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SEP 14 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

NEW DIAMOND HEALTH AND
REHAB OF SIMPSONVILLE, LLC,

Plaintiff,

v.

BARBARA J. GAUTHIER,
INDIVIDUALLY AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF EARL F. GAUTHIER, BRIAN E.
GAUTHIER, AND POWERS
CONSTRUCTION, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

CIVIL ACTION NO. 2015-CP-30-00953

ORDER GRANTING SUMMARY
JUDGMENT AS TO DEFENDANT
POWERS CONSTRUCTION, LLC
AND BARBARA J. GAUTHIER,
INDIVIDUALLY AND AS PERSONAL
REPRESENTATIVE OF THE
ESTATE OF EARL F. GAUTHIER

LAURENS COUNTY
CLERK OF COURT

2016 AUG 11 A 11:58

LYNN W. LANCASTER

THIS MATTER IS BEFORE THE COURT upon the motions of the Defendants
**POWERS CONSTRUCTION, LLC and BARBARA GAUTHIER, INDIVIDUALLY
AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF EARL F.
GAUTHIER,** filed in this Court on March 28, 2016 and April 6, 2016, respectively. A
hearing on these Motions were held on Wednesday, June 16, 2016 at the Laurens County
Courthouse.

1. The present action involves a Complaint filed in the Laurens County Probate Court on June 4, 2015 and subsequently removed to this Court on November 13, 2015, whereby the Plaintiff, a creditor of the Estate of Earl F. Gauthier ("the Estate"), seeks to collect a debt purportedly owed to it by the Estate by challenging a May 12, 2015 real estate transfer by Barbara Gauthier to Powers Construction, LLC by that certain deed recorded in the Official Records of Laurens County, South Carolina in Book 1210, at Page 317, on May 13, 2015 (the

RSS

"May 2015 Deed") (Attached hereto as Exhibit A) of the properties commonly known as 2912 Todd Quarter Road, Waterloo, South Carolina, bearing TMS Number 243-00-00-001, and being further described as:

Parcel #1

All that certain piece, parcel or tract of land, with all improvements thereon, situate, lying and being in the County of Laurens, Waterloo Township, State of South Carolina, containing approximately seven-tenths (7/10) of an acre, more or less, and being more particularly described on a plat thereof made by Lewis C. Godsey, RLS, dated October 20, 1972, and recorded in the Office of the Clerk of Court for Laurens County, South Carolina in Plat Book 29 at Page 64. Said lot being bounded, now or formerly, of Hudson, for a distance of 276.5 feet; on the south by Lake Greenwood for a distance of 110 feet; on the west by property of Clara D. Coker for a distance of 245 feet; and on the north by S.C. State Road 30-307 for a distance of 110 ft.

Parcel #2

All that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being in the County of Laurens, Waterloo Township, State of South Carolina, and being on Lake Greenwood, and containing 1.51 acres, more or less, as shown on Plat of Survey made by Lewis C. Godsey, RLS, dated August 3, 1954. Said plat being recorded in the Office of the Clerk of Court for Laurens County, South Carolina in Plat Book 29 at Page 40. For a more accurate description of said lands as to metes, bounds, courses and distances, reference is directed to the aforementioned plat.

(the "Subject Properties").

2. A review of the chain of title of the Subject Properties, the Probate of the Estate of Earl Gauthier, and the uncontested facts of this case reveals the following:

- a. By that certain Deed dated March 10, 1987 and recorded in the Official Records of Laurens County, South Carolina, in Book 240, at Page 549, on March 10, 1987, (the "Initial Deed"), Charles G. Gallier and Alfreda F. Gallier, as grantors, conveyed to Earl F. Gauthier, as grantee, fee simple title to the Subject Properties. A copy of the Initial Deed is attached hereto as Exhibit B;

- b. Subsequent to this conveyance, the Gauthiers discovered that Barbara J. Gauthier, individually, was mistakenly not included as a grantee on the Initial Deed. *See* Affidavit of Barbara J. Gauthier (attached hereto as **Exhibit C**); *see also* Affidavit of H. Michael Gainey (attached hereto as **Exhibit D**);
- c. On April 13, 1987, Charles G. Gallier and Alfreda F. Gallier, as grantors, corrected the Initial Deed to convey the Subject Properties to Earl F. Gauthier and Barbara Gauthier, grantees, as joint tenants and not tenants in common, for and during their joint lives with the right of survivorship by way of a corrective deed recorded in the Official Records of Laurens County, South Carolina in Book 240, at Page 816, on April 13, 1987, (the "Corrective Deed")—as was originally intended by the parties. *See* Corrective Deed (attached hereto as **Exhibit E**);
- d. The Corrective Deed indicated that the previous deed "erroneously named only Earl F. Gauthier as grantee;"
- e. The Gauthiers requested and accepted the corrective deed. *See* Affidavit of H. Michael Gainey (attached hereto as **Exhibit D**); *See also* Affidavit of Barbara J. Gauthier (attached hereto as **Exhibit C**);
- f. Earl F. Gauthier died testate on or about November 23, 2013;
- g. Subsequent to his death, Earl F. Gauthier's Last Will and Testament was admitted to Probate in Laurens County, South Carolina, and Barbara Gauthier was appointed personal representative of the Estate of Earl F.

- Gauthier (the "Estate") by the Laurens County Probate Court ("Probate Court") on or about January 10, 2014;
- h. Plaintiff timely filed and served its Creditor's Claim against the Estate and its Demand for Notice;
 - i. Originally, the Subject Properties were correctly not included to the Inventory and Appraisalment of the Estate filed May 19, 2014. However, on October 23, 2014, a Second Supplementary, Amended or Corrected Inventory and Appraisalment was filed by Barbara Gauthier, the Personal Representative of the Estate, which mistakenly included the Subject Properties;
 - j. On October 30, 2014, Barbara Gauthier filed a lis pendens, Summons and Petition incorporating the Initial Deed, requesting that the Probate Court approve the sale of the Subject Properties;
 - k. On November 18, 2014, a Third Supplementary, Amended or Corrected Inventory and Appraisalment was filed by Mrs. Gauthier which also mistakenly included the Subject Properties;
 - l. On November 25, 2014, Plaintiff filed a response to the Estate's Petition to Sell Real Estate consenting to the sale of the Subject Properties on the condition that its claim be paid in full from the proceeds of the sale;
 - m. Subsequent to this, on April 24, 2015, Ms. Gauthier filed a Fourth Supplementary, Amended or Corrected Inventory and Appraisalment that corrected the mistaken inclusion and removed the Subject Properties from

the inventory of the Estate and sold the Subject Properties to Defendant Powers Construction, LLC without notice to the Plaintiff; and

- o. Plaintiff, alleges because of the mistaken inclusion of the Subject Properties in the Second and Third Inventory of the Estate, it did not sue Mrs. Gauthier directly for the costs associated with the nursing care, room and board provided to her husband (which formed the basis of Plaintiff's creditor's claim against the Estate until after the sale of the Subject Properties by Mrs. Gauthier). See Affidavit of Thomas Conrad (attached hereto as Exhibit F).

Standard for Motion for Summary Judgment

Rule 56(c) of the South Carolina Rules of Civil Procedure allows a party to move for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with 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." If the moving party has provided the necessary support, "an adverse party may not rest upon the mere allegations or denials of his pleading, but his response . . . must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRCF. Instead, the opposing party must show there is a genuine issue for trial by use of the same methods used to support a motion for summary judgment. *See Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651 (Ct. App. 1994) ("When a plaintiff is faced with a defendant's motion for summary judgment that is supported by evidence, the plaintiff

cannot defeat the motion by relying upon the mere allegations of his complaint, but must disclose the facts he intends to rely on by affidavit or other proof”).

CONCLUSIONS OF LAW

1. As articulated by the South Carolina Supreme Court, a second, corrective deed voids and replaces the prior recorded deed where the grantee accepts a subsequent inconsistent deed from the grantor, voiding the prior incorrect deed. *Cox v. Tanner*, 229 S.C. 568, 576, 93 S.E.2d 905, 910 (1956).¹
2. In the instant case, the conveyances are virtually identical to the scenario recounted in *Cox*, except that the corrective deed in this case was executed and filed nearly two years sooner than the one in *Cox*:
 - a. The Initial Deed dated March 10, 1987 conveyed the Subject Properties to Earl Gauthier alone;
 - b. Subsequent to this conveyance, the Gauthiers noticed that there was a mistake and that Barbara J. Gauthier had not been included as a grantee, as originally contemplated and intended by the parties. See Affidavit of

1. In *Cox v. Tanner*, a South Carolina Supreme Court opinion concerning a factual scenario that is virtually identical to the one in the present case, a grantor deeded a tract of land to the husband only and the deed was recorded on November 30, 1945. *Id.* at 571, 93 S.E.2d at 907. Subsequent to the Initial Deed, on January 25, 1947—*nearly two years later*—the grantee requested that the grantor correct the November 30, 1945 deed to include his wife as a grantee. *Id.* at 571-72, 93 S.E.2d at 907. The grantor obliged the husband’s request and the second, corrective deed was filed on February 6, 1947. *Id.* Additionally, the second deed contained the following language: “This is a correction Deed to take the place of the Deed filed at the Register of Mesne Conveyance Office at Spartanburg, South Carolina, for Spartanburg County, on November 30, 1945.” *Id.* The basis of the challenge to the corrective deed in *Cox* was the same as in the instant matter – that the grantor had no interest left to convey at the time she issued the second deed because her interest was disposed of with the first deed. *Id.* at 576, 93 S.E.2d at 910. However, the Supreme Court reasoned that it was the intent of the parties for the second deed to take the place of the first one and the evidence supported such a view. Thus, the corrective deed was held to cancel the Initial Deed and to replace it *ab initio*, and the conveyance in question was effective. *Id.*

RSS

Barbara J. Gauthier (attached hereto as Exhibit C); *see also* Affidavit of H. Michael Gainey (attached hereto as Exhibit D);

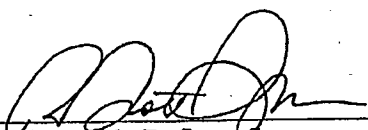
- c. Desiring to cure the defect, Mr. Gauthier requested a new deed listing himself and his wife as joint tenants. *Id*;
 - d. The original grantors executed the Corrective Deed, conveyed the Subject Properties to Earl F. Gauthier and Barbara Gauthier, as joint tenants and not tenants in common, for and during their joint lives with the right of survivorship, on April 13, 1987. *Id*;
 - e. Just as was the case in *Cox*, the Corrective Deed indicated that the previous deed "erroneously named only Earl F. Gauthier as grantee;" and
 - f. Finally, in *Cox* and in the instant matter, the original grantee accepted the subsequent, inconsistent deed from the grantor, thereby annulling and replacing the original. *Id*.
3. The Corrective Deed was meant to take the place of the Initial Deed, and it was therefore an effective conveyance, voiding and replacing the Initial Deed.
 4. Joint tenancies with rights of survivorship are not subject to probate—if one tenant dies, the remainder passes to the other outside of probate. *See* South Carolina Code § 27-7-40(a)(i) (when property is held by joint tenants, "[i]n the event of the death of a joint tenant, and in the event only one other joint tenant in the joint tenancy survives, the entire interest of the deceased joint tenant in the real estate vests in the surviving joint tenant, who is vested with the entire interest in the real estate owned by the joint tenants").

5. Therefore, pursuant to South Carolina Code § 27-7-40(a)(i), at the time of Earl Gauthier's death, the Subject Properties passed automatically in fee simple to his surviving wife, Barbara J. Gauthier, by operation of law.
6. The Subsequent Conveyance of the Subject Properties were not subject to the claims or lien held by the Plaintiff.²

THEREFORE, the Motion for Summary Judgment of Defendant Barbara J. Gauthier, individually and as Personal Representative of the Estate of Earl F. Gauthier, is hereby GRANTED. Upon the death of Earl F. Gauthier, the Subject Properties vested solely in Barbara J. Gauthier, individually, and the claims of the Plaintiff are hereby DISMISSED WITH PREJUDICE;

FURTHER, Defendant Powers Construction, LLC's Motion for Summary Judgment is hereby GRANTED. Defendant Powers Construction, LLC is the owner of the Subject Properties in fee simple, free of any lien or claim of the Plaintiff, and the claims of the Plaintiff against Defendant Powers Construction, LLC are hereby DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.


 The Honorable R. Scott Sprouse
 Laurens County Court of Common Pleas

Lynn W. Lancaster
 Laurens County S.C.C.P. & G.S.

A TRUE COPY OF ORIGINAL

August 7, 2016

² Plaintiff's counsel argued at the hearing that genuine issues of material fact existed insofar as Mrs. Gauthier signed and filed multiple sworn inventories and pleadings in the Probate Court asserting that the Subject Properties were assets of the Estate prior to filing the corrected Fourth Inventory omitting the Subject Properties. Plaintiff's counsel also argued that Mrs. Gauthier's conduct (removing the Subject Properties from the Estate Inventory and selling it without notice to Plaintiff) distinguishes the present case from *Cox*.

Exhibit A

WITNESS the grantor's (s') hand(s) and seal(s) this 12th day of May, 2015

SIGNED, sealed and delivered in the presence of:

Dennis James West

Robert W. Whitesides

Barbara J. Gauthier (SEAL)
Barbara Gauthier

Barbara J. Gauthier (SEAL)
Being one and the same person, also known as
Barbara J. Gauthier

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

ACKNOWLEDGEMENT

I, Robert W. Whitesides, Notary Public, do hereby certify that personally
Barbara Gauthier, also known as Barbara J. Gauthier, appeared before me this day and acknowledged the due
execution of the foregoing instrument.

Witness my hand and seal this the 12th day of May 2015

Robert W. Whitesides (SEAL)

Notary Public for South Carolina

My Commission Expires: 8-15-18

STATE OF SOUTH CAROLINA)
COUNTY OF LAURENS)

AFFIDAVIT

Page 1 of 2

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred, which is located in the County of Laurens, bearing Laurens County Tax Map Number 24J-00-00-001, was transferred by Barbara J. Gauthier to Powers Construction L.L.C.
- 3.
3. Check one of the following: The deed is

- (a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) _____ exempt from the deed recording fee because (See Information section of affidavit):

(If exempt, please skip items 4 - 7, and go to item 8 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

- (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$165,000
- (b) _____ The fee is computed on the fair market value of the realty which is _____
- (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is _____

5. Check Yes OR No X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "yes", the amount of the outstanding balance of this lien, or encumbrance is: \$0

6. The deed recording fee is computed as follows:

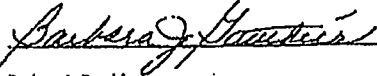
- (a) Place the amount listed in item 4 above here: \$165,000
- (b) Place the amount listed in item 5 above here: 0
(If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: 165,000

7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$610.50 plus \$10.00 to record deed.

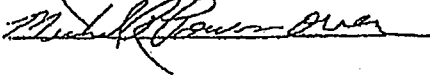
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor, And Grantee.

Robert W. Whitesides
PO Box 222
Laurens, SC 29360
(864) 984-5114

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

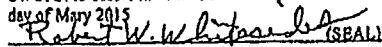

Barbara J. Gauthier

Powers Construction L.L.C.



SWORN to before me this 12th

day of May 2015

 (SEAL)

Notary Public for South Carolina

My Commission Expires: 8-15-18

INFORMATION

Except as provided in this paragraph, the term "value" means "the consideration paid or to be paid in money or money's worth for the realty". Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bond, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, "value" means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax in purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 35 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantor's interest in the partnership or trust. A "family partnership" is a partnership whose partners are all members of the same family. A "family trust" is a trust in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. "Family" means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any of the above. A "charitable entity" means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and
- (12) that constitute a corrective deed or a quietclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quietclaim deed.
- (13) transferring realty subject to mortgages to the mortgagees whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.

Robert W. Whitesides
PO Box 222
Laurens, SC 29360
(864) 984-5114

Exhibit B

Grantee's address: c/o Charlie's Landing
Rt. 1, Box 127
Waterloo, SC 29384

BOOK 240 PAGE 549

TITLE TO REAL ESTATE AND FORM Y C 1974

State of South Carolina,
Laurens County

MAR 10 10 28 AM '87

Know All Men by These Presents:

That we, Charles G. Gallier and Alfreda F. Gallier

In the State aforesaid,

In consideration of the sum of One Hundred Fifty Thousand and No/100 (\$150,000.00) DOLLARS,

to the grantor(s) in hand paid as and before the sealing of these presents by the grantee(s) (the receipt whereof is hereby acknowledged), have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Earl F. Gauthier, his heirs and assigns forever, the following described property, to-wit:

PARCEL NO. 1 All that certain piece, parcel or tract of land situate, lying and being in the County of Laurens, Waterloo Township, State of South Carolina, containing approximately seven-tenths (7/10) of an acre, more or less, and being more particularly described on a plat thereof, made by Lewis C. Godsey, A.S., dated October 20, 1972, and recorded in the Office of the Clerk of Court for Laurens County in Plat Book 29, at page 64. Said lot being bounded now or formerly of Hudson for a distance of 276.5 feet; on the south by Lake Greenwood for a distance of 110 feet; on the west by property of Glara D. Coker for a distance of 245 feet; on the north by SC State Road 30-307 for a distance of 110 feet.

PARCEL NO. 2: All that certain piece, parcel or lot of land situate, lying and being in the County of Laurens, State of South Carolina, and being on Lake Greenwood, and containing 1.51 acres, more or less, as shown on plat of survey, made by Lewis C. Godsey, A.S., dated August 3, 1954. Said plat being recorded in the Office of the Clerk of Court for Laurens County in Plat Book 29, at page 40. For a more accurate description of said lands as to metes, bounds, courses and distances, reference is directed to the aforementioned plat.

This being the identical property conveyed to the grantors by deed of John P. Hudson, et al., recorded November 24, 1982, in the Office of the Clerk of Court for Laurens County in Deed Book 229, at page 54.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the grantee(s) hereinabove named, and his and assigns forever.

And the grantor(s) do(es) hereby bind the grantor(s) and the grantor(s)'s Heirs, Executors and Administrators to warrant and forever defend all and singular the said premises unto the grantee(s) hereinabove named, and the grantee(s)'s Heirs and Assigns against the grantor(s) and the grantor(s)'s Heirs and against every person whomsoever lawfully claiming or to claim the same of any part thereof.

Witness the grantor(s)'s hand and seal this 10 day of March in the year of our Lord One Thousand Nine Hundred and Eighty-seven

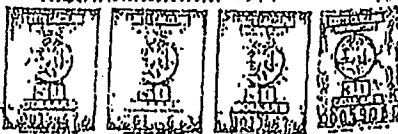
Signed, Sealed and Delivered in the Presence of

Jackson J. Gauthier

William J. Gauthier

Charles G. Gallier (Seal)

Alfreda F. Gallier (Seal)



State of South Carolina,

Personally appeared before me

LAURENS County

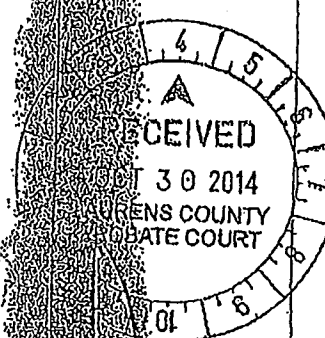
and made oath that he saw the within named grantor(s), Charles G. Gallier and Alfreda F. Gallier, who, read and as their act and deed witnessed the execution thereof.

Sworn to before me this 10 day of March, A. D. 1987.

Notary Public for South Carolina

My Comm. 155100 - EXPIRES 12-31-87

Jackson J. Gauthier



DATE 3/30/87
BOOK 240
PAGE 549
NEXT 2/26/88
NEXT 2/26/88

Exhibit C

Exhibit D

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AFFIDAVIT

I, H. MICHAEL GAINEY, being first duly sworn, depose, state and affirm as follows:

(1) That my full name is Harold Michael Gainey, that I am an attorney at law who has been licensed to practice law in the State of South Carolina since May of 1983, and that I am a member in good standing of the South Carolina Bar Association and the Greenville County Bar Association.

(2) That on March 10, 1987, I represented Earl F. Gauthier and Barbara Gauthier in the purchase of that certain real property briefly described as Parcel One and Parcel Two in Waterloo Township in Laurens County, South Carolina. That as part and parcel of such representation I witnessed and notarized a deed of conveyance signed by Charles G. Gallier and Alfreda F. Gallier as Grantors, conveying the subject property to Earl F. Gauthier. That I subsequently caused said deed to be recorded on March 10, 1987 in the Office of the Clerk of Court for Laurens County in Deed Book 240 at Page 549.

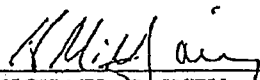
(3) That upon receiving the original recorded deed back from the Clerk of Court, I mailed said deed to Earl F. Gauthier. After receiving the recorded deed from me, Mr. Gauthier contacted me to state that the property should have been titled in both himself and his wife, with provisions for survivorship.

(4) That I then prepared a corrective deed which indicated on its face that its purpose was to correct the previous deed, and that the reason for correction was that the previous deed erroneously named only Earl F. Gauthier as Grantee.

(5) That on April 8, 1987, I witnessed and notarized the execution of the corrective deed from Charles G. Gallier and Alfreda F. Gallier conveying the subject property to Earl F. Gauthier and Barbara Gauthier, as joint tenants and not as tenants in common, for and during their joint lives with the right of survivorship.

(6) That the preparation and execution of the corrective deed was requested by Earl F. Gauthier and, subsequent to its execution, was accepted by Earl F. Gauthier and Barbara Gauthier as corrected.

(7) That on April 13, 1987, I caused the corrective deed to be recorded in the Office of the Clerk of Court for Laurens County in Deed Book 240 at Page 816 and that, upon receipt of the corrective deed from Laurens County, I caused the corrective deed to be mailed to Mr. and Mrs. Gauthier.



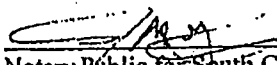
H. MICHAEL GAINEY
ATTORNEY AT LAW

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

ACKNOWLEDGEMENT

Personally appeared, H. Michael Gainey, who, on oath, deposes and states that he executed the foregoing Affidavit, and as his act and deed, delivered the document for the uses and purposes stated therein.

SWORN to before me this 27th day of April, 2016.



Notary Public for South Carolina
My Commission Expires 10/14/2020

Exhibit E

STATE OF SOUTH CAROLINA
COUNTY OF Laurens

APR 13 1 59 PM '87

BOOK 240 - 816

KNOW ALL MEN BY THESE PRESENTS, that Charles G. Gallier and Alfreda F. Gallier

in consideration of One Dollar (\$1.00) and correction of previous deed _____ Dollars,

the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto

Earl F. Gauthier and Barbara Gauthier, as joint tenants and not as tenants in common, for and during their joint lives with the right of survivorship, the following described property, to-wit:

PARCEL NO. 1: ALL that certain piece, parcel or tract of land, situate, lying and being in the County of Laurens, Waterloo Township, State of South Carolina, containing approximately seven-tenths (7/10) of an acre, more or less, and being more particularly described on a plat thereof made by Lewis C. Godsey, RLS, dated October 20, 1972, and recorded in the Office of the Clerk of Court for Laurens County in Plat Book 29 at Page 64. Said lot being bounded now or formerly of Hudson, for a distance of 276.5 feet; on the south by Lake Greenwood for a distance of 110 feet; on the west by property of Clara D. Coker for a distance of 245 feet; on the north by S. C. State Road 30-307 for a distance of 110 feet.

PARCEL NO. 2: ALL that certain piece, parcel or lot of land, situate, lying and being in the County of Laurens, State of South Carolina, and being on Lake Greenwood, and containing 1.51 acres, more or less, as shown on plat of survey made by Lewis C. Godsey, RLS, dated August 3, 1954. Said plat being recorded in the Office of the Clerk of Court for Laurens County in Plat Book 29 at Page 40. For a more accurate description of said lands as to metes, bounds, courses and distances, reference is directed to the aforementioned plat.

This being the same property conveyed to the Grantors herein by deed of John P. Hudson, et al, recorded November 24, 1982 in the Office of the Clerk of Court for Laurens County in Deed Book 229 at Page 54.

Grantee's address:
c/o Charlie's Landing
Rt. 1, Box 127
Waterloo, SC 29384

Note: Previous deed from Grantors to Grantees erroneously named only Earl F. Gauthier as Grantee.

DATE 4-13-87
BOOK 240
PAGE 816
AUDITOR William W. Rodgers

together with all and singular the rights, demands, benefits, franchises and appurtenances to and possessions belonging or in any way incident or appurtenant, to have and to hold all and singular the premises herein mentioned unto the grantee(s) and the grantee(s)' heirs or successors and assigns, forever. And the grantor(s) shall have the grantee(s) and the grantee(s)' heirs or successors, executors and administrators to warrant and forever defend all and singular said premises unto the grantee(s) and the grantee(s)' heirs or successors and against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the grantor(s)' hand and seal this 8th day of April, 1987.

SIGNETH, sealed and delivered in the presence of

Charles G. Gallier (SEAL)
Alfreda F. Gallier (SEAL)
Alfreda F. Gallier (SEAL)

STATE OF SOUTH CAROLINA } PROBATE
COUNTY OF GREENVILLE }

Personally appeared the undersigned witness and made oath that (s)he saw the within named grantor(s) sign and seal and as the grantor(s)' act and deed, deliver the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

WITNESS to before me this 8th day of April, 1987
Michael A. King (SEAL)
Notary Public for South Carolina

My commission expires 2-24-96

A TRUE COPY OF ORIGINAL
Dyes of Laurens
FROM W. J. LAMBERT
Laurens County C.C.P. & C.S.

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

NEW DIAMOND HEALTH AND
REHAB OF SIMPSONVILLE, LLC,

Petitioner,

v.

BARBARA J. GAUTHIER,
INDIVIDUALLY AND AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF EARL F. GAUTHIER, BRIAN E.
GAUTHIER, AND POWERS
CONSTRUCTION, LLC,

Respondents.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

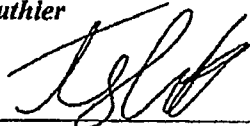
CIVIL ACTION NO. 2015-CP-30-00953

CERTIFICATE OF SERVICE

The undersigned, of the law office of Rogers Lewis Jackson Mann & Quinn, LLC, does certify that on June 10, 2016, he did cause to have served by U.S. Postal Service, regular mail with postage prepaid and return address clearly indicated, a copy of **Defendant Powers Construction, LLC's Memorandum in Support of its Motion for Summary Judgement**, in the above-captioned case, to the following:

Mr. Bruce B. Campbell
307 Pettigru St.
Greenville, SC 29601
Attorney for the Petitioner

Mr. Robert W. Whitesides, Sr.
Whitesides Law Offices
PO Box 222
Laurens, SC 29360-0222
Attorney for Respondents Barbara J. Gauthier, Individually and as Personal Representative of the Estate of Earl F. Gauthier and Brian E. Gauthier



M. Tyler Koester, Paralegal
Rogers Lewis Jackson Mann & Quinn, LLC

June 10, 2016
Columbia, SC

Exhibit F

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

New Diamond Health and Rehab
of Simpsonville, LLC,

Plaintiff,

v.

Barbara J. Gauthier, Individually and as
Personal Representative of the Estate of Earl
F. Gauthier, Brian E. Gauthier, and Powers
Construction, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
C.A. No. 2015-CP-30-953

**AFFIDAVIT OF
THOMAS CONRAD**

PERSONALLY appeared before me Thomas Conrad who, being duly sworn, deposes and states:

1. I am over eighteen (18) years of age and fully competent to testify to the matters set forth in this affidavit.
2. I am the Administrator of Simpsonville Rehabilitation and Health Care Center, LLC, formerly known as New Diamond Health and Rehab of Simpsonville, LLC ("Simpsonville Rehab") and am submitting this affidavit in opposition to Barbara J. Gauthier's and New Power's Construction, LLC's motions for summary judgment.
3. I have reviewed Simpsonville Rehab's business records with respect Earl Gauthier, his past due account, and Simpsonville Rehab's collection efforts. If called as a witness, I could and would testify to the truth of the matters asserted herein.

4. At the time of his death on November 23, 2013, Earl Gauthier owed Simpsonville Rehab \$32,463.21 for unpaid nursing care, room and board. Simpsonville Rehab filed and served a Notice of Creditors claim and a Demand for Notice. (Exhibits A and B).

5. Sometime later Simpsonville Rehab learned that the Personal Representative of the Estate filed a 2nd Supplementary, Amended or Corrected Inventory and Appraisalment, on October 23, 2014, which listed real property located at 2912 Todd Quarter Rd., Waterloo, SC 29384 (the "Property") as an asset of the Estate, owned 100% by the Estate, and estimated the fair market value of the Property to be \$110,000. (Exhibit C).

6. On November 18, 2014, the Personal Representative filed a 3rd Supplementary, Amended or Corrected Inventory and Appraisalment which again listed the Property as an asset of the Estate, owned 100% by the Estate, and estimated the fair market value of the Property to be \$110,000. (Exhibit D).

7. Simpsonville Rehab was later advised that, on October 30, 2014, Robert Whitesides, Jr., attorney for the Personal Representative, filed a *Lis Pendens* and Petition for Sale of Real Property asking the Probate Court for authority to sell the Property. The Personal Representative attached a copy of Mr. Gauthier's deed to the petition. (Exhibit E).

8. Simpsonville Rehab filed a timely response to the Petition for Sale of Real Property, consenting to a sale for \$110,000.00 conditioned upon its priority creditor's claim being paid. (Exhibit F).

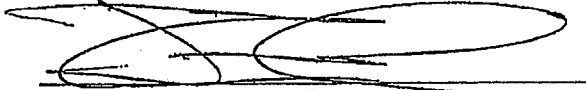
9. Simpsonville Rehab later learned that on April 24, 2015, the Personal Representative filed a 4th Supplementary, Amended or Corrected Inventory and Appraisalment which removed the Property from the Estate Inventory. Simpsonville Rehab was not provided a copy of the 4th Supplementary, Amended or Corrected Inventory and Appraisalment. (Exhibit G).

10. Simpsonville Rehab later learned that on May 12, 2015, Barbara Gauthier executed a deed in her individual capacity purportedly conveying the Property to Powers Construction, LLC for \$165,000.00.

11. Simpsonville Rehab relied upon Mrs. Gauthier's and the Estate's repeated representations that the Property was an asset of the Estate and subject to its creditor's claim.

12. In reliance on these representations, Simpsonville Rehab did not immediately sue Mrs. Gauthier individually to collect the sums due for Mr. Gauthier's nursing care, room and board.

AFFIANT FURTHER SAYETH NOT.



Thomas Conrad, Administrator
Simpsonville Rehab and Health Care, LLC

SWORN to before me this
9th day of June, 2016



Notary Public for South Carolina

My Commission Expires: 12/16/2023

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

FORM 4

JUDGMENT IN A CIVIL CASE

IN THE COURT OF COMMON PLEAS

CASE NO. 2015-CP-30-953

RECEIVED
SEP 14 2016
SC Court of Appeals

New Diamond Health and Rehab of Simpsonville, LLC
PLAINTIFF(S)

Barbara J. Gauthier, Individually and as Personal
Representative of the Estate of Earl L. Gauthier,
Brian E. Gauthier, and Powers Construction, LLC
DEFENDANT(S)

Submitted by: Court	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

LAURENS COUNTY
CLERK OF COURT

2016 AUG 11 A 11:57

LYNN W. LANCASTER

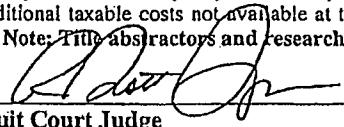
INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		

If applicable, describe the property, including tax map information and address, referenced in the judgment.

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	2752 Judge Code	8-7-16 Date
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THIS COPY OF ORIGINAL

