requested Modification of the CRT, Raymond James will become the sole successor trustee. (See Am. Compl., Exhibit "B.") William Slaughter, First Vice President and Trust Officer at Raymond James remains willing and able to serve as the independent successor trustee to the corporate trustee of the CRT. (Slaughter Affidavit, ¶¶4-6, 13.) Raymond James maintains a standard fee schedule for trustee's fees and management fees for trusts, including charitable trusts. (Slaughter Affidavit, ¶9.) Slaughter applied the Raymond James standard fee schedule to the 2014 year-end CRT assets (\$813,117.91) in order to calculate the fees that Raymond James will charge if selected to serve as the independent successor trustee to the corporate trustee of the CRT. (Slaughter Affidavit, ¶¶8-10.)

If Raymond James serves as the trustee for the Revocable Trust, the Irrevocable Trust, and the CRT, the total trust assets under management for the Bunn family will be \$6,765,223.48, and Raymond James will charge an annual fee for the CRT, which includes trustee's fees and all management fees, of .80% of the 2014 year-end value of the CRT. (Slaughter Affidavit, ¶11.) Hypothetically and for sake of illustration, if Raymond James was not the trustee of the Revocable Trust and the Irrevocable Trust, the total trust assets under management for the Bunn family would be limited to the value of the CRT, and Raymond James would charge an annual fee for the CRT, which includes trustee's fees and all management fees, of 1.47% of the 2014 year-end value of the CRT. (Slaughter Affidavit, ¶12.)

Petitioners allege that the current trustee's fees and management fees are excessive and wasteful. *See* Am. Compl., ¶45. Applying a simple mathematical comparison, it is plainly evident that the current fees of 5.27% are wasteful when compared to the proposed fees of .80%. Viewed another way, based on 5.27% of the 2014 year-end value of the CRT, Delaney and Wells Fargo will charge fees in 2015 of approximately \$42,851.31. To perform the same trustee services and management of assets, Raymond James will charge only \$6,504.94, representing an annual savings of approximately \$36,346.37.

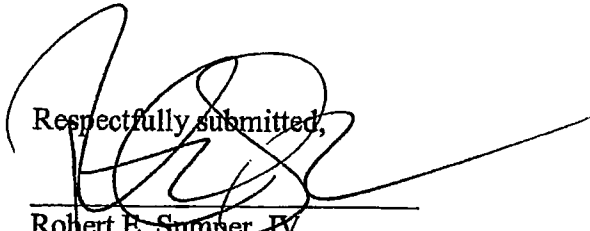
As stated previously, the purpose of the CRT, like any charitable remainder trust, is to provide for the Settlers for their lives and then to make distributions to the designated charitable beneficiaries. At this time, where the combination of the fees and the Unitrust Payment exceeds 16% of the CRT value, there is a potential that the CRT assets could be substantially depleted before the Marilyn W. Bunn's death. Such would frustrate the purpose of the CRT. In order to ensure that this does not occur, it is necessary for the CRT to eliminate the waste incurred under the current administration. The modification as presented, like the modification in *In re D.M.B.*,

would substantially reduce waste, and further the Settlers' intent of providing income for the life of the income beneficiary and distributing a remainder interest to the Beneficiaries upon termination of the CRT.

V. CONCLUSION

For the reasons stated in this memorandum, the Court should grant summary judgment and approve the removal of Delaney as Trustee of the CRT. Alternatively the Court should approve the modification of the CRT in order to avoid the unnecessary wasting of the CRT's assets.

Respectfully submitted,


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ATTORNEYS FOR
MARGARET B. LOCHMANDY AND
MARILYN W. BUNN, BY AND
THROUGH HER GUARDIAN, DENISE
SUDES

This 3rd day of February, 2015.

IN THE PROBATE COURT
COUNTY OF GWINNETT
STATE OF GEORGIA

FILED IN OFFICE
CLERK PROBATE COURT
GWINNETT COUNTY, GA
2013 SEP -5 PM 3:28
Ch
CLERK

IN RE: ESTATE OF

MARILYN BUNN,
PROPOSED WARD

)
)
) ESTATE NO. 13-C-000291
)

FINAL ORDER

A hearing was held on the above-referenced petition on September 3, 2013, and after considering the pleadings, the evaluation report and the evidence taken at the hearing, the Court makes the following:

FINDINGS OF FACT

1.

All procedural requirements of O.C.G.A. §29-4-11 have been met. Petitioner Margaret Bunn Lochmandy appeared for the September 3, 2013 hearing with her attorneys, Matthew Wilkins and Eric Wilborn. The Proposed Ward, Marilyn Bunn, appeared for the hearing with her attorney, Brad Wolfe.

2.

At the hearing, Margaret Bunn Lochmandy testified that her mother, the Proposed Ward, suffers from dementia associated with Alzheimer's disease. She further testified that the Proposed Ward is unable to rationally consider medical treatment in order to communicate responsible decisions regarding her health. Margaret Bunn Lochmandy testified that her mother is unable to reasonably provide for her own safety when dealing with stressful situations.

Petitioner Margaret Bunn Lochmandy filed an affidavit prepared by Dr. Jeffrey B. English along with her Petition. The Affidavit filed by Dr. English substantiates Petitioner Margaret Bunn Lochmandy's testimony, indicating that the Proposed Ward suffers from dementia. Dr. English also indicates on his Affidavit that the Proposed Ward lacks sufficient capacity to make or communicate significant responsible decisions concerning her health or safety or the management of her property.

Brad Wolfe, the attorney for the Proposed Ward, presented to the Court an issue regarding certain South Carolina Trusts, of which the Proposed Ward is a beneficiary. Counsel for the Proposed Ward requested leave of the Court to grant the appointed guardian, Denise

Suddes, express authority to initiate or respond to litigation, as necessary, to modify the Marilyn W. Bunn Irrevocable Trust u/a/d 04/09/01 and the James M. Bunn & Marilyn W. Bunn Charitable Remainder Trust u/a/d 12/16/93 (hereinafter, the "Trusts"), remove and replace the current trustees of the Trusts, and pursue damages arising out of the conduct of one or more of the trustees of the Trusts. Counsel for the Proposed Ward explained to the Court that such power is reasonably necessary to provide adequately for the support, care, education, health, and welfare of the Proposed Ward

It is the finding of this Court that Marilyn Bunn is in need of a guardian because she lacks sufficient capacity to make or communicate significant responsible decisions concerning her health and safety. Such need appears to be permanent. The evaluation report filed by Dr. Thomas J. McIntyre supported the finding of incapacity, and the Proposed Ward's attorney had no objection to the appointment of a guardian for his Client.

It is also the finding of this Court that Marilyn Bunn would suffer great physical and mental harm if subjected to bringing, defending, or participating in legal, equitable, or administrative proceedings. The guardian is therefore granted express authority to initiate or respond to litigation, as necessary, to modify the Trusts, remove and replace the current trustees of the Trusts, and pursue damages arising out of the conduct of one or more of the trustees of the Trusts.

3.

The Petitioner moved the Court to appoint Denise Suddes as guardian for the ward, asserting that Ms. Suddes should serve because she is a long-time family member through marriage and because it is in the proposed ward's best interest that she is appointed. The Petitioner has elected not to seek the appointment of a conservator at this time.

CONCLUSIONS OF LAW

The Court finds, by clear and convincing evidence that Marilyn Bunn, hereinafter referred to as "the ward," is in need a guardian because the ward lacks sufficient capacity to make or communicate significant responsible decisions concerning her health or safety. The duration of the guardianship is permanent.

Therefore it is

ORDERED that Denise Suddes should be, and hereby is, appointed guardian of the ward

because she is a long-time family member by marriage who has no conflicts of interest and because it is in the ward's best interest that she is appointed. Letters of guardianship shall issue to the guardian upon her taking the required oath.

IT IS FURTHER ORDERED that the guardian is expressly authorized to initiate or respond to litigation, as necessary, to modify the Trusts, remove and replace the current trustees of the Trusts, and pursue damages arising out of the conduct of one or more of the trustees of the Trusts.

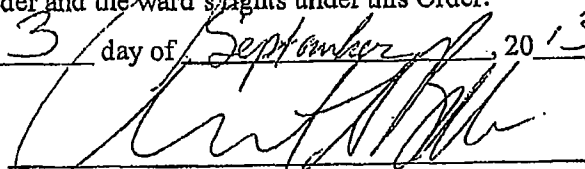
IT IS FURTHER ORDERED that due to the appointment of a guardian, this Order REMOVES from the ward the power to (initial all that are applicable):

- ☐ (a) Contract marriage;
- ☒ (b) Make, modify, or terminate other contracts;
- ☐ (c) Consent to medical treatment;
- ☐ (d) Establish a residence or dwelling place;
- ☐ (e) Change domicile;
- ☐ (f) Revoke a revocable trust established by the ward;
- ☒ (g) Bring or defend any action at law or equity, except an action relating to the guardianship.

IT IS FURTHER ORDERED that a copy of this Order shall be served by first class mail on the ward, the ward's attorney; the guardian; the petitioner; her attorney; and the individuals listed in paragraphs 6, 7, 8, and 12 of the Petition.

IT IS FURTHER ORDERED that the ward's legal counsel shall make reasonable efforts to explain to the ward this Order and the ward's rights under this Order.

SO ORDERED this 3 day of September, 2013.


Christopher A. Ballar, Judge
Gwinnett County Probate Court

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF: JOHN M. AND
MARILYN W. BUNN CHARITABLE
REMAINDER TRUST

MARILYN W. BUNN, A PERSON *NON*
COMPOS MENTIS BY AND THROUGH
HER GUARDIAN, DENISE SUDDER,
AND MARGARET BUNN LOCHMANDY

PETITIONERS,

v.

DOUGLAS S. DELANEY, AS TRUSTEE
AND IN HIS INDIVIDUAL CAPACITY,
AND ALAN WILSON, THE SOUTH
CAROLINA ATTORNEY GENERAL

RESPONDENT.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NUMBER 2014-CP-07-1732

**AFFIDAVIT OF
MARGARET LOCHMANDY**

PERSONALLY appeared before me, Margaret Lochmandy who, being duly sworn, on
oath, deposes and says that:

1. I am over eighteen (18) years old. I am competent to give this affidavit, and it is
based upon my own personal knowledge.
2. I am a resident of Gwinnett County, Georgia.
3. I am the current sole successor Individual Trustee of the CRT.
4. The Guardian for the Settlor of the CRT and I wish to remove Doug Delaney, the
independent successor trustee to the corporate trustee.

5. The Guardian for the Settlor of the CRT and I wish to name William Slaughter, First Vice President & Trust Officer at Raymond James & Associates (“Raymond James”) as the independent successor trustee to the corporate trustee of the CRT and to transfer the management of the CRT assets from Wells Fargo Advisors, LLC to Raymond James, N.A.

6. I have reviewed the 2014 CRT statements provided by Wells Fargo (the “Statements”). See Exhibit A.

7. The CRT balance on December 31, 2013, was \$882,366.81. *Id.*

8. Based on my review of the Statements and my communications with Delaney, I am aware that Delaney charged a trustee’s fee of \$3,000.00 per month from January through June of 2014.

9. On July 10, 2014, Wells Fargo informed my attorney by letter that it was freezing the account and would “withhold acting upon any instructions regarding the account until we are in receipt of a court order determining who the authorized party is for the above-referenced account.” See Exhibit B.

10. Delaney did not receive payment for a trustee’s fee in July and has not to my knowledge receive a trustee’s fee thereafter. Wells Fargo made an automatic draft payment of \$3,000.00 on October 15, 2014 (TRACE # 121000242019297), but I have not received an explanation for that payment.

11. Applying a monthly trustee’s fee of \$3,000.00, Delaney would have charged an annual trustee’s fee for 2014 in the amount of \$36,000.00 if Wells Fargo had not frozen the account.

12. Based on the 2013 CRT year-end balance of \$882,366.81, Delaney was charging an annual 2014 trustee’s fee for 2014 equal to 4.08% of the total value of the CRT.

13. In addition to Delaney's trustee's fee, Wells Fargo charged the CRT a 1.25% "PIM Fee" (management fee) on the primary account (Account Number 5915-5195) calculated quarterly. No PIM Fee was charged on the cash/sweeps account (Account Number 3970-9189). The 2014 quarterly PIM Fees for Account Number 5915-5195 were charged as follows:

- a. \$2,684.57 on January 10, 2014 ($1.25\% \times \$859,067.69 \div 4$);
- b. \$2,606.28 on April 11, 2014 ($1.25\% \times \$834,014.58 \div 4$);
- c. \$2,657.07 on July 11, 2014 ($1.25\% \times \$850,264.11 \div 4$); and
- d. \$2,543.79 on October 10, 2014 ($1.25\% \times \$814,015.84 \div 4$).

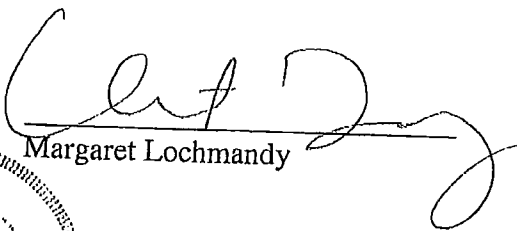
\$10,491.71 TOTAL

e. Based on the 2013 CRT year-end balance of \$882,366.81, Wells Fargo charged an actual annual PIM Fee for 2014 equal to 1.19% of the total value of the CRT in 2014.

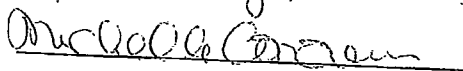
f. If Delaney had received \$3,000.00 per month, the combined annual trustee's fees and PIM Fees for 2014 would have been equal to 5.27% of the total value of the CRT.

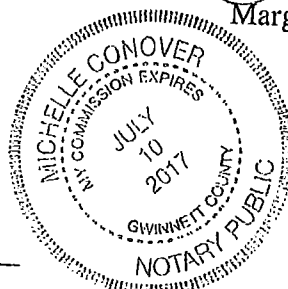
Further the Affiant sayeth naught.

This, the 2nd day of February, 2015.


Margaret Lochmandy

SWORN to before me this 2nd
day of February, 2015


Michelle Conover



Notary Public of Georgia

My commission expires: July 10, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
IN THE MATTER OF:)
JOHN M. AND MARILYN W. BUNN)
CHARITABLE REMAINDER TRUST)
_____)

MARILYN W. BUNN, a person *non*
compos mentis by and through her
guardian, DENISE SUDDER, and
MARGARET BUNN LOCHMANDY,)

Plaintiffs,)

v.)

DOUGLAS S. DELANEY, as Trustee)
and in his individual capacity, ALAN)
WILSON, THE SOUTH CAROLINA)
ATTORNEY GENERAL, SACRED)
HEART-GRIFFIN HIGH SCHOOL,)
ST. JOSEPH'S HOME, QUINCY)
UNIVERSITY, NOTRE DAME, THE)
LAWRENCEVILLE SCHOOL, ALL)
SAINTS CATHOLIC CHURCH, AND)
HABITAT FOR HUMANITY c/o ALL)
SAINTS CATHOLIC CHURCH,)

Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-07-1732

**DEFENDANT DOUGLAS S.
DELANEY'S RETURN TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND
MEMORANDUM IN OPPOSITION**

2015 FEB 16 PM 3:27

IN RESPONSE to the Plaintiffs' Motion for Summary Judgment and Memorandum in Support of same (hereinafter, "Motion" or "Memorandum"),¹ Defendant Douglas S. Delaney ("Delaney") would offer as follows:

¹Although the Motion, dated October 31, 2014, refers only to "summary judgment", the Memorandum, dated February 3, 2015, refers to "partial summary judgment".

STANDARD OF REVIEW

Summary judgment is a drastic remedy and should be cautiously invoked so that a litigant will not be improperly deprived of trial on disputed factual issues. *Hoard ex rel. Hoard v. Roper Hosp., Inc.*, 387 S.C. 539, 694 S.E.2d 1 (2010), citing *Cunningham ex rel. Grice v. Helping Hands, Inc.*, 352 S.C. 485, 575 S.E.2d 549 (2003).² Summary judgment is properly granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is *no genuine issue as to any material fact* and that the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRPC (emphasis supplied).

ARGUMENT

1. The recitation of facts in the Memorandum fails to mention the vacancy created.

In their recitation of facts (Section II of the Memo), the Plaintiffs exclude a critical fact, to wit: the vacancy created by the appointment of Denise Suddes as guardian for Settlor Marilyn W. Bunn.

When the Gwinnett County Probate Court appointed Suddes as the Marilyn Bunn's guardian in September of 2013 due to Bunn's apparent incapacity, such appointment created a vacancy in the position of successor individual trustee for the CRT at issue under South Carolina law. S.C. Code Ann. Section 62-7-704(a)(6) ("A vacancy occurs in a trusteeship if . . . a guardian or conservator is appointed for an individual serving as trustee.") As reflected in his affidavit dated March 12, 2015, incorporated herein by reference (alternatively, "Delaney's Affidavit" or "Affidavit"), Delaney, exercising his powers as successor independent trustee of the CRT, appointed himself as successor individual trustee to fill the vacancy, a position he has now held since June of 2014.

²It should be noted that this is the second attempt by the Plaintiffs to cut short the removal process in their claims against Delaney, the first attempt having been made via Motion for Temporary Restraining Order/Injunction and Appointment of a Receiver/Trustee *Ad Litem*, dated July 17, 2014, which motion was denied by Judge Brooks Goldsmith via Order dated August 16, 2014. That this second attempt is styled as a "summary judgment motion" does not alter the fact that the Plaintiffs continue to try and avoid having to make the case for removal of Delaney for cause.

2. Margaret Bunn Lochmandy is not a trustee of the CRT as she did not accept such position.

Despite the Memorandum's assertion to the contrary, Plaintiff Lochmandy did not fill the vacant successor individual trustee position created by the appointment of Suddes, and she is not the current successor individual trustee.

Under S.C. Code Ann. Section 62-7-701, a person accepts a trustee position by "substantially complying with a method of acceptance provided in the terms of the trust". S.C. Code Ann. Section 62-7-701(a)(1). Although the Plaintiffs are correct that successor trustees "are not required to take any **formal** steps to accept their position" under the terms of the CRT, Memorandum, at 4 (emphasis supplied), the inquiry does not end there. As Section 62-7-701 goes on to establish, if the terms of the trust do not provide a formal method, a putative successor trustee can accept the position "by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship". S.C. Code Section 62-7-701(a)(2).

As reflected in Delaney's Affidavit, neither Plaintiff Lochmandy nor Kelly Kathleen Bunn³ accepted delivery of trust property or assets, exercised any powers or performed duties as successor individual trustee or otherwise manifested acceptance of the position in any fashion. Indeed, as is also reflected in Delaney's Affidavit, Plaintiff Lochmandy never even notified the CRT's investment advisor, Wells Fargo Advisors, of Marilyn Bunn's incapacity status and appointment of Suddes. Plaintiff Lochmandy also never requested the appropriate changes be made to the monthly accounting statements, which continue to reflect Marilyn Bunn as successor individual trustee.

To the extent Plaintiff Lochmandy asserts that she did take steps to accept the position, such is a question of fact precluding summary judgment for the Plaintiffs.

3. The role of successor individual trustee cannot be automatically imposed upon Plaintiff Lochmandy.

Plaintiff Lochmandy did not accept the position of successor individual trustee, and it could not be forced upon her by any "mandatory" language of the CRT.

³Kelly Kathleen Bunn is now deceased.

“As a general rule, a fiduciary relationship cannot be established by the unilateral action of one party.” *Regions Bank v. Schmauch*, 354 S.C. 648, 670-671, 582 S.E.2d 432, 444 (Ct.App. 2003). Thus, under South Carolina law, Plaintiff Lochmandy could not “automatically” become the successor individual trustee, a fiduciary position, without accepting the same. This is further borne out by the language of S.C. Code Section Ann. 62-7-701(b), which specifically states that a “trustee who has not yet accepted the trusteeship may reject the trusteeship”, belying the Plaintiffs’ argument that Plaintiff Lochmandy’s ascension to such position was automatic. Furthermore, as reflected in his Affidavit, it was only after Plaintiff Lochmandy failed to accept the position within a “reasonable time” – over eight months – Delaney appointed himself to the position of successor individual trustee. See S.C. Code Section Ann. 62-7-701 (“A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship”).⁴

4. The Memorandum is erroneous in its explication of the meaning of the term “vacancy”.

S.C. Code Ann. Section 62-7-704(a)(6) specifically states that a vacancy is created when “a guardian or conservator is appointed for an individual serving as trustee.”

However, in their Memorandum, the Plaintiffs cite Section 62-7-704(a) for the proposition that a named successor trustee must reject the position, resign, be disqualified or removed for a vacancy to occur. Memorandum, at 5. As reflected in subsection (a)(6), this is simply incorrect.

5. The Plaintiffs’ proposition that the successor independent trustee “stands in the shoes” of the corporate trustee for all purposes under the CRT is mere conjecture.

⁴Significantly, the Plaintiffs’ Memorandum quotes several passages from the CRT that begin with the words “shall act”. While the Plaintiffs emphasize the word “shall” in each passage (presumably to support their argument that the trustee position was conferred automatically), Delaney submits that the operative word in each such passage is instead “act” – something Plaintiff Lochmandy failed to do.

Although Delaney, as successor independent trustee, has the same duties and powers as the corporate trustee he replaced, nowhere in the language of the CRT is it stated that Delaney “stands in the shoes” of the corporate trustee, and the Plaintiffs cite no legal authority for such proposition.

In their Memorandum, the Plaintiffs make repeated reference to the notion that Delaney merely “stands in the shoes” of the original corporate trustee for the CRT; however, this notion is found nowhere in South Carolina case law nor statutory law. Baldly stating this assertion as a legal conclusion does not change its nature as unsupported opinion.

The simple fact that Delaney has many of the same powers and duties of the corporate trustee does not mean, by operation of law, that he is subject to the same removal provisions, or terms of succession, applicable to the corporate trustee. Moreover, the CRT is completely silent on the issue, despite the Plaintiffs’ suggestions to the contrary.

6. The language of the CRT is not ambiguous, and the issue of the Settlor’s intent is a question of fact.

The CRT is silent on the issue of removal of the successor independent trustee, and any question as to the Settlor’s original intent in such regard is a question of fact.

“The primary consideration in construing a trust is to discern the settlor’s intent.” *Bowles v. Bradley*, 319 S.C. 377, 461 S.E.2d 811 (1995). However, “when there is no defect on the face of a document but an uncertainty appears upon attempting to effectuate the document, then the document contains a latent ambiguity and parol evidence is admissible to determine the settlor’s intent”. *Id.* at 380.

In their Memorandum, the Plaintiffs make repeated reference to the settlor’s “intent” and claim to successfully discern the same from the face of the CRT with regard to replacement of Delaney as successor independent trustee; this is erroneous for several reasons. First, Delaney’s position is that the CRT language is not ambiguous, as it simply contains no provision for removal of the independent trustee similar to the one set out for the corporate trustee; accordingly, there is no need to determine the Settlor’s intent. Second, as reflected in his Affidavit, Delaney was personally chosen by Marilyn Bunn to serve as the successor independent trustee for the CRT and, moreover, she did not intend for him to be subject to the same removal provision applicable to the

(prior) corporate trustee. Third, Marilyn Bunn is not deceased; thus, ascertaining the Settlor's intent, to the extent such is necessary, could be effectuated by parol evidence in the form of her testimony (and, perhaps, that of other witnesses).

In any event, Marilyn Bunn's intent is another question of fact precluding summary judgment for the Plaintiffs.⁵

7. Any removal of the successor independent trustee is governed by and provided for in the South Carolina Trust Code.

In their Memorandum, the Plaintiffs presume that, because the CRT does not specifically indicate that Delaney's tenure is permanent or fails to set forth a methodology for removing Delaney as successor independent trustee, the independent trustee must therefore be subject to the same removal provisions set forth for the corporate trustee. In fact, Delaney is subject to removal pursuant to the South Carolina Trust Code, as are all trustees under South Carolina law. Indeed, the Plaintiffs themselves assert in their pleadings that Delaney is subject to removal by this Court for cause, breach of trust and breach of fiduciary duty.

8. Delaney is the current successor individual trustee.

The Plaintiffs alternatively argue that, even if Delaney does not stand in the shoes of the corporate trustee, then Plaintiff Lochmandy, as successor individual trustee, is empowered under the CRT to carry out the intentions of the Settlor, and in turn, remove Delaney. However, as reflected in his Affidavit, the current successor individual trustee is Delaney, not Plaintiff Lochmandy.

To the extent the Plaintiffs dispute this contention, such is a question of fact precluding summary judgment for the Plaintiffs.

⁵The Plaintiffs will likely point to Marilyn Bunn's adjudicated incapacity as a bar to the taking of her deposition in this case. However, it is undisputed that, well after the Gwinnett County Probate Court deemed her incapacitated, Marilyn Bunn signed forms to change the payee bank for her monthly Unitrust payments. *See* Affidavit of Denise Suddes, dated June 26, 2014.

9. Delaney has committed no waste of CRT assets, and was actively prevented by the Plaintiffs from replacing Wells Fargo as investment advisor.

Delaney's trustee fees, which have been paid for years without objection, are not "waste",⁶ and it is disingenuous, at the very least, for Plaintiffs to now complain of Wells Fargo's fees when they have flatly refused to assist Delaney in his attempts to terminate Wells Fargo as investment advisor for the CRT.

In furtherance of their ongoing efforts to cut short the process of removing Delaney as successor independent trustee, the Plaintiffs now argue that the Court's modification of the removal provisions in the CRT are appropriate because of waste allegedly committed by Delaney. In support of this position, the Plaintiffs cite S.C. Code Ann. Section 62-7-412 for the proposition that the Court is empowered to modify the trust because of circumstances unanticipated by the settlor. However, the fact that Delaney is the successor independent trustee is not an unanticipated circumstance, given that Marilyn Bunn personally chose him for the position. *See Delaney Affidavit*. Also, the fact that Delaney charges trustee fees is not an unanticipated circumstance, given that he has been receiving trustee fees for thirteen years with no complaint or objection from the Settlers or the beneficiaries. *Id.* Furthermore, as trustees are entitled to fees, and given that the Plaintiffs' proposed successor for Delaney will also charge trustee fees, such fees could hardly be considered "unanticipated".

The Plaintiffs' reliance on the case of *In re D.M.B.*, 979 A.2d 15 (D.C. 2009), a District of Columbia appellate case, is unavailing for several reasons. First, the holding in that case suggests that the court there imposed additional restraints on the trustee in that case because the trustee himself had drafted the trust providing for his trustee compensation; such is inapposite to the instant matter, as Delaney did not draft the Bunn CRT. Second, in approving the trust at issue in that case, the lower court in *D.M.B.* specifically added a provision requiring the trustee to seek and receive approval for all compensation; that is also not applicable here as there is no such provision in the CRT, nor any existing order providing for such. Also, unlike the trustee in *D.M.B.*, up until June of

⁶For that matter, the PIM fees charged by Wells Fargo – which have also been paid for years without complaint by the Plaintiffs – are not technically "waste" either. *See Delaney Affidavit*.

2014 Delaney received monthly trustee fees for thirteen years without any complaint or objection of the Settlor or beneficiaries.⁷

In its discussion of waste of trust assets, the Plaintiffs' Memorandum neglects the fact that any and every trustee other than Delaney is going to charge trustee fees. Although the Plaintiffs' stated choice of successor, Raymond James, states that its fees are a certain amount right now, that may change in the future. No one can guarantee what Raymond James' fees will be after it has served as trustee after a few years. Second, as reflected in Delaney's Affidavit, Raymond James (which will also be serving as investment advisor) will be taking their monies from the CRT in other ways, in the form of fees, commissions and the like.

Moreover, it is interesting that the Plaintiffs are now complaining about the fees charged by Wells Fargo, given that Delaney sought the Plaintiffs' cooperation in removing Wells Fargo several months ago, and the Plaintiffs refused to assist with – or even approve – such removal. *See* Delaney Affidavit.

Lastly, Delaney submits that the question of what constitutes “waste” is a question of fact precluding summary judgment for the Plaintiffs.

CONCLUSION

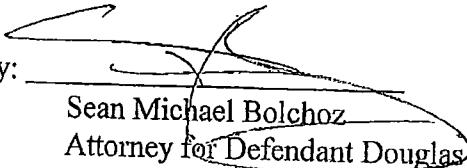
WHEREFORE, in light of the foregoing, Delaney believes the Plaintiffs' Motion for Summary Judgment should be **DENIED**.

(Signature on next page following.)

⁷Delaney has not received his monthly trustee fees since June of 2014 (except for one month's payment in October of 2014), because Wells Fargo has refused to make these payments. According to the Plaintiffs, they had nothing to do with Wells Fargo's actions in this regard.

Respectfully submitted,

BOLCHOZ LAW FIRM, PA

By: 

Sean Michael Bolchoz
Attorney for Defendant Douglas S. Delaney
6 Buckingham Plantation Drive, Suite B
Post Office Box 828
Bluffton, South Carolina 29910
(843) 836-3033

Bluffton, South Carolina
March 16, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
IN RE:)
JOHN M. AND MARILYN W. BUNN)
CHARITABLE REMAINDER TRUST)
UNDER AGREEMENT DATED)
DECEMBER 16, 1993)
_____)

MARILYN W. BUNN, a person *non*
compos mentis by and through her
guardian, DENISE SUDDER, and
MARGARET BUNN LOCHMANDY,

Petitioners,

v.)

DOUGLAS S. DELANEY, as Trustee)
and in his individual capacity, and ALAN)
WILSON, THE SOUTH CAROLINA)
ATTORNEY GENERAL,)
_____)

Respondents.)

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-07-1732

AFFIDAVIT OF DOUGLAS S. DELANEY

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Personally appeared before me, Douglas S. Delaney, who, first being duly sworn, states and affirms as follows:

1. I am the current successor independent trustee and successor individual trustee of the John M. and Marilyn W. Bunn Charitable Remainder Trust, Under Agreement Dated December 16, 1993, (the "CRT"); I succeeded the former corporate trustee, Security and Investment Management and Trust Co.
2. I have served as successor independent trustee without complaint (until I was sued) since March 6, 2001.
3. In 2001, settlor Marilyn Bunn personally chose me to serve as the successor independent trustee for the CRT, to replace the then existing corporate trustee.

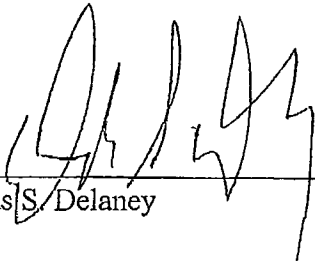
4. I am informed and believe that it was Marilyn Bunn's intent that I serve as an independent trustee, and that I was not to be subject to removal except for cause.
5. I am informed and believe that it was not Marilyn Bunn's intent that I be subject to the same removal provisions, or terms of succession, that were applicable to the previous corporate trustee under the terms of the CRT.
6. Nothing in the CRT states that the terms regarding removal and succession of the corporate trustee apply to the successor independent trustee.
7. In late 2013 or early 2014, I learned that Settlor and then-successor individual trustee Marilyn Bunn had been declared incapacitated by a court in Georgia, and that Denise Suddes had been appointed her guardian.
8. At no time following the appointment of Suddes did Plaintiff Lochmandy or Kelly Lochmandy notify me that they were accepting the position of successor individual trustee.
9. At no time following the appointment of Suddes did Plaintiff Lochmandy or Kelly Bunn accept the delivery of any CRT assets, or take control of the CRT assets.
10. I am informed and believe that, at no time following the appointment of Suddes, did Plaintiff Lochmandy or Kelly Bunn exercise any powers or perform any duties as successor individual trustee.
11. In June of 2014, I learned that Marilyn Bunn, despite her adjudication of incapacity, had prepared and signed paperwork to change the payee bank for her monthly Unitrust payment, and delivered the same to Wells Fargo.
12. I inquired of Wells Fargo as to how a payee change was accomplished, given Bunn's incapacity status and subsequently learned that Wells Fargo did not know of Bunn's incapacity status.
13. I am informed and believe that, at no time following the appointment of Suddes, did Plaintiff Lochmandy or Kelly Bunn notify Wells Fargo of Bunn's incapacity status or the appointment of Suddes.

14. At no time following the appointment of Suddes, did Plaintiff Lochmandy or Kelly Bunn request of Wells Fargo that the monthly CRT statements be modified to reflect that Marilyn Bunn is no longer a trustee.
15. I have requested that Wells Fargo make this change on the bank statements on several occasions; Wells Fargo has refused to make this change, and the monthly CRT statements continue to reflect that Marilyn Bunn is a trustee of the Trust.
16. On or about June 17, 2014, given the vacancy in the position of successor individual trustee created by the appointment of Suddes, and given Plaintiff Lochmandy and Kelly Bunn's rejection of the position, pursuant to my powers under the CRT, I executed an Appointment of Successor Individual Trustee, dated June 17, 2014, appointing myself as successor individual trustee; a copy of said appointment is attached to this affidavit.
17. Last September, given Wells Fargo's commandeering of the CRT and refusal to follow my directives,¹ among other reasons, I determined that Wells Fargo's services as investment advisor for the CRT should be terminated, and prepared the paperwork to transfer the CRT assets to a new investment advisor.
18. When the Plaintiffs were informed of the impending change in advisors, despite their prior complaints about Wells Fargo, Plaintiffs' counsel informed my attorney via email of September 23, 2014, that the Plaintiffs "do not consent to moving the CRT account" from Wells Fargo.
19. During my entire tenure as successor independent trustee, and up until July of 2014, I have received trustee fees on a monthly basis.
20. Although the Plaintiffs now allege that my trustee compensation and Wells Fargo PIM fees are "waste", in over thirteen years serving as successor independent trustee, I never received any objections or complaints regarding either my trustee fees or the Wells Fargo PIM fees (which do not technically constitute "waste", in any event).

¹These facts served as the grounds for my Motion for Interim Relief, dated October 23, 2014.

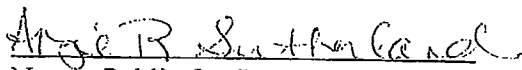
21. I have reviewed the affidavit of William L. Slaughter, Jr. , dated February 2, 2015, regarding the Plaintiffs' choice of Raymond James for my replacement *and* as investment advisor.
22. I am informed and believe that Slaughter and Raymond James are emphasizing a lower monthly trustee fee to distract from the likelihood that, in its role as investment advisor, Raymond James plans to make significantly more money on the investment portfolio through various hidden fees (e.g., sales or investment loads, ten (10%) percent annuity commissions, 12(b) fees, mutual funds, and the like).
23. Based upon my experience, I am informed and believe that Raymond James' first purchase as investment advisor will likely be an annuity, for which Raymond James will take a ten percent of the current value of the CRT as its first commission.
24. Based upon my experience, I am informed and believe that "waste" encompasses much more than merely fees charged to the CRT; it also includes analyses of net returns, capital appreciation, income generation and investment costs, in addition to trustee commissions.
25. The CRT has generally maintained principal, notwithstanding an annual 10.875% payout to Settlor Marilyn Bunn, for the past fourteen years.

FURTHER SAYETH AFFIANT NOT.



Douglas S. Delaney

Sworn to before me this
12 day of March, 2015.



Notary Public for South Carolina

My Commission Expires: _____
ANGIE R. SUTHERLAND
Notary Public, State of South Carolina
My Commission Expires 10/31/2023

JOHN M. AND MARILYN W. BUNN
CHARITABLE REMAINDER TRUST
DATED DECEMBER 16, 1993
APPOINTMENT OF SUCCESSOR INDIVIDUAL TRUSTEE

WHEREAS, on March 16, 2001, DOUGLAS S. DELANEY was appointed successor independent trustee to the corporate trustee of the JOHN M. AND MARILYN W. BUNN CHARITABLE REMAINDER TRUST DATED DECEMBER 16, 1993 ("TRUST") by MARILYN W. BUNN in accordance with paragraph 2 of Section 2 of Article III (page 8) of the TRUST; and

WHEREAS, pursuant to paragraph 2 of Section 4 of Article III (page 9) of the TRUST, every successor trustee, both individual and independent, shall have all the powers given the originally named trustees and specific powers granted to the corporate trustee extended to the successor independent trustee as of March 16, 2001; and

WHEREAS, on September 3, 2013, upon petition by MARGARET MARY BUNN LOCHMANDY, MARILYN W. BUNN was determined to lack sufficient capacity as a result of the onset of Alzheimer's disease, and was found unable to make responsible decisions concerning her health, safety or management of her property by the Probate Court of Gwinnett County (Estate No. 13-C-000291)("ORDER"), and

WHEREAS, as a result of the ORDER, DENISE SUDDER ("GUARDIAN") was appointed permanent guardianship over MARILYN W. BUNN and MARGARET MARY BUNN LOCHMANDY and KELLY KATHLEEN BUNN were to become the first successor individual trustees of the TRUST with the GUARDIAN to serve as second successor individual trustee of the TRUST; and

WHEREAS, after the death of KELLY KATHLEEN BUNN, upon information and belief in early 2014, MARGARET MARY BUNN LOCHMANDY became the sole successor individual trustee under Section 2 of Article III (page 8) of the TRUST and has been, since early 2013, represented by the same separate legal counsel as has the GUARDIAN during the same period; and

WHEREAS, upon information and belief, WELLS FARGO ADVISORS, LLC ("TRUST Investment Advisor") has never been provided by MARGARET MARY BUNN LOCHMANDY, the GUARDIAN, or their legal counsel a copy or notice of the ORDER or a copy of the death certificate for KELLY KATHLEEN BUNN or notice of her death, or make any meaningful effort to acceptance the position of first successor individual trustee (MARGARET MARY BUNN LOCHMANDY) or second successor individual trustee (GUARDIAN); and

WHEREAS, upon information and belief, both MARGARET MARY BUNN LOCHMANDY and the GUARDIAN have failed to take the most minimal steps in either accepting the roles as successor individual trustee or to apparently instruct MARILYN W. BUNN that either are assisting her with regard to the TRUST; and

WHEREAS, pursuant to Section 2 of Article III of the TRUST, the successor independent trustee, acting through the powers given under Section 4 to the corporate trustee, believes that, in order to address current trust administration difficulties caused by the refusal to act for a period of over nine (9) months or 270 days, it is in the best interests of the TRUST and its beneficiary, MARILYN W. BUNN, to immediately appoint a new successor individual trustee as authorized under the terms of the TRUST to work jointly with the successor independent trustee; and

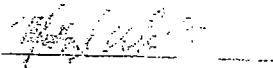
NOW, THEREFORE, IT IS AGREED:

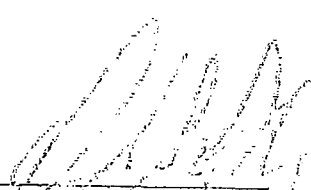
APPOINTMENT OF SUCCESSOR INDIVIDUAL TRUSTEE.

- A. Pursuant to the last sentence of the first paragraph of Section 2 of Article III of the TRUST, and due to the long term refusal to act by both successor individual trustees, MARGARET MARY BUNN LOCHMANDY and the GUARDIAN, for a period in excess 270 days, and the implications of said failure to act, the successor independent trustee is hereby empowered and does in fact appoint a successor individual trustee.
- B. In order to preserve the effective and proper administration of the TRUST and, pursuant to TRUST terms set forth above, the successor independent trustee hereby appoints DOUGLAS S. DELANEY as interim successor individual trustee until such time as the TRUST Investment Accounts are again effectively invested, secured and, if necessary, transferred to a new TRUST Investment Advisor.
- C. As memorialized by his signature below, DOUGLAS S. DELANEY does hereby accept the appointment as successor individual trustee until such time as arrangements are necessary to appoint another successor individual trustee.
- D. The recitals set forth above are incorporated herein as if repeated verbatim.

IN WITNESS WHEREOF, the successor independent trustee acting through its powers as corporate trustee of the TRUST executed this appointment of successor individual trustee.

WITNESS:




DOUGLAS S. DELANEY
SUCCESSOR INDEPENDENT
TRUSTEE/ INTERIM SUCCESSOR
INDIVIDUAL TRUSTEE

WHEREAS, without the knowledge of the successor independent trustee, upon information and belief, MARILYN W. BUNN has made changes to TRUST payments since the ORDER was issued; and

WHEREAS, as the propriety of changes to matters affecting distributions must be overseen by the successor independent trustee, MARILYN W. BUNN has taken actions concerning the TRUST in violation of Section 1(c) of Article III (page 8) of the TRUST; and

WHEREAS, the successor independent trustee became aware, on June 11, 2014, that MARILYN W. BUNN personally and unilaterally changed payee bank accounts of the monthly TRUST payment, in the amount of \$7,992.77, as a result of an alert notification provided to the successor independent trustee by the TRUST Investment Advisor through regular mail; and

WHEREAS, due to the incapacity of MARILYN W. BUNN, the successor independent trustee was concerned about the change in payee banks (as the recipient could not be confirmed by the alert notification); and,

WHEREAS, although indicating by email that MARILYN W. BUNN authorized the change, the TRUST Investment Advisor refuses, despite repeated requests by the successor independent trustee to relinquish custody of a copy of that certain Wells Fargo letter of authorization ("LOA") providing detail of the change request in contravention of the clear right of the successor independent trustee under Section 1(a) (page 6) of Article III of the TRUST to retain "custody of the records of the trust"; and

WHEREAS, as of the execution of this instrument, the TRUST Investment Advisor has failed to apprise the successor independent trustee of the status of the Trust Investment Accounts and the monthly payment only providing the statement that at some indefinite date their "legal department" will be in contact with the successor independent trustee; and

WHEREAS, the sole successor individual trustee, MARGARET MARY BUNN LOCHMANDY, and the GUARDIAN have, contemporaneously, and in violation of their TRUST duties, with wanton disregard, have refused to act and, in particular, (1) failed to accept their trusteeship (successively, as first successor and second successor individual trustee); (2) failed to properly inform the TRUST Investment Advisor for a period of time exceeding nine (9) months or 270 days since the appointment of the GUARDIAN; and (3) failed to properly inform the TRUST Investment Advisor of the death of the first successor individual co-trustee ("refusal to act"); and

WHEREAS, as a direct result of the refusal to act, the administration, management and investment of the TRUST Investment Accounts are in an emergency management situation that demands immediate action; and



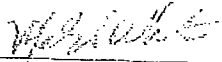
STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

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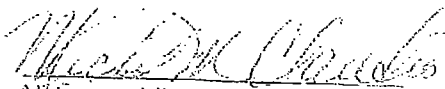
PROBATE

Personally appeared the undersigned witness and made oath the s/he saw the within named SUCCESSOR INDEPENDENT TRUSTEE seal and as his/her act and deed deliver the within APPOINTMENT OF SUCCESSOR INDIVIDUAL TRUSTEE and that deponent with the other witness whose name is subscribed above witnessed the execution thereof.


WITNESS

Sworn to before me this

17 day of June, 2014


Notary public of South Carolina
My Commission expires: 9/14/2020

STATE OF SOUTH CAROLINA

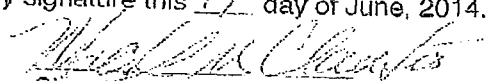
COUNTY OF BEAUFORT

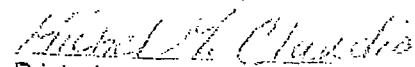
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ACKNOWLEDGE

I, a NOTARY PUBLIC, within and for the State and County aforesaid do hereby certify that the foregoing APPOINTMENT OF SUCCESSOR INDIVIDUAL TRUSTEE was this day produced to me in the above state and county and was executed and acknowledged by DOUGLAS S. DELANEY, as SUCCESSOR INDEPENDENT TRUSTEE and SUCCESSOR INDIVIDUAL TRUSTEE, to be his free and voluntary act and deed.

Witness my signature this 17 day of June, 2014.


Signature of Notary Public


Printed name of Notary Public

Notary Public for South Carolina

My Commission expires: 2-14-2020



STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
IN THE MATTER OF:)
JOHN M. AND MARILYN W. BUNN)
CHARITABLE REMAINDER TRUST)
)

MARILYN W. BUNN, a person *non*
compos mentis by and through her
guardian, DENISE SUDDER, and
MARGARET BUNN LOCHMANDY,

Plaintiffs,

v.

DOUGLAS S. DELANEY, as Trustee
and in his individual capacity, ALAN
WILSON, THE SOUTH CAROLINA
ATTORNEY GENERAL, SACRED
HEART-GRIFFIN HIGH SCHOOL,
ST. JOSEPH'S HOME, QUINCY
UNIVERSITY, NOTRE DAME, THE
LAWRENCEVILLE SCHOOL, ALL
SAINTS CATHOLIC CHURCH, AND
HABITAT FOR HUMANITY c/o ALL
SAINTS CATHOLIC CHURCH,

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-07-1732

**NOTICE OF MOTION AND MOTION
TO RECONSIDER, ALTER AND/OR
AMEND JUDGMENT**

2015 MAY 12 PM 12:35
CLERK OF COURT
JULIA A. BROWN

TO: THE ABOVE-NAMED PLAINTIFFS, AND ATTORNEYS:

PLEASE TAKE NOTICE THAT Defendant Douglas S. Delaney (hereinafter "Delaney"), by and through his undersigned counsel, will move before the Beaufort County Court of Common Pleas, to be heard on the 10th day after service hereof, or as soon thereafter as counsel may be heard, for the Court's reconsideration, alteration and/or amendment, under Rule 59, SCRCP, of the Order Granting Plaintiff's Motion for Partial Summary Judgment, dated April 28, 2015, and issued in the

within action by The Honorable Marvin H. Dukes, III, Beaufort County Master in Equity (the "Order"), and as grounds therefor, would respectfully set forth as follows:

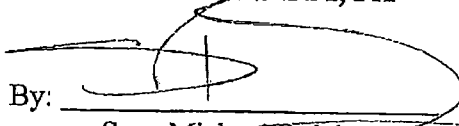
1. Counsel for Delaney was served a copy of the filed Order by the Plaintiffs, and received the same via regular mail on May 4, 2015, 2015.
2. The Order is in error in that, in reaching its holding, it ignores numerous questions of material fact, which should preclude a grant of summary judgment to the Plaintiffs.
3. The Order is in error in that, in reaching its holding, it ignores the vacancy created under South Carolina law when a Georgia court appointed a guardian *ad litem* for the Settlor of the trust at issue ("the Trust"), Marilyn Bunn; specifically, the Order ignores the express language of S.C. Code Ann. Section 62-7-704(a)(6) in failing to hold that the appointment of a guardian for the Settlor created a vacancy in the successor individual trusteeship.
4. The Order is in error in holding that the position of successor individual trustee, a fiduciary position with attendant duties and potential liabilities, may be automatically imposed upon a person and, in fact, was imposed upon Plaintiff Margaret Bunn Lochmandy ("Lochmandy") and Kelly Bunn.
5. The Order is in error in that, in reaching its holding, it ignores S.C. Code Ann. Section 62-7-701, which specifically contemplates that a putative trustee can and may reject a trusteeship.
6. The Order is in error in that it improperly burdens Delaney, the non-movant, with an affirmative duty to present evidence of the rejection by Plaintiff Lochmandy and Kelly Bunn of the successor individual trusteeship.
7. The Order is in error in that it ignores evidence presented by Delaney that both Plaintiff Lochmandy and Kelly Bunn failed to accept the successor individual trusteeship, and/or rejected the same, once the guardian *ad litem* was appointed for the Settlor of the Trust.

8. The Order is in error in failing to recognize that whether Plaintiff Lochmandy and Kelly Bunn rejected the successor individual trusteeship was and is a question of material fact.
9. The Order is in error in that, in reaching its holding, it ignores South Carolina law regarding fiduciary positions; specifically, that a fiduciary obligation cannot be imposed upon someone.
10. The Order is in error in that it ignores evidence submitted by Delaney regarding the intent of the Settlor, Marilyn Bunn, to the effect that Delaney, as successor independent trustee, was not to be subject to the same removal terms applicable to the corporate trustee.
11. The Order is in error in that, to reach its holding, it attempts to interpret the Trust language to glean the Settlor's "intent", when the Trust language is unambiguous and contains no express provision for the removal of the successor independent trustee by the Settlor or the successor individual trustees.
12. The Order is in error in concluding that, because the Trust contains no express provision for removing the successor independent trustee, the Settlor's intent therefore must have been for the corporate trustee removal provisions to apply to the successor independent trustee.
13. The Order is in error in that it reads into the Trust language several terms that are not expressly stated therein.
14. The Order is in error in that it reaches conclusions regarding the Settlor's "intent" from the unambiguous Trust language, while ignoring undisputed evidence that the Settlor took actions indicating that she is not incapacitated, despite the Georgia order, and is therefore capable of giving testimony regarding her actual intent.

WHEREFORE, in light of the foregoing, Defendant Douglas S. Delaney prays that this Court reconsider, alter and/or amend its Order dated April 28, 2015, taking into account the foregoing, and reverse its decision to grant partial summary judgment to the Plaintiffs, and award Delaney any such other and further relief as this Court deems just and proper.

Respectfully submitted,

BOLCHOZ LAW FIRM, PA

By: 

Sean Michael Bolchoz
6 Buckingham Plantation Drive, Suite B
Post Office Box 828
Bluffton, South Carolina 29910
(843) 836-3033
Attorney for Defendant Douglas S. Delaney

Bluffton, South Carolina

May 11, 2015

\\Seanbolchoz-pc\ND to G Clients\Delaney - 2716\John & Marilyn W. Bunn CRT - 11\motion - to reconsider - rev.wpd

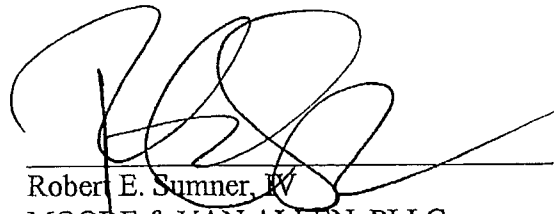
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NUMBER 2014-CP-07-1732
IN THE MATTER OF:	)	
JOHN M. AND MARILYN W. BUNN	)	
CHARITABLE REMAINDER TRUST	)	
_____	)	
MARILYN W. BUNN, A PERSON <i>NON</i>	)	
<i>COMPOS MENTIS</i> BY AND THROUGH	)	
HER GUARDIAN, DENISE SUDDER,	)	
AND MARGARET BUNN LOCHMANDY,	)	
	)	MEMORANDUM IN OPPOSITION TO
PLAINTIFFS,	)	DEFENDANT DELANEY'S MOTION
	)	TO RECONSIDER, ALTER, OR
v.	)	AMEND JUDGMENT
	)	
DOUGLAS S. DELANEY, AS TRUSTEE	)	
AND IN HIS INDIVIDUAL CAPACITY,	)	
ALAN WILSON, THE SOUTH CAROLINA	)	
ATTORNEY GENERAL, SACRED HEART-	)	
GRIFFIN HIGH SCHOOL, ST. JOSEPH'S	)	
HOME, QUINCY UNIVERSITY, NOTRE	)	
DAME, THE LAWRENCEVILLE SCHOOL,	)	
ALL SAINTS CATHOLIC CHURCH, AND	)	
HABITAT FOR HUMANITY c/o ALL	)	
SAINTS CATHOLIC CHURCH,	)	
	)	
DEFENDANTS.	)	
_____	)	_____

Now come Plaintiffs, Marilyn W. Bunn, a person non compos mentis by and through her Guardian, Denise Suddes and Margaret Bunn Lochmandy, by and through counsel, pursuant to Rule 59(e) SCRCF, and hereby oppose Defendant Douglas S. Delaney's Motion to Reconsider, Alter and/or Amend Judgment (the "Motion"). Plaintiffs oppose the Motion because the issues raised in the Motion were properly ruled upon in the Court's Order Granting Plaintiff's Motion for Partial Summary Judgment.

“The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to ‘reconsider matters properly encompassed in a decision on the merits.’” Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505, 510 (2006) (citing Arnold v. State, 309 S.C. 157, 172-173, 420 SE 2d 834 (1992)). “A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.” Hickman v. Hickman, 301 S.C. 455, 456, 392 SE 2d 481 (citing Natural Resources Defense Council v. U.S.E.P.A., 705 F. Supp. 698, 701 (D.D.C. 1989), vacated on other grounds, 707 F. Supp. 3 (D.D.C. 1989) (“Rule 59(e) motions are not vehicles for bringing before the court theories or arguments that were not advanced earlier.”))

On April 28, 2015, the Court granted partial summary judgment to Plaintiffs finding that Margaret Lochmandy was the successor individual trustee, and that both Lochmandy and the surviving Settlor, by and through her guardian, were authorized by the Trust document and South Carolina law to remove the successor independent trustee, Douglas S. Delaney. Delaney served his Motion on May 11, 2015. The issues raised in the motion were thoroughly briefed and argued by the parties, and subsequently ruled on and properly disposed of in the Order granting partial summary judgment. Plaintiffs incorporate the arguments from the pleadings, briefs, and those presented at the hearing by reference pursuant to Rule 10(c) SCRPC.

For the reasons contained in Plaintiffs’ pleadings, briefing, arguments presented at the hearing, and the Court’s Order, Plaintiffs respectfully request that the Court deny Delaney’s Motion.



Robert E. Sumner, IV
MOORE & VAN ALLEN, PLLC
78 Wentworth Street
Charleston, South Carolina 29401
(843) 579-7000
robertsumner@mvalaw.com

This 27th day of May, 2015.

ATTORNEYS FOR PLAINTIFFS
MARILYN W. BUNN AND
MARGARET B. LOCHMANDY

IN THE COURT OF COMMON PLEAS

CASE NO. 2013-CP-07-2728

MARILYN W. BUNN IRREVOCABLE
TRUST under agreement dated April 9,
2001

Plaintiffs,

AFFIDAVIT OF DENISE SUDDER

RAY WARCO and CAROLYN MYERS,

AND

Defendants.

CHARLESTON\575404v2

I am over eighteen (18) years old. I am competent to give this affidavit, and it is based upon my own personal knowledge.

2. I am a resident of Fulton County, Georgia.

3. On September 3, 2013, Judge Christopher A. Ballar of the Gwinnett County Probate Court ordered and appointed me the Guardian for Marilyn Bunn (the "Order"). A copy of the filed Order is attached hereto as Exhibit A.

4. The Order empowered me to make, modify or terminate contracts. The Order also specifically empowered me to initiate or respond to litigation, as necessary, to modify the Marilyn W. Bunn Irrevocable Trust u/a/d 04/09/01 (the "Irrevocable Trust") and the John M. Bunn & Marilyn W. Bunn Charitable Remainder Trust u/a/d 12/16/93 (the "CRT") (hereinafter referred to collectively as, the "Trusts"), remove and replace current trustees of the Trusts and pursue damages arising out of the conduct of one or more of the trustees of the Trusts. Exhibit A, p. 3.

5. In May of 2014, the family of Marilyn Bunn approached me because it became necessary for Marilyn Bunn to change the bank accounts into which monthly disbursements were made by the CRT from First Federal to Bank of America. The family requested that I sign the change of bank account forms to effect this change.

6. I considered the request, but was unsure that the Order gave me the power to sign change of bank account forms. I informed the family that I preferred not to sign the forms as requested because I was uncertain as to my authority to do so. Additionally, I preferred not to sign the forms at that time because I was concerned that executing the forms would lead to litigation involving the CRT, Marilyn Bunn, and Doug Delaney, who is a co-trustee of the CRT.

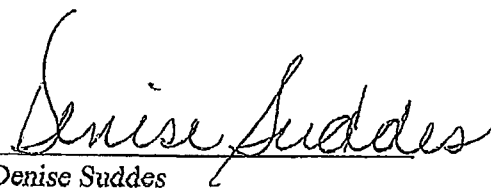
7. I understand that after I expressed my preference not to sign the forms Marilyn Bunn signed the forms and the forms were delivered to Wells Fargo, who manages the assets of the CRT.

8. In June of 2014, I was contacted by counsel for the Bunn family, who explained that the Order authorized me to sign the change of bank account forms and requested that I sign and submit them to Wachovia to remove any questions or concerns regarding the capacity of Marilyn Bunn to make the requested change.

9. On June 20, 2014, after my concerns about my authority to execute the forms and risk of litigation involving the CRT had been alleviated, I executed the change of bank account forms on behalf of Marilyn Bunn. Copies of the executed forms are attached hereto as Exhibit B. I mailed the originals to Robert E. Sumner, IV, Esquire, counsel for Marilyn W. Bunn, Margaret Mary Bunn Lochmandy, Kelly Kathleen Bunn, Regan Ann Lochmandy, Abigail Elizabeth Lochmandy, and the unborn issue of Marilyn W. Bunn, and I understand that the change of bank account forms have been delivered to Wells Fargo.

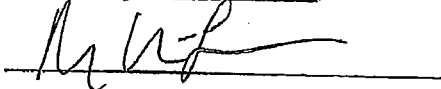
Further the Affiant sayeth naught.

This, the ____ day of June, 2014.


Denise Suddes
Guardian for Marilyn W. Bunn

SWORN to before me this 26

day of June, 2014



Notary Public of Georgia

My commission expires: 5-12-2015



REDACTED

06/20/2014 PRI 9:20 FAX 6783099004 Slutsky Wolfe and Bailey

843-579-8743 0002/002

Bank One Investment Management Group
AUTOMATED CLEARING HOUSE (ACH)
AUTHORIZATION AGREEMENT

Depository Information	
Name of Depository: [REDACTED]	Branch: 100 West 33rd St.
City: New York	State: NY Zip: 10001
Routing Number: [REDACTED]	
Account Number: [REDACTED]	
Check One: ☒ Checking ☐ Savings	(Please attach a voided check [REDACTED])
Authorization	
I hereby authorize Bank One, Michigan, N.A. ("Bank One") to initiate credit entries for retirement benefits to my account indicated above at the depository financial institution named above ("Depository") and to credit the same to such account. I acknowledge that the origination of ACH transactions to my account must comply with the provisions of U.S. law and the NACHA rules.	
I also authorize Bank One to charge the above account, or any other account in my name, for any payment made after my death or otherwise in error, and agree to refund the payment to Bank One. I agree for myself, my heirs, and the representatives of my estate to indemnify Bank One for any loss resulting from Bank One's participation in this agreement.	
This authorization is to remain in full force and effect until Bank One has received written notification from me of its termination in such time and in such manner as to afford Bank One and Depository a reasonable opportunity to act on it.	
Name: Marilyn W. Bunn	Social Security Number: [REDACTED]
* Signature: <u>Marilyn W. Bunn</u>	
Address: [REDACTED]	
City: [REDACTED]	State: [REDACTED] Zip: [REDACTED]
Name of Retirement Plan: [REDACTED]	

* By: Denise Suddes pursuant to FINAL order of the Probate Court of Gwinnett County, Georgia Under Case No. 13-C-000291, dated September 5, 2013

REDACTED

06/20/2014 FRI 9:20 FAX 6783099004 Sluteky Wolfe and Bailey

001/002

ACH Authorization Agreement

Sub Firm #	BR Code	FA Code	Account Number

(Office Use Only)

This will serve as authorization to participate in the Automated Clearing House (ACH) program to transfer funds between the designated bank account and your brokerage account of Wells Fargo Advisors, LLC ("WFA").

BROKERAGE ACCOUNT INFORMATION

Account Title _____

Account Title (continued) _____

BANK ACCOUNT INFORMATION

☒ New ☐ Update (We authorize WFA to update existing ACH(S) ☐ We authorize WFA to cancel existing ACH(S))

*Verbal Client authorization is permissible to update or cancel ACH transfer(s) to a bank account(s).

Name on Bank Account _____

Name on Bank Account (continued) _____

Bank Name _____ City New York State NY ZIP Code 10001

Routing _____ Account Number _____ Type ☒ Checking ☐ Savings

PERIODIC TRANSFERS

Deposits to Bank from Brokerage:

Amount \$ 7,992.77 Start Date 03/26/2014 End Date (Optional) _____ Frequency Monthly

Withdrawals from Bank to Brokerage:

Amount \$ _____ Start Date _____ End Date (Optional) _____ Frequency _____

Variable Transfer Distributions from Brokerage Account to Bank Account

☐ FC-BAL Free Credit Balance	☐ DIV Dividends	☐ INT Interest	☐ CAP Capital Gains Distribution	☐ Other Cash in lieu, optional dividend, substitute payments
☐ MM-BAL MM Fund Balance	☐ ROC Return of Capital	☐ RCP Return of Principal	☐ LJO Liquidation	
☐ PDST Partnership Dist	☐ DDIV Dividends from Securities held outside of Plan	☐ MAT Maturities	☐ PRIN Principal	

Start Date _____ End Date (Optional) _____

Frequency Options:

☐ Daily ☐ Weekly ☐ Semi-Monthly ☐ Monthly on the Last Business Day ☐ Quarterly ☐ Annually

☐ Semi-Weekly (variable only) ☐ Bi-weekly ☐ Monthly ☐ Bi-Monthly ☐ Semi-Annually

The combination of Daily + FC-BAL or MM-BAL is not permitted.

ACH on Demand

☒ We authorize WFA to transfer funds upon Client request.

Permissible transactions: ☐ Deposit to bank from brokerage ☐ Withdrawal from bank to brokerage

DOCUMENTATION OF CLIENT(S) VERBAL INSTRUCTIONS

Name of Authorized Account Holder	Account Holder(s) personally known to me or	Account Holder(s) identified by two pieces of identifying information (e.g. SSN, DOB, recent account activity, home phone number)
Marilyn W. Bunn	☐	☐ 1. _____ 2. _____
	☐	☐ 1. _____ 2. _____
	☐	☐ 1. _____ 2. _____

SIGNATURES: ALL ACCOUNT OWNERS MUST SIGN

If the registrations to the bank account and the brokerage account are not the same, signatures of all account holders and verification of those signatures are required before a withdrawal from the bank account can be initiated on the brokerage account.

DO NOT SIGN BELOW UNLESS YOU HAVE READ AND UNDERSTAND ALL TERMS AND CONDITIONS ON PAGE TWO OF THE DOCUMENT

Signature 1 *Marilyn W. Bunn* Print Name Marilyn W. Bunn Date 6-20-14

Signature 2 _____ Print Name _____ Date _____

Signature 3 _____ Print Name _____ Date _____

ASSOCIATE AND SUPERVISORY SIGNATURES

The undersigned certifies that the account holder(s) authorized the ACH transfers as described in this form. The undersigned further certifies that all handwritten portions of this document were filled in before account holder(s) signature(s) and that this document was not altered after being signed by account holder(s). If the account holder(s) verbally authorized an update or cancellation of ACH transfer to a bank account, their identity was verified by one of the methods documented above.

Associate's Signature _____ Print Associate's Name _____ Date _____

Qualified Supervisor's Signature _____ Print Qualified Supervisor's Name _____ Date _____

Wells Fargo Advisors, LLC

605024 (REV 07-03/13)

Page 1 of 2

★ By: Denise Suddes pursuant to FINAL order of The Probate Court of Gwinnett County, Georgia Under Case No. 13-C-000291, dated September 5, 2013.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
IN RE:)
JOHN M. AND MARILYN W. BUNN)
CHARITABLE REMAINDER TRUST)
UNDER AGREEMENT DATED)
DECEMBER 16, 1993)
_____)

MARILYN W. BUNN, a person *non*)
compos mentis by and through her)
guardian, DENISE SUDDER, and)
MARGARET BUNN LOCHMANDY,)
)
Petitioners,)

v.)

DOUGLAS S. DELANEY, as Trustee)
and in his individual capacity, and ALAN)
WILSON, THE SOUTH CAROLINA)
ATTORNEY GENERAL,)
)
Respondents.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO. 2014-CP-07-1732

AFFIDAVIT OF DOUGLAS S. DELANEY

Personally appeared before me, Douglas S. Delaney, who, first being duly sworn, states and affirms as follows:

1. I am the *successor independent trustee* of the John M. and Marilyn W. Bunn Charitable Remainder Trust, Under Agreement Dated December 16, 1993, (the "Bunn CRT"); I succeeded the former corporate trustee, Security and Investment Management and Trust Co.
2. Petitioner Marilyn Bunn, Settlor of the Bunn CRT, also serves, or served, as the *successor individual trustee*; while this position is distinct from my position as successor independent trustee, the successor individual trustee serves with me as co-trustee of the Bunn CRT.

3. I have served as successor independent trustee without complaint from the Settlor or any of the beneficiaries since March 6, 2001.
4. The Bunn CRT assets are in securities, maintained by the Bunn CRT's current financial advisor, Wells Fargo Advisors.
5. The Bunn CRT has performed well over the past 13 years; as reflected by the latest quarterly portfolio review, for the period ending June 30, 2014,¹ the CRT's net time-weighted return for the past year is 12.33%. The CRT has generally maintained a consistent principal value, notwithstanding annual payments of 10.87% to the Settlor, Marilyn Bunn, every year since the Trust's inception.
6. There is another action currently pending in the Beaufort County Court of Common Pleas concerning the Marilyn W. Bunn Irrevocable Trust, UAD April 9, 2001 (the "Irrevocable Trust"),² which involves many of the same parties, including myself (as co-trustee of the Irrevocable Trust), the Petitioners herein, Marilyn Bunn, Denise Suddes and Margaret Mary Bunn Lochmandy, as well as their counsel Robert Sumner (the "Irrevocable Trust Case").
7. During the course of the Irrevocable Trust Case, I was informed that the Settlor of both the Irrevocable Trust and the Bunn CRT, Marilyn Bunn, had apparently been diagnosed with dementia and declared by a Georgia County Probate Court to be incapacitated and/or unable to make decisions concerning management of her property (the "Georgia Order"); I believe the Georgia Order made specific reference to both the Irrevocable Trust and the Bunn CRT.
8. The Georgia Order apparently appointed Suddes as guardian for Marilyn Bunn.
9. Under the terms of the Bunn CRT, upon Marilyn Bunn's incapacity, Lochmandy, Marilyn's daughter, is entitled to succeed Marilyn Bunn as successor individual trustee and my co-trustee; however, this is a fiduciary position, and Lochmandy must

¹Copies of these reviews have been regularly sent to the Petitioners, their counsel, CPA and/or bookkeeper, or otherwise been made available to same.

²*Marilyn W. Bunn Irrevocable Trust Agreement, UAD 04/09/2001; Douglas S. Delaney and Thomas H. Bell v. Ray Warco, et al., Case No. 2013-CP-07-2728 (the "Irrevocable Trust Case").*

accept the position and take some overt steps to assume such responsibility, as the Bunn CRT cannot force Lochmandy to simply “become” the successor individual trustee against her will.

10. Likewise, under the terms of the Bunn CRT, upon Lochmandy’s incapacity (or failure to act), Suddes is entitled to succeed Lochmandy as successor individual trustee and my co-trustee; however, this is a fiduciary position, and Suddes must accept the position and take some overt steps to assume such responsibility, as the Bunn CRT cannot force Suddes to simply “become” the successor individual trustee against her will.
11. Although I am the successor independent trustee, I have also never been contacted by Lochmandy or her counsel or anyone on her behalf, or Suddes (who would succeed Lochmandy upon her failure to act) or her counsel regarding their intent to take over as the new successor individual trustee.
12. In the fall of 2013, after I learned of the appointment of Suddes, my counsel twice requested the addresses for both Suddes and Lochmandy so that I could take steps to have them added to the mailing matrix for the monthly trust account statements sent out by Wells Fargo.
13. These statements – which provide a complete accounting of all Bunn CRT assets – have been sent regularly by me to either Marilyn Bunn or someone on her behalf, (such as her counsel, Sumner), since my appointment (the last statement was sent on July 17, 2014); at the very least, they have always been available upon request.
14. In all events, I have either provided or made available trust accountings per applicable state law and the Bunn CRT agreement (Article III, Sections 1 and 4). I have never personally received a question, concern or complaint concerning anything contained in the accountings.
15. In November of 2013, their counsel, Sumner, finally responded by asking for the monthly statements to be sent to him, and stating he would “be responsible for providing copies to the appropriate parties”; a copy of this letter is attached.

16. I interpreted this response to mean I was not to have contact with his clients, Suddes and Lochmandy. Further, his letter was silent on whether Lochmandy (or Suddes) would be stepping up as successor individual trustee for Marilyn Bunn.
17. On or about June 11, 2014, I noticed that the monthly statement showed that the depository bank for monthly Bunn CRT "Unitrust" payments³ had been changed from First Federal to Bank of America.
18. I was surprised to discover this, because I had not made this change and, as successor independent trustee, under Article III, Section 1 of the Bunn CRT agreement, I should have been notified ahead of this change and the party who authorized the same.
19. I e-mailed Wells Fargo on June 11 and asked who had made this change; the Wells Fargo officer responded: "Marilyn Bunn".
20. I was taken aback by this (given the Georgia Order) so I mentioned to the officer that Marilyn Bunn had been declared incapacitated, and asked if perhaps her guardian had requested the account change. I also asked, again, for the letter of authorization ("LOA") for the change.⁴
21. At no time did I object to the to the requested depository account change, nor did I tell the Wells Fargo officer that Suddes "lacked authority to effect such a change."
22. Prior to this event, the Settlor had always kept me informed about changes to the depository account (in fact, I have *never* objected to the Settlor's requested changes in the depository account). My goal here was simply to obtain custody of the LOA and ensure the propriety of the account into which payment was made.
23. The Wells Fargo officer refused to send the LOA and, moreover, refused to speak any further with me about the matter at all, and referred me to the Wells Fargo legal department.

³These are payments made by the Bunn CRT to Marilyn Bunn or her revocable trust on a monthly basis.

⁴A copy of this e-mail exchange is attached.

24. I am informed and believe that neither Suddes, Lochmandy, Marilyn Bunn, nor their counsel, had notified Wells Fargo of the Georgia Order, incapacity of Marilyn Bunn or the appointment of Suddes as her guardian.
25. In light of this, it became clear to me that neither Lochmandy nor anyone else had stepped up to or voluntarily assumed the position of successor independent trustee after Marilyn Bunn's incapacity. Therefore, I immediately prepared an Appointment of Successor Individual Trustee ("Appointment"), in my capacity as successor independent trustee, documenting the fact that, given her failure to voluntarily assume the role, Lochmandy was no longer considered trustee of the Bunn CRT for the reasons outlined therein. Through counsel, I sent a copy of the Appointment to Sumner and to Wells Fargo.⁵
26. I subsequently learned that, apparently, despite the appointment of Suddes as her guardian, Marilyn Bunn – who has been presented to courts in both Georgia and here as "incapacitated" – did indeed execute an LOA to change the depository bank for her monthly Unitrust statement.⁶
27. On or about June 30, 2014, my attorney received a document styled as a "Notice of Removal of Trustee" from Sumner, purporting to remove me as for various reasons; the accompanying letter requested that I sign the same and the Notice and return it to Sumner, which I refused to do.⁷
28. I have been informed by Wells Fargo that they had "frozen" the Bunn CRT account and any transactions relating to same; this apparently only applies to my monthly trustee fees, and *not* to any other outlays, such as Marilyn Bunn's monthly Unitrust

⁵A copy of this Appointment is attached.

⁶See the affidavit of Denise Suddes. Apparently, even though Marilyn Bunn signed the LOA, Suddes signed another one, on the advice of her counsel.

⁷The Notice of Removal and its accompanying letter completely misconstrues and misinterprets the terms of the Bunn CRT: Neither the Settlor nor the Settlor's guardian are entitled to remove the successor independent trustee. Although the *powers* of the successor independent derive from those of the corporate trustee, this does not mean that the *removal process* for the corporate trustee is the same for that of the successor independent. The CRT agreement goes to great lengths to set forth trustee succession and delineate powers to the respective, distinct trustees to insure that the residual *charitable* beneficiaries are protected from overreaching by the *family* beneficiaries. See Bunn CRT Agreement at Article III.

payment, which Wells Fargo will continue to make (although not to the new account designated by Marilyn Bunn and Suddes).⁸

29. In their Motion for Injunctive relief, the Petitioners assert repeatedly that Marilyn Bunn will not receive her monthly Unitrust statement unless the Court enjoins me from acting as successor independent trustee. However, on August 1, 2014, I received a Wells Fargo Transaction Notice, which reflects an electronic funds transfer ("ACH DIRECT DEPOSIT") in the amount of \$7,992.77 into Marilyn Bunn's First Federal bank account on July 25, 2014. Thus, I am informed that Marilyn Bunn is continuing to receive her monthly payments.
30. Also, I am informed and believe that Wells Fargo is continuing to receive their for investment and/or transaction fees.
31. On or about July 22, 2014, I had my counsel send a letter to Wells Fargo, a copy of which is attached hereto, informing Wells Fargo that it had no authority to "freeze" the Bunn CRT account, and demanding that it reverse this position. To date, I have received nothing and heard nothing from Wells Fargo on this matter.
32. I have no objection to the appointment of Carol Ruff, Esquire (the person proposed by Sumner in the TRO Motion) as successor individual trustee on an interim basis; indeed, my Appointment, at paragraph C, specifically contemplates that a new successor individual trustee will be appointed.

FURTHER SAYETH AFFIANT NOT.

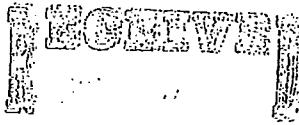
Sworn to before me this
4th day of August, 2014.

Angie R. Sutherland
Notary Public for South Carolina
My Commission Expires: 10/31/2013

Douglas S. Delaney

ANGIE R. SUTHERLAND
Notary Public, State of South Carolina
My Commission Expires 10/31/2023

⁸See Wells Fargo letter of July 10, 2014.



Moore & Van Allen

BY:

November 4, 2013

Robert E. Sumner, IV
Attorney at Law

T 843 579 7018
F 843 579 8743
robertsumner@mvalaw.com

VIA EMAIL AND US MAIL

Moore & Van Allen PLLC

Sean Michael Bolchoz, Esq.
Bolchoz Law Firm, P.A.
6 Buckingham Plantation Drive, Suite B
Bluffton, SC 29910

78 Wentworth St.
Charleston, SC 29401-1428

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

**Re: John M. Bunn & Marilyn W. Bunn
Charitable Remainder Trust u/a/d 12/16/93**

Re: Marilyn W. Bunn Irrevocable Trust UAD 04/09/01

Dear Sean,

This letter is in response to your letter dated October 16, 2013, requesting the mailing addresses for Denise Suddes, Kelly Bunn and Margaret Lochmandy. Please send the statements directly to my attention I will be responsible for providing copies to the appropriate parties.

If you should have any questions please do not hesitate to contact me.

Yours very truly,

Moore & Van Allen, PLLC

Robert E. Sumner, IV

RES/hm

RE: Bunn CRT

Douglas Delaney <doug@delaneylawfirmssc.com>
Draft

Sun, Aug 3, 2014 at 2:01 PM

From: Douglas Delaney [mailto:doug@delaneylawfirmssc.com]
Sent: Wednesday, June 11, 2014 10:57 AM
To: Cutshall, Elizabeth
Subject: Re: Bunn CRT

Marilyn? She has been adjudicated incapacitated. Was it her guardian?

As trustee I must be informed prior to any changes especially changes such as this. Please forward a copy of the scanned authorization. Thanks

On Wednesday, June 11, 2014, <elizabeth.cutshall@wellsfargoadvisors.com> wrote:

Marilyn Bunn

Elizabeth Sullivan Cutshall
Senior Registered Client Associate
Officer

Bezilla Kinney Wealth Management Group
Wells Fargo Advisors
400 Merchant Street, Hilton Head Island, SC 29926
Tel 843-681-1401 | Toll-Free 866-570-4043
Fax 843-689-6780
Email elizabeth.cutshall@WFAdvisors.com
<http://www.bezilla-kinney.wfadv.com/>

From: Douglas Delaney [mailto:doug@delaneylawfirmssc.com]
Sent: Wednesday, June 11, 2014 10:29 AM
To: Cutshall, Elizabeth
Subject: Bunn CRT

I see there is a new bank to which the CRT monthly amounts are to be distributed starting June 26...It was First Federal, now BOA

I was unaware of this change....do you know who authorized this? and can you send a form?

Douglas S. Delaney, J.D., LL.M (Tax)

Delaney Law Firm, PA

doug@delaneylawfirmllc.com

www.delaneylawfirmplansahead.com

New Physical Address:

23 Plantation Park Drive, Suite 501

Bluffton, SC 29910

Behind Dairy Queen off Hwy 278

Mailing Address:

PO Box 3199

Bluffton, SC 29910

(843) 815-9777 phone

View my profile on

http://www.linkedin.com/profile/edit?trk=hb_tab_pro_top

Circular 230 Disclosure: Pursuant to U.S. Treasury Department Regulations, I am required to advise you that, unless otherwise expressly indicated, any advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any insurance, investment, tax or accounting advice on any matters addressed herein. All opinions expressed herein are my personal opinions. The information contained in this e-mail communication is neither to be construed as legal advice nor creating an attorney client relationship. Seek independent counsel. If you are not the intended recipient, or an authorized employee or agent responsible for delivering it to the intended recipient, the dissemination, distribution or reproduction of this communication or its contents (including any attachments) is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone or reply e-mail and permanently delete it and any copies from your system and files. By messaging with me, you consent to the foregoing.

Vivat Jesus!

BOLCHOZ LAW FIRM, PA
6 BUCKINGHAM PLANTATION DRIVE, SUITE B
POST OFFICE BOX 828
BLUFFTON, S.C. 29910
(843) 836-3033
FAX: (843) 836-3035

www.bolchozlaw.com

July 22, 2014

VIA EMAIL TO KEITH.MCILWAINE@WELLSFARGOADVISORS.COM
AND REGULAR MAIL

Keith McIlwaine
Wells Fargo Advisors, LLC
MAC H0005-087
One North Jefferson Ave
St. Louis, MO 63103

*RE: John M. Bunn and Marilyn W. Bunn Charitable Remainder Trust u/w/d/12/16/93
Account Number: 3970-9189 and 5915-5195*

Dear Mr. McIlwaine:

Please be informed that I represent Douglas S. Delaney, the successor independent trustee of the above-referenced trust (the "Trust"). My client was recently informed by Wells Fargo Advisors, the financial advisor and counselor to the Trust, that you are now his contact for matters involving this Trust.

As you are no doubt aware, last month, my client discovered that an unknown party changed the designated recipient bank for monthly payments to Beneficiary Marilyn W. Bunn to another financial institution. This occurred without Mr. Delaney's prior knowledge. When he requested a copy of the letter of authorization ("LOA") providing for such change, the local Wells Fargo Advisors representatives in Hilton Head, South Carolina, refused to provide him with the LOA and, furthermore, refused to speak to him about the matter and, instead, referred him another department. Prior to notice of your involvement, Mr. Delaney was assured by yet another Wells Fargo representative that he would receive a copy of the LOA straightaway; however, as of this writing (and over a month later) he has received nothing from Wells Fargo.

Now, my client has been recently informed that the Trust account maintained by Wells Fargo has been "frozen" by Wells Fargo due to some alleged court order or other legal document, and that, apparently, all transactions relating to same are terminated until further notice. Neither I nor my client are aware of *any* court order(s) relating to this Trust one way or the other, nor have we received any "legal documents" concerning the same. We certainly are unaware of anything that

Keith McIlwaine

July 22, 2014

Page 2

would justify Wells Fargo's "freezing" of this Trust account, so my client is obviously confounded as to why Wells Fargo has taken this action.

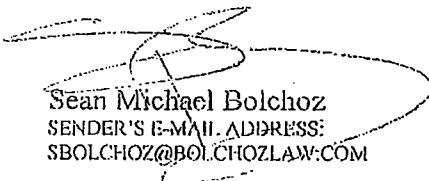
In any event, please consider this letter a written demand by Mr. Delaney, as successor independent trustee of the Trust, that Wells Fargo Advisors immediately reverse course and "unfreeze" the Trust account, allowing transactions with the account to resume. You should further consider this letter my client's written demand that the LOA be produced immediately, and that any court order(s) or other legal documents resulting in Wells Fargo's "freezing" of the Trust account be delivered to me right away. My client is very concerned that Wells Fargo's actions in this regard are placing the Trust and its charities in jeopardy.

I look forward to your expedited response.

With kind, personal regards, I am

Sincerely,

BOLCHOZ LAW FIRM, PA


Sean Michael Bolchoz
SENDER'S E-MAIL ADDRESS:
SBOLCHOZ@BOLCHOZLAW.COM

SMB/ars
Enclosures

cc: Douglas S. Delaney, Esquire (via email only to delaneylawfirm@hargray.com)
\\Seanbolchoz-pc\delD to G Clients\Delaney - 2716\John & Marilyn W. Bunn CRT - 11\Wells Fargo ltr - LOA and frozen account.vpd

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE MATTER OF: JOHN M. AND
MARILYN W. BUNN CHARITABLE
REMAINDER TRUST

MARILYN W. BUNN, A PERSON *NON*
COMPOS MENTIS BY AND THROUGH
HER GUARDIAN, DENISE SUDDER,
AND MARGARET BUNN LOCHMANDY

PETITIONERS,

v.

DOUGLAS S. DELANEY, AS TRUSTEE
AND IN HIS INDIVIDUAL CAPACITY,
AND ALAN WILSON, THE SOUTH
CAROLINA ATTORNEY GENERAL

RESPONDENT.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NUMBER 2014-CP-07-1732

**AFFIDAVIT OF
MARGARET LOCHMANDY**

PERSONALLY appeared before me, Margaret Lochmandy who, being duly sworn, on
oath, deposes and says that:

1. I am over eighteen (18) years old. I am competent to give this affidavit, and it is
based upon my own personal knowledge.

2. I am a resident of Gwinnett County, Georgia.

3. I am the current successor Individual Trustee of the CRT, as provided for in the
Trust instrument.

4. On June 3, 2013, at my behest, Robert Sumner requested copies of trust documents from Mr. Bolchoz, attorney for Douglas Delaney, based on my status as an interested party and being named in the CRT as successor trustee. (Exhibit A.)

5. On September 11, 2013, at my behest, Robert Sumner informed Mr. Bolchoz that a guardian had been appointed for Marilyn W. Bunn, individual trustee, and again requested documents for my sister, the guardian, and me. (Exhibit B.)

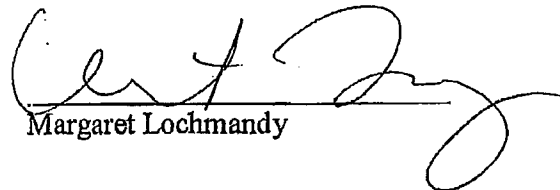
6. On October 7, 2013, at my behest, Robert Sumner again requested a complete accounting for the CRT, as well as other documents related to the administration of the CRT. (Exhibit C.)

7. My sister, Kathleen Kelly Bunn, died on February 26, 2014.

8. On June 30, 2014, at my behest, Robert Sumner wrote Mr. Bolchoz objecting to Mr. Delaney's attempt to appoint himself as successor independent trustee. (Exhibit D.)

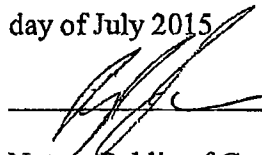
Further the Affiant sayeth naught.

This, the 16 day of July 2015.


Margaret Lochmandy

SWORN to before me this 16

day of July 2015.


Notary Public of Georgia

My commission expires:

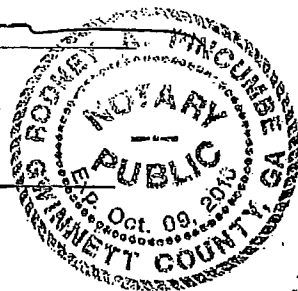


EXHIBIT A

Moore & Van Allen

June 3, 2013

VIA EMAIL AND US MAIL

Sean Michael Bolchoz, Esq.
Bolchoz Law Firm, P.A.
6 Buckingham Plantation Drive, Suite B
Bluffton, SC 29910

Re: **John M. Bunn & Marilyn W. Bunn**
Charitable Remainder Trust u/a/d 12/16/93

Robert E. Sumner, IV
Attorney at Law

T 843 579 7018
F 843 579 8743
robertsumner@mvalaw.com

Moore & Van Allen PLLC

78 Wentworth St.
Charleston, SC 29401-1428

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

Dear Sean,

Please allow this letter to acknowledge receipt of your letter dated May 13, 2013, and to respond to several issues raised therein. I believe that the Charitable Remainder Trust (CRT) documents demonstrate my clients are interested in the CRT and have adequate standing to request trust documents. First, you are aware that Marilyn Bunn is the grantor of the CRT and recipient of the unitrust payments (a beneficiary) under the CRT. I have been engaged directly by Ms. Bunn regarding the issues we have raised over the CRT. In an abundance of caution, however, we are in the process of having a conservator appointed to oversee Ms. Bunn's affairs in this regard. The application is pending in her home county in Georgia, and we anticipate that it should be finalized in the coming days or weeks.

I believe the appointment of a conservator should alleviate any concerns that you have over the propriety of my request. Nevertheless, Margaret Lochmandy and Kelly Bunn are also interested parties with standing to request information under the CRT. Specifically, they are listed as successor trustees in Article III, Section 2 of the CRT, which is found on page 8 of the CRT trust agreement. At this time, I am not aware of any amendment that eliminated their interests in the CRT. As such, please allow this letter to reiterate the request for CRT trust documents and a complete accounting for the CRT.

After reading your letter, I am clear on your client's position with respect to the request for resignation. However, I welcome the opportunity to discuss our concerns about the CRT with you and/or your client. In the event that you are not interested, we will move forward to protect our interests and those of the CRT.

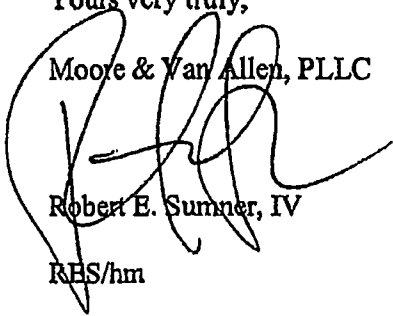
Given that our initial request was tendered on April 29, 2013, time is of the essence with respect to the production of trust documents and the trust accounting. Please respond to this letter in writing within one week of the date of this letter.

CHARLESTON535707v1

Charlotte, NC
Research Triangle Park, NC
Charleston, SC

Yours very truly,

Moore & Van Allen, PLLC



Robert E. Sumner, IV

RES/hm

CHARLESTON535707v1

EXHIBIT B

Moore & Van Allen

September 11, 2013

VIA EMAIL AND US MAIL

Sean Michael Bolchoz, Esq.
Bolchoz Law Firm, P.A.
6 Buckingham Plantation Drive, Suite B
Bluffton, SC 29910

Robert E. Sumner, IV
Attorney at Law

T 843.579.7018
F 843.579.8743
robertsumner@mvalaw.com

Moore & Van Allen PLLC

78 Wentworth St.
Charleston, SC 29401-1428

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

**Re: John M. Bunn & Marilyn W. Bunn
Charitable Remainder Trust u/a/d 12/16/93**

**CONFIDENTIAL SETTLEMENT COMMUNICATIONS PURSUANT TO
SCRE RULE 408**

Dear Sean,

The purpose of this letter is to follow-up on my correspondence of April 29, 2013 and June 3, 2013, regarding the John M. Bunn & Marilyn W. Bunn Charitable Remainder Trust u/a/d 12/16/93 (the "CRT"). Copies of the letters are attached hereto as Exhibit A and Exhibit B, respectively.

In my April 29, 2013 letter, on behalf of my clients, I requested that Doug Delaney provide a complete copy of the CRT with all amendments, an accounting of the CRT and copies of any documents or other material information in his possession that relate to the CRT. I specifically requested copies of all documentation related to the payment of Trustee's fees under the CRT, including the method for calculating, notifications of any changes in fees and copies of checks or wire transfers reflecting payment. I explained that it is necessary for my clients to obtain the requested information to determine the exact holdings of the Irrevocable Trust and protect their interests in the Irrevocable Trust. See S.C. Code Ann. 62-7-813.

You responded and refused to provide the requested documents, questioning the capacity of Ms. Bunn and the propriety of my request. In my June 3, 2013 letter I made the same demand on behalf of my clients. Additionally, I reassured you that my request was appropriate. Specifically, I informed you that we were in the process of appointing someone to oversee Ms. Bunn's affairs in regards to this and other trust matters. I further explained to you that Margaret Lochmandy and Kelly Bunn are also interested parties with standing to request information under the CRT, as they are listed as successor trustees in Article III, Section 2 of the CRT, which is found on page 8 of the CRT trust agreement.

I am pleased to report that an order appointing Denise Suddes as Guardian for Ms. Bunn was signed and entered by the Gwinnett County Probate Court on September 5, 2013. A copy of the Order is attached hereto as Exhibit C. Thereafter, I was engaged by Ms. Suddes, in her capacity

as Guardian for Ms. Bunn, to take certain actions with respect to the CRT and other trusts. These actions include requesting CRT documents and, if necessary, initiating litigation to ensure that the CRT is being properly administered.

Given the information that has been previously provided and the steps taken to appoint the Guardian for Ms. Bunn, I see no reasonable basis for your continued refusal to produce the CRT documents. As such, on behalf of Margaret Lochmandy, Kelly Bunn and Denise Suddes, in her capacity as Guardian for Ms. Bunn, I hereby demand that you produce all responsive CRT documents within thirty (30) days from the date of this letter. The reason for the lengthy timeframe for compliance with my demand is to account for your medical condition that was recently reported by you to the Probate Court. Given that Mr. Delaney has a statutory obligation to maintain the CRT documents and has been aware of this demand for over five (5) months, I see no reason why he cannot comply within thirty (30) days.

In light of the fact that this demand concerns a charitable trust and out of an abundance of caution, I am copying C.H. "Sonny" Jones, Esq. of the South Carolina Attorney General's Office. I ask that you please copy Mr. Jones on any written response(s) to this or other matters related to the CRT going forward.

I look forward to receiving the requested information on or prior to the deadline set forth in this letter.

Yours very truly,

Moore & Van Allen, PLLC

Robert E. Sumner, IV

RES/hm

CC: Sonny Jones, Esq., S.C. Attorney General (via Email and US Mail)

EXHIBIT C

Moore & Van Allen

October 7, 2013

Robert E. Sumner, IV
Attorney at Law

T 843 579 7018
F 843 579 8743
robertsumner@mivalaw.com

VIA EMAIL AND US MAIL

Sean Michael Bolchoz, Esq.
Bolchoz Law Firm, P.A.
6 Buckingham Plantation Drive, Suite B
Bluffton, SC 29910

Moore & Van Allen PLLC

78 Wentworth St.
Charleston, SC 29401-1428

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

**Re: John M. Bunn & Marilyn W. Bunn
Charitable Remainder Trust u/a/d 12/16/93**

Dear Sean,

Thank you for your response to my letter dated September 11, 2013, regarding the John M. Bunn & Marilyn W. Bunn Charitable Remainder Trust u/a/d 12/16/93 (the "CRT"). Thank you also for providing the revocable allocations from 2001 and 2008.

Unfortunately, your letter does not provide the documentation that was requested and that Mr. Delaney, as trustee, is required to maintain. It is immaterial whether documents have been provided historically or if they have been provided to Ray Warco and Carolyn Myers. As such, please provide a complete copy of the CRT, all amendments, a complete accounting, any documents in Mr. Delaney's possession related to the CRT and any documentation in Mr. Delaney's possession related to compensation. It is imperative that these documents be provided in a timely manner. If I do not receive a copy of the documents by October 11, 2013 (the original deadline), we will have no choice but to file a petition for an accounting and other appropriate legal action.

To address the questions raised in your letter, please include Denise Suddes, Margaret Lochmandy and Kelly Bunn on all CRT statements and 1099's from this date forward.

I am once again copying C.H. "Sonny" Jones, Esq. of the South Carolina Attorney General's Office. The reason for Mr. Jones' inclusion is to keep him informed about this situation and your continued refusal to provide the CRT documents that we have requested since March. I ask that you please copy Mr. Jones on any written response(s) to this or other matters related to the CRT going forward.

I look forward to receiving the requested information on or prior to the deadline set forth in this letter.

Yours very truly,

Moore & Van Allen, PLLC

Robert E. Sumner, IV

RES/nm

CC: Sonny Jones, Esq., S.C. Attorney General (via Email and US Mail)

EXHIBIT D

Moore&VanAllen

June 30, 2014

VIA EMAIL AND US MAIL

Sean Michael Bolchoz, Esq.
Bolchoz Law Firm, P.A.
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Attorney at Law

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Moore & Van Allen PLLC

78 Wentworth St.
Charleston, SC 29401-1428

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

Re: James M. Bunn & Marilyn W. Bunn Charitable Remainder Trust u/a/d 12/16/93

Dear Sean:

I am writing on behalf of Denise Suddes as Guardian for Marilyn W. Bunn, Co-Settlor (the "Settlor") of the James M. Bunn & Marilyn W. Bunn Charitable Remainder Trust u/a/d 12/16/93 (the "CRT"), and Margaret Bunn Lochmandy, Successor Individual Trustee of the CRT. I am in receipt of the Appointment of Successor Individual Trustee (the "Appointment") for the CRT executed by your client, Douglas S. Delaney on June 17, 2014. I have reviewed the contents of the purported Appointment and find it to be ineffective for numerous reasons.

First, my clients have seen no documentation naming Mr. Delaney as the successor independent trustee to the corporate trustee of the CRT. Despite repeated requests for CRT documentation, Mr. Delaney has refused to provide any documentation of his appointment or acceptance as trustee of the Trust, in any capacity. Until we have received such written documentation, the Settlor and Successor Individual Trustee of the CRT will not recognize any changes made by Mr. Delaney, acting as the successor independent trustee to the corporate trustee, including but not limited to the changes set forth in the purported Appointment.

Second, Mr. Delaney's reasoning for the purported Appointment lacks any basis in the CRT or under South Carolina law. Except for certain mandatory provisions under the South Carolina Trust Code (the "Trust Code"), the settlor of a trust may override the provisions of the Trust Code and provide for different terms by which a trust will be administered. S.C. Code Ann. Section 62-7-105(b). The manner by which a trustee is required to accept the office of trustee is not one of the mandatory provisions of the Trust Code. There is no provision in the CRT that requires Margaret Bunn Lochmandy to execute a written acceptance of the successor individual trustee position. In fact, Article III, Section 2 explicitly states that "[i]n the case of resignation, refusal or inability to act of the survivor of the individual trustees, Margaret Mary Bunn [Lochmandy]... shall act as the successor individual trustee..." This mandatory provision of the CRT is automatic and is only defeated by a successor independent trustee's resignation, refusal, or inability to act. Similarly, the CRT contains no provision that requires the successor individual trustee to provide any information to the Investment Advisor, whatsoever. Rather, the responsibility for informing the Investment Advisor of any changes in the individual trustee position would be the responsibility of the successor independent trustee to the corporate trustee.

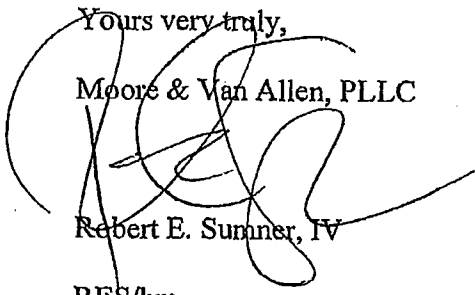
See Article III, Section 1(a) & (b).

Based on the aforementioned facts, please allow this letter to notify you and Mr. Delaney that the Settlor and Successor Individual Trustee of the CRT hereby formally exercise their right to remove the successor independent trustee pursuant to Article III, Section 3 of the CRT. Specifically, Article III, Section 3 states, "the settlors during their lifetime, the survivor of them after one of their deaths, or the individual trustee, may remove the corporate trustee." Following the intent of Article III, Section 4 and the reasoning of the arguments set forth in the purported Appointment, the independent successor trustee steps into the shoes of the corporate trustee. Accordingly, all of the rights and obligations of the corporate trustee also apply to the independent successor trustee. This includes the Settlor and Successor Individual Trustee's ability to remove the corporate trustee. To effect this change, I have included a Notice Removal of Trustee form to be executed by Mr. Delaney. Please instruct Mr. Delaney to sign, date, and return the original document to my office within ten days of the date of this letter. I will follow-up with instructions regarding the transfer of the CRT's assets.

Upon receipt of this correspondence, please contact me if you have any questions. I look forward to receiving the executed document in the near future.

Yours very truly,

Moore & Van Allen, PLLC



Robert E. Sumner, IV

RES/hm

Laura F. Obi

From: Dukes, Marvin <mdukes@bcgov.net>
Sent: Wednesday, March 25, 2015 4:23 PM
To: Sean Bolchoz
Cc: McLeod, Heather; Robert Sumner; Lydia Turnier; Angie Sutherland
Subject: RE: Bunn v. Delaney

Dear Counsel,

Thank you for all speaking with me today.

Mr. Delaney's Affidavit describes no active rejection by Lochmandy or Kelly Bunn of the position of successor individual trustee (I believe paragraph 16 to be a legal conclusion based on the factual recitations set forth in 8-14). Based on the affidavit, the attached appointment of successor individual trustee, the CRT and 62-7-704(a) it is clear that neither Margaret nor Kelly resigned, refused or were unable to act, nor did they fall into any of the pertinent categories listed in 704(a). I believe that, as a matter of law, Lochmandy is the successor individual trustee.

Further, for reasons articulated in Plaintiff's brief, I believe that the successor independent trustee stands in the shoes of the corporate trustee and can be removed.

There is a prohibition on removal of the corporate trustee in the first line of section 3. Had the intent been to prohibit not-for-cause removal of the successor independent trustee, one would expect similar language for the SIT. Finally, a successor is generally an entity who takes over and continues the role or position of another. Additional powers or protections would be rare and would need to be specified.

I believe the document to be unambiguous. I would appreciate it if Plaintiffs could draft an Order granting partial SJ as specified above.

Best to all,

Marvin H. Dukes, III
Master-in-Equity for Beaufort County
Beaufort County Courthouse
102 Ribaut Road, Room 212
Post Office Drawer 1228
Beaufort, SC 29901
Office: 843.255.5710
Fax: 843.255.9505

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From: Sean Bolchoz [mailto:sbolchoz@bolchozlaw.com]
Sent: Wednesday, March 25, 2015 1:47 PM
To: Dukes, Marvin
Cc: McLeod, Heather; Robert Sumner; Lydia Turnier; Angie Sutherland
Subject: Bunn v. Delaney

Dear Judge Dukes:

Ahead of our conference call this afternoon, I wanted to address a few points regarding the Plaintiffs' summary judgment (SJ) motion, to wit:

- The Plaintiffs are asking this Court to construe the CRT terms – essentially, to interpret it in a fashion consistent with the Plaintiffs' desired interpretation. However, as reflected in Delaney's return to the SJ motion, it is our position that the terms of the CRT are not ambiguous or uncertain and, therefore, no construction (or interpretation) of same is necessary. Simply put, *nowhere* in the CRT is it stated, reflected or indicated that the successor independent trustee is subject to the same removal provisions as was the former corporate trustee.
- To the extent that there is any uncertainty in the CRT, then parol evidence is admissible to determine the intent of the settlor, Marilyn Bunn. *See Bowles v. Bradley*, 319 S.C. 377 (1995).
- The Court has evidence before it now, in the form of Delaney's sworn affidavit, wherein he affirms that: (1) he was personally chosen by Marilyn Bunn to serve as successor independent trustee; and (2) Marilyn Bunn did not intend for him to be subject to the same removal provisions as was the corporate trustee. At the SJ stage, these must be taken as fact; the Plaintiffs have offered no testimony to counter these facts.
- In response to the Court's inquiry at the hearing on March 16 regarding reasons for treating the successor independent trustee differently from the corporate trustee, I pointed out that it could have been because Marilyn Bunn wanted a trustee from outside of the family because she didn't trust her own in matters relating to the CRT. However, there are also significant tax treatment issues at play here: This trust is a tax exempt trust. Under Internal Revenue Code 671, this tax exempt status would be terminated under the Grantor Trust rules where the grantor maintained a "revolving door" power to change trustees on a whim. At the time of the creation of the CRT, the tax purpose was to prevent the Grantor Trust rules from applying. The concern is still present and the need is still there. The provisions in the CRT relating to trustee powers were not relevant to this analysis, just the succession power to appoint.

I look forward to our call this afternoon.

Best regards,
Sean



Sean Michael Bolchoz

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

RECEIVED

MAR 30 2016

The Honorable Marvin H. Dukes, III

SC Court of Appeals

Case No. 2014-CP-07-1732

Marilyn W. Bunn, a person *non compos mentis* by and through her guardian,
Denise Suddes, and Margaret Bunn Lochmandy.....Respondents,

v.

Douglas S. Delaney, as Trustee and in his individual capacity, Alan Wilson,
the South Carolina Attorney General, Sacred Heart-Griffin High School,
St. Joseph's Home, Quincy University, Notre Dame, The Lawrenceville
School, All Saints Catholic Church, and Habitat for Humanity c/o All
Saints Catholic Church.....Defendants,

Of Whom Douglas S. Delaney is the.....Appellant.

CERTIFICATE OF COUNSEL

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

March 28, 2016

Sean Michael Bolchoz
Bolchoz Law Firm, PA
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Bluffton, South Carolina 29910
(843) 836-3033
Attorney for Appellant