

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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AUG 16 2016

SC Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS

Roger L. Couch, Circuit Court Judge
Irvin G. Condon, Probate Court Judge

Appellate Case No. 2016-001141
Circuit Court Case No. 2014-CP-10-4336
Probate Case No. 2013-GC-10-1029

Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, Appellants.

v.

Keith S. Wellin, Respondent,

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

Pursuant to S.C. Code Ann. § 62-1-308(d) and Rule 209, SCACR, Appellants Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King ("Appellants") designate the following material for inclusion in the record on appeal.

ORDERS

In the probate court:

1. Order Appointing Edward Bennett as Conservator dated 08/15/13
2. Order Granting Schwartz's *Ex Parte* Motion for Temporary Restraining Order dated 12/20/13
3. Order Amending 08/15/13 Order Appointing Edward Bennett as Conservator dated 02/21/14
4. Order for Petitioners' to Pay \$50,228,000.00 to Special Conservator II dated 02/21/14
5. Order Denying Petitioners' Motion to Amend Judgment dated 07/03/14

6. Order Regarding Petitioners' Notice of Voluntary Dismissal dated 07/03/14

In the circuit court:

7. Order Affirming Probate Court Orders dated 01/13/16
8. Order Denying Appellants' Motion to Alter or Amend dated 05/16/16

In the district court:

9. Order Denying Keith Wellin's Motion for Preliminary Injunction and Dissolving Temporary Restraining Order filed 11/22/13 (*Wellin I*)
10. Order Denying Schwartz's Motion for TRO and Preliminary Injunction and Dissolving Temporary Restraining Order issued in State Court filed 01/07/14 (*Wellin II*)
11. Order Dismissing *Wellin III* (2:14-cv-00652) and *Wellin IV* (2:14-cv-00579) filed 05/28/14
12. Consent Order Substituting Wendy Wellin as Plaintiff in *Wellin I* dated 11/25/14

PLEADINGS

In the probate court:

13. Summons and Petition of Peter J. Wellin, Cynthia, W. Plum, Marjorie W. King ("Petitioners") for Appointment of Conservatorship for Keith S. Wellin ("Respondent") filed 07/19/13

Exhibits:

Exhibit A- Statement of the Property, Assets and Income of Keith S. Wellin

Exhibit B- Complaint in USDC SC Civil Action No.: 2-13-cv-1831-DCN ("*Wellin I*") dated 07/03/13

Exhibit C- Delaware Court of Chancery Action No. 8723-VCL dated 07/12/13

Exhibit D- Plaintiff's Memorandum in Support of His Motion for TRO and Order to Show Cause for Preliminary Injunction in *Wellin I* dated 07/03/13

14. Summons and Complaint filed by Lester Schwartz (*removed to USDC Civil Action No. 2:13-cv-03595-DCN, "Wellin II"*) filed 12/17/13

15. Edward Bennett's Summons and Petition to Return Assets (*removed to USDC SC 13-cv-00652, "Wellin III"*) filed 02/25/14

In the circuit court:

16. Final Brief of Appellants filed 07/13/15

17. Final Reply Brief of Appellants filed 07/13/15

18. Respondent's Final Brief filed 07/27/15

19. Respondent's Sur Reply in Opposition to Reply Brief of Appellants filed 07/27/15

20. Appellants' Supplemental Memorandum Objecting to Respondent's Proposed Order filed 11/19/15

21. Plaintiffs' Notice of Appeal filed 05/27/16

MOTIONS

In the probate court:

22. Schwartz's Motion for Temporary Restraining Order and Memorandum of Law in Support (*removed with Wellin II*) filed 12/17/13

23. Schwartz's Notice and Motion for Segregation of Trust Assets to Pay Fees of Trust Protector and His Attorneys (*removed with Wellin II*) filed 12/27/13

24. Petitioners' Motion to Dismiss the Special Conservator's Application for Substantive Relief and Memorandum in Support filed 02/03/14

Exhibits:

Exhibit A- Wellin Family 2009 Irrevocable Trust

Exhibit B- Temporary Restraining Order in *Wellin I* dated 07/03/13

Exhibit C- Excerpts from 11/18/13 Hearing Transcript in *Wellin I*

Exhibit D- Edward Bennett Letter dated 11/20/13 with attachments

Exhibit E- Excerpts from 12/31/13 Hearing Transcript in *Wellin II*

Exhibit F- Supplemental Reply Memorandum of Lester Schwartz in *Wellin II* dated 01/05/14

Exhibit G- Dissolution and Distribution Documents

Exhibit H- Summons and Complaint in *Wellin II* dated 12/17/13

Exhibit I- Order dissolving TRO in *Wellin II* dated 07/07/14

Exhibit J- Keith Wellin's Answer to Counterclaims in *Wellin II* dated 01/31/14

25. Petitioners' Memorandum in Opposition to Bennett's Oral Request for Relief filed 02/14/14

Exhibits:

Exhibit C- Letter from Bennett's Counsel to Court dated 02/05/14

Exhibit D- Email chain dated 02/11/14

26. Petitioners' Motion to Alter or Amend Judgment filed 03/03/14

27. Respondent's Petition to Remove Linda Austin as Designated Examiner filed 03/05/14

28. Petitioners' Opposition to Respondent's Petition to Remove Austin as Designated Examiner filed 03/12/14

Exhibits:

Exhibit A- Video of Mr. Wellin's 02/07/14 Deposition

29. Respondent's Reply to Petitioners' Opposition to Respondent's Petition to Remove Linda Austin, M.D. as Designated Examiner filed 03/18/14

Exhibits:

Exhibit A- Transcript of Keith Wellin Deposition dated 02/07/14

Exhibit B- Video of Keith Wellin Statement dated 07/02/13

Exhibit C- Affidavit of Peter Wellin filed in *Wellin I* dated 08/27/13

30. Petitioners' Motion to Appoint New Temporary Conservator Pending Merits Hearing filed 05/01/14

Exhibits:

Exhibit A- S.C. Adv. Op. 96-21, 1996 WL 914244 (S.C. Bar Eth. Adv. Comm.)

31. Edward Bennett's Petition for Appointment of Permanent Conservator filed 08/01/14
32. Respondent's Response to Bennett's Petition to Appoint Conservator filed 08/07/14
33. Bennett's Verified Petition for Order Lifting Automatic Stay filed 08/19/14
34. Response of Peter J. Wellin, Marjorie W. King, and Cynthia W. Plum to Bennett's Petition to Appoint Conservator filed 08/26/14

In the circuit court:

35. Appellants' Motion to Alter or Amend Judgment filed 01/22/16
36. Respondent's Return to Motion to Alter or Amend Judgment filed 01/29/16

TRANSCRIPTS

In the probate court:

37. Transcript of Emergency Hearing Regarding Appointment of Conservator held 07/26/13
38. Transcript of Hearing of Bennett's Application for Substantive Relief held 02/06/14
39. Transcript of Hearing of Respondent's Petition to Remove Dr. Austin as Designated Examiner held 03/27/14
40. Transcript of Hearing of Petitioners' Motion to Alter or Amend Judgment held 04/01/14
41. Transcript of Hearing of outstanding discovery motions held 05/01/14

In the circuit court:

42. Transcript of Hearing on Appeal from Probate Court held on 07/28/15

43. Transcript of Hearing on Appellants' Motion to Alter or Amend held on 04/08/16

In the district court:

44. Transcript of Motions Hearing before Judge Norton held on 11/18/13
45. Transcript of Hearing before Judge Norton held on 11/21/13

OTHER:

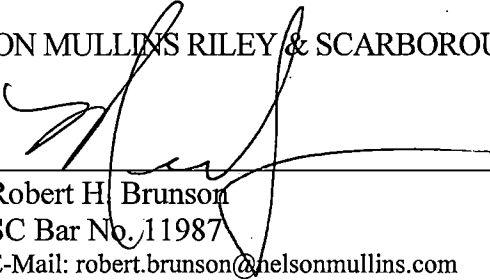
46. Promissory Note dated 11/30/09
47. Friendship Partners Limited Partnership Agreement
48. Friendship Management, LLC Operating Agreement
49. Purchase and Sale Agreement dated 11/30/09
50. Letter from John Hagerty to Edward Bennett dated 12/06/13
51. Letter from Edward Bennett to John Hagerty dated 12/06/13
52. Acknowledgment of Notice of Removal in *Wellin II* dated 12/30/13
53. Bennett's *Ex Parte* Application for Guidance to Probate Court filed 01/14/14
54. Acknowledgment of Notice of Removal in *Wellin III* dated 03/24/14
55. Notice of Voluntary Dismissal filed 05/05/14
56. Petitioners' Notice of Intent to Appeal to Circuit Court filed 07/11/14
57. Statement of Issues on Appeal filed 08/13/14
58. Certificate of Appointment and Order of Appointment of Wendy Wellin in Probate Court action dated 09/17/14
59. Proposed Order sent by Hood to Judge Couch on 11/09/15
60. Letter from Edward Bennett to Peter Wellin, Cynthia Plum and Marjorie King dated 11/20/13 (with attachments)
61. Notice of Removal of Probate Case No. 2013-GC-10-0129 to USDC Case No. 2:13-cv-03595 filed 12/27/13 (*Wellin II*)

62. Lester Schwartz's Motion for Extension of Temporary Restraining Order and Order to Show Cause for Preliminary Injunction filed 12/28/13 (*Wellin II*)
63. Complaint in USDC Case No. 2:14-cv-00579 filed 02/28/14 (*Wellin IV*)
64. Amended Verified Complaint in *Wellin I* filed 02/28/14
65. Notice of Removal of Probate Case No. 2013-GC-10-0129 to USDC Case No. 2:14-cv-00652 filed 03/03/14 (*Wellin III*)
66. Email from Judge Couch's law clerk dated 09/22/15 requesting proposed order from Hood/Provence
67. Complaint against Wendy Wellin in Case No. 2:14-cv-04067 filed 10/20/14 (*Defamation action*)
68. Email from Jamie Hood dated 11/09/15 sending proposed Order in Case No. 2014-CP-10-04336 to Judge Couch
69. Supplemental Memorandum Objecting to Respondents' Proposed Order filed 11/19/15
70. Email from Tiffany Provence dated 05/10/16 sending her proposed Order to Judge Couch
71. Email from Judge Couch's law clerk dated 05/16/16 to Merritt Abney advising that Judge Couch has entered and signed Tiffany Provence's proposed Order.

Undersigned counsel certifies, pursuant to Rule 209(c), SCACR, that the designation contains no matter which is irrelevant to the appeal.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____


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*Attorneys for Appellants Peter Wellin, Cynthia
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Charleston, South Carolina
August 15, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS

Roger L. Couch, Circuit Court Judge
Irvin G. Condon, Probate Court Judge

Appellate Case No. 2016-001141
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SC Court of Appeals

Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, Appellants.

v.

Keith S. Wellin, Respondent,

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the Appellants' Designation of Matter to be Included in the Record on Appeal on Respondent by depositing copies of it in the United States Mail, postage prepaid, addressed to the below Counsel of Record:

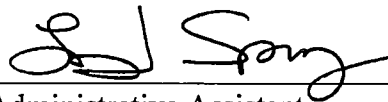
Pleadings: **APPELLANTS' DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL**

Counsel Served:

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August 15, 2016



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August 15, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

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SC Court of Appeals

RE: Peter J. Wellin, Cynthia W. Plum and Marjorie W. King v. Keith S. Wellin
S.C. Court of Appeals Case No. 2016-001141
Circuit Court Case No. 2014-CP-10-4336
Probate Court Case No. 2013-GC-10-0129
Our File No. 39113/01500

Dear Ms. Kitchings:

Enclosed please find the original and one copy each of the Initial Brief of Appellant and Appellant's Designation of Matter to be Included in the Record on Appeal in the above matter. We would ask that you file the originals and return clocked-in copies to us via the enclosed envelope.

By copy of this letter to counsel of record, we are serving them a copy of the initial brief and designation.

With kind regards, I remain

Very truly yours,


Merritt G. Abney

MGA:ls

Enclosures

cc: Robert H. Hood, Esq.
Molly H. Craig, Esq.
James B. Hood, Esq.
William G. DesChamps, IV, Esq.
Tiffany N. Provence, Esq.

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