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

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.

APPELLANT'S FINAL BRIEF

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STATEMENT OF THE CASE

In 1993, John and Marilyn Bunn created the John M. And Marilyn W. Bunn Charitable Remainder Trust u/a/d December 16, 1993 (the "Trust") (R. p. 30), which was structured with both a corporate trustee and an individual trustee. Initially, Security Investment Management and Trust Co. served as the corporate trustee, while Settlors Marilyn and John Bunn served as the individual cotrustees until the death of John Bunn, when Marilyn Bunn went on to serve in such capacity alone.

In 2001, the Appellant was asked by Marilyn Bunn to replace the corporate trustee as successor independent trustee. While the Trust contains specific removal provisions for the corporate trustee, it contains no such removal provisions for the successor independent trustee.

The Appellant served as the independent trustee, alongside Marilyn Bunn as successor individual trustee, for several years without incident. In 2013, the Appellant notified the individual trustee, the beneficiaries, and the financial advisor for the Trust, Wells Fargo, that he was increasing his monthly trustee fees. The individual trustee and the beneficiaries did not object.

In 2013, a Georgia Court determined that Marilyn Bunn was incapacitated and incapable of handling her own affairs, including financial affairs and the trusteeship of the Trust. Denise Suddes ("Suddes") was appointed by the Georgia Court as guardian and conservator for Marilyn Bunn. The Appellant was not notified of the appointment by Marilyn Bunn, by Suddes or anyone else on behalf of Marilyn Bunn, nor was he notified by Respondent Margaret Bunn Lochmandy ("Lochmandy") or Kelly Bunn, beneficiaries who

were also named in the Trust as successor individual trustees.[1] However, the Appellant subsequently learned of the appointment in late 2013 or early 2014.

Thereafter, in June of 2014, the Appellant 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. When the Appellant inquired as to how Marilyn Bunn could have accomplished this in light of her incapacity, he learned that Wells Fargo had not been advised of either her incapacity or the appointment of Suddes.

After determining that no one had accepted the position of successor individual trustee upon the vacancy created by the appointment of Suddes, the Appellant executed an Appointment of Successor Individual Trustee, dated June 17, 2014 (R. p. 150), appointing himself as successor individual trustee, pursuant to the terms of the Trust and the powers given him thereby, and served the same upon Marilyn Bunn, Suddes and the beneficiaries.

Thereafter, Marilyn Bunn, through Suddes, and Lochmandy served upon the Appellant a Notice of Removal of Trustee, executed by Suddes and Lochmandy (identifying herself as successor individual trustee), which purported to remove the Appellant as successor independent trustee pursuant to Article III, Section 3 of the Trust. The Appellant was asked to sign the Acknowledgment of Receipt and Notice, and refused.

On or about July 18, 2014, the Respondents filed suit against the Appellant seeking, among other things, the Appellant's removal as successor trustee, damages, and injunctive relief. On or about August 5, 2014, The Honorable Brooks Goldsmith heard the

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[1]Kelly Bunn ("Bunn") passed away after Suddes was appointed, some time in 2014.

Respondents' motion for injunctive relief and denied the same by order dated August 16, 2014. (R. p. 13)

The Respondents subsequently filed a motion for summary judgment, dated October 31, 2014. (R. p. 112) The motion was heard by the Beaufort County Master-in-Equity on or about March 16, 2015. By order dated April 28, 2015 ("Order") (R. p. 3), the Master-in-Equity granted the Respondents partial summary judgment, holding as follows: that Lochmandy automatically became successor individual trustee upon Marilyn Bunn's incapacity; that Lochmandy, as successor individual trustee, has the authority under the terms of the Trust to remove the successor independent Trustee (Appellant); and that Marilyn Bunn, as Settlor, through her guardian, also has the power to remove the successor independent Trustee (Appellant) under the terms of the Trust.

The Appellant subsequently filed and served a motion to reconsider, alter or amend the judgment, dated May 11, 2015 (R. p. 154); a hearing on that motion was held before the Master-in-Equity on or about July 20, 2015. Thereafter, the Master-in-Equity issued a Form 4 Order denying Appellant's motion. (R. p. 1) The Appellant received the Form 4 Order on or about July 22, 2015, and timely filed his Notice of Appeal (R. p. 110) from both the Form 4 Order and the Order on August 20, 2015.

ARGUMENT

I. The trial court erred by granting the Respondents partial summary judgment, despite the existence of questions of material fact.

Though the presence of issues of fact in this case should have precluded judgment as a matter of law, the trial court nevertheless granted the Respondents partial summary judgment, holding that Respondent Lochmandy is successor individual trustee rather than the Appellant, and that Lochmandy, in such position, has the authority to remove Appellant as successor independent trustee.

"When reviewing the grant of a summary judgment motion, an appellate court applies the same standard that governs the trial court under Rule 56(c), SCRCP, which provides that 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." *Proctor v. Whitlark & Whitlark, Inc.*, 2015 WL 5834209 (2015). 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). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid S. Mgmt. Co.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

A. The trial court erred in disregarding questions of material fact concerning whether Bunn and Lochmandy accepted the position

of successor individual trustee.

Neither Bunn nor Lochmandy manifestly accepted the position of successor individual trustee, and any assertion to the contrary constitutes a question of fact, which should preclude summary judgment on this issue.

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). If the terms of the trust do not provide a formal method, a person 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 Ann. Section 62-7-701(a)(2).

According to the Appellant's affidavit of March 12, 2015 (R. pp. 147-148), neither Bunn nor Lochmandy: accepted delivery of any trust property or assets; exercised any powers of successor individual trustee; notified the CRT's investment advisor of Marilyn Bunn's incapacity status; informed the investment advisor of the appointment of Denise Suddes as Marilyn Bunn's guardian; or ever requested that the Trust's monthly accounting statements be changed to reflect Marilyn Bunn's status. The foregoing certainly constitutes evidence of a failure or refusal on the part of Bunn and Lochmandy to accept the position of successor individual trustee. Despite the foregoing, the trial court ruled that, upon Marilyn Bunn's incapacity, Bunn and Lochmandy automatically became the successor individual trustees, essentially holding that Bunn and Lochmandy became trustees *regardless* of their acceptance of the position. This was error.

Moreover, at the hearing on Appellant's motion to reconsider, Lochmandy submitted

an affidavit dated July 16, 2015 (R. p. 178), apparently in support of her opposition to Appellant's reconsideration motion. In her affidavit, Lochmandy asserts, for the first time, that she took certain actions evidencing her acceptance of the position of successor individual trustee, notwithstanding the Appellant's affidavit to the contrary.[2] Lochmandy's July 16 affidavit – in light of the Appellant's testimony to the contrary – clearly evidences the existence of a disputed issue of material fact: namely, whether Lochmandy and/or Bunn actually accepted the position of successor individual trustee. Nevertheless, even after the trial court was provided a copy of Lochmandy's affidavit at the reconsideration hearing, it refused to modify its ruling that Lochmandy automatically became the successor individual trustee. This was error.

B. Whether Bunn or Lochmandy actively rejected the successor individual trusteeship is a question of material fact.

As with the issue of acceptance, a question of material fact also exists with regard to whether Bunn and Lochmandy rejected the trusteeship, and the trial court's neglect of this question was error.

A person designated as trustee who has not yet accepted the trusteeship can reject the trusteeship. Further, a person designated as trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship. S.C. Code Ann. Section 62-7-701(a)(2).

Here again, in holding that Lochmandy's appointment to the trustee position was

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[2]Lochmandy's previous affidavit, dated February 2, 2015 (R. p. 134), which was submitted in support of Respondents' summary judgment motion, makes no mention of actions reflecting her acceptance of the trusteeship.

automatic, the trial court apparently disregarded the explicit wording of Section 62-7-701. This holding necessarily disregards not only South Carolina law concerning rejection of a trusteeship, but the Appellant's affidavits, wherein he testifies that Lochmandy failed to accept the position for a period greater than eight months. (R. pp. 148, 171) This fact is crucial, considering that a proposed trustee, designated in the Trust, who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

Given the length of time between the appointment of Suddes as guardian for Marilyn Bunn and any action taken on the part of Lochmandy, as reflected in the Appellant's affidavit, a question of material fact exists as to whether the failure to take action for over eight months was a reasonable amount of time and, in turn, whether Bunn and/or Lochmandy rejected the position of successor individual trustee.[3] In light of this, trial court's grant of summary judgment was error.

II. The trial court erred in holding that Lochmandy and Marilyn Bunn are authorized to remove the Appellant as successor independent trustee under the terms of the Trust.

Even if this Court determines that Lochmandy, rather than the Appellant, is the successor individual trustee, the Trust does not contain a provision allowing the successor individual trustee or the Settlor, Marilyn Bunn, to remove the successor independent trustee,

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[3]Counsel for the Respondents, during the summary judgment hearing, apparently conceded that whether Bunn and Lochmandy accepted the trusteeship is a question of fact. *See* Transcript of Hearing on Plaintiff's Motion for Summary Judgment ["Transcript"], 32:9-14). (R. p. 103)

and the trial court erred in holding otherwise.

A. The Trust is unambiguous regarding removal of the successor independent trustee.

The Trust language needed no interpretation regarding the issue of removal of the successor independent trustee and the trial court erred by doing so.

"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); *Chiles v. Chiles,* 270 S.C. 379, 242 S.E.2d 426 (1978). If the language of the trust instrument is plain and capable of legal construction, that language determines the force and effect of the instrument, and extrinsic evidence will not be admitted to alter the plain language of the instrument. *Bowles*, at 380.

The Trust contains no provision for removal of the successor independent trustee, though it does contain a provision for the removal of the corporate trustee. As reflected in the Appellant's affidavit, this was most likely by design. (R. p. 171, n.7) However, the Respondents argued, and the trial court found, that the Appellant, as successor independent trustee, merely "stood in the shoes" of the corporate trustee; thus, although there is no provision for removal of the successor independent trustee, given that there is such a provision for the corporate trustee, the trial court held that such removal provision was obviously meant to apply to the Appellant, as well. Accordingly, the trial court held that Lochmandy, as successor individual trustee, and Marilyn Bunn, as Settlor, through her guardian, each has the power to remove the Appellant as successor independent trustee.

Such holding, however, misapprehends the law. First, there is no ambiguity in the Trust and, therefore, there was no need for the trial court to interpret its provisions. There

is simply no provision for removal of the Appellant as successor independent trustee, no matter how much the Respondents might wish otherwise. The trial court considered this immaterial, finding that the Settlors could have specifically prohibited "not-for-cause removal" in the Trust, but did not, and holding that the Trust "does not state that . . . there is no way to remove the successor." This was error, not only because it fails to take all inferences in the light most favorable to the Appellant,[4] but also because it depends for its logic on the tacit assumption that there would be no way otherwise to remove the successor independent trustee, when the court always has the authority to remove a trustee for cause under the South Carolina Trust Code. Second, the trial court's holding ignores that there may well have been specific reasons why the Settlors decided against including provisions for removal (other than for cause) of the Appellant as successor independent trustee.[5] Whether any such reasons are applicable in the instant case constitute yet another question of fact that should have precluded summary judgment for the Respondents on this issue.

B. The trial court's interpretation of the Trust disregarded evidence submitted by the Appellant and failed to consider available parol evidence.

Even if it was appropriate to seek to interpret the Trust, the trial court ignored the

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[4]For example, one could reasonably infer from this that the Settlors saw no need to include a prohibition on "not-for-cause" removal, and chose instead to simply leave out a specific provision for the removal of the successor independent trustee, defaulting to the "for cause" removal provisions of the Trust Code.

[5]For example, the Settlors may have wished to protect the Trust and the successor independent trustee position from overreach, threats or influence from the non-charitable beneficiaries, as indicated in the Appellant's affidavit. (R. p. 171, n.7)

testimony from the Appellant's affidavit, which supported the assertion that Marilyn Bunn did not want the Appellant subject to not-for-cause removal, and did not take into account the availability of parol evidence.

When there is no defect on the face of a document, but an uncertainty appears when attempting to effectuate the document, then the document contains a latent ambiguity and parol evidence is admissible to determine the Settlor's intent. *Bowles*, at 380; *Jennings v. Talbert,* 77 S.C. 454, 58 S.E. 420 (1907).

As stated hereinabove, the Trust is not ambiguous on the issue of removal of the successor independent trustee and, therefore, did not require interpretation. However, in undertaking such interpretation, the trial court disregarded the Appellant's affidavit, wherein he states that he was personally chosen by Marilyn Bunn to serve as successor independent trustee, and that she did not intend for him to be subject to the same removal provision applicable to the prior corporate trustee. (R. p. 147) The trial court was required to accept these assertions as fact. To the extent that this is a disputed question, summary judgment was not appropriate.

Furthermore, if it is necessary to determine the intent of the Settlors to interpret the Trust, then the trial court should have taken parol evidence from Marilyn Bunn, who is still alive. Or, the Appellant should be allowed to depose Marilyn Bunn in order to determine any such questions of intent directly from the Settlor. Despite the Georgia Court's finding of incapacity on the part of Marilyn Bunn, it is undisputed that she took certain actions to address her own financial affairs *well after* the Georgia Court appointed a guardian for her.[6]

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[6]*See* Affidavit of Denise Suddes, dated June 26, 2014. (R. p. 161)

Nevertheless, the Respondents take the position that Marilyn Bunn's testimony is off limits, given the Georgia court's finding of incapacity.[7] (Transcript, 42:5-25; 43:1-3) (R. p. 106) Thus, the Respondents advance theories of Marilyn Bunn's intent regarding the Trust's removal provisions, while arguing that she cannot testify about her *actual* intent because of her incapacity, despite Marilyn Bunn's having acted to handle her financial affairs even after the appointment of a guardian for her. This convenient position is highly prejudicial to the Appellant and, apparently, was accepted by the trial court in its ruling for the Respondents.

III. The trial court's Order depends upon misapplication of South Carolina law.

To reach the decision to grant partial summary judgment to the Respondents, the trial court had to disregard critical tenets of South Carolina law and the South Carolina Trust Code. This was error.

A. The trial court erred in holding that Bunn and Lochmandy automatically became successor individual trustees upon Marilyn Bunn's incapacity, and by disregarding the question of whether such position was accepted or rejected.

The powers Bunn and Lochmandy would have enjoyed had they accepted the successor individual trusteeship are immaterial to the question of whether the trusteeship is accepted in the first place, and trial court erred in conflating the two.

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[7]As reflected in the Appellant's affidavit, despite his position as successor independent trustee, he had no notice of the Georgia proceedings, as he only learned of the appointment much later, in late 2013 or early 2014. (R. pp. 168-169)

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. S.C. Code Ann. Section 62-7-812.

The trial court essentially held that, in light of Section 62-7-812, neither Bunn nor Lochmandy needed to accept the position of successor individual trustee, because the position was automatically conferred upon them when Marilyn Bunn was deemed incapacitated by the Georgia Court. This holding misconstrues Section 62-7-812 by conflating the *nature* of the powers a person receives upon becoming successor trustee with that person's *acceptance* of such position. In other words, by describing the powers a person "appointed . . . by the trust instrument" (in this case, Bunn and Lochmandy) will have once the trusteeship is accepted, the trial court read Section 62-7-812 to automatically confer the position on Bunn and Lochmandy, without making the determination of whether Bunn or Lochmandy accepted the appointment in the first place. By reading 62-7-812 in this fashion, the trial court renders S.C. Code Section 62-7-701 – which sets forth how a person can both accept *and reject* a trustee appointment – superfluous. Indeed, it appears that the trial court, in granting the Respondents partial summary judgment, failed to take Section 62-7-701 into account at all.[8] This was error.

B. The Georgia Court's appointment of a *guardian ad litem* for Marilyn Bunn created a vacancy in the position of successor individual trustee.

The trial court's holding that no vacancy in the successor individual trusteeship was

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[8]Section 62-7-701 is cited nowhere in the trial court's Order.

created upon the appointment of Denise Suddes is not supportable by South Carolina law.

A vacancy in a trusteeship occurs if a guardian or a conservator is appointed for an individual currently serving as a trustee. S.C. Code Ann. Section 62-7-704(a)(6).

Thus, when the Georgia Court appointed Suddes as guardian for Marilyn Bunn, who was serving as the successor individual trustee at that time, a vacancy in that position was created. Despite the wording of the statute, the Respondents nevertheless argued to the trial court that no vacancy was created under this statute because no guardian was appointed for Bunn or Lochmandy. This argument, however, puts the cart before the horse, as it only works if one assumes that the position of successor individual trustee is imposed *automatically* upon Bunn and Lochmandy once Marilyn Bunn was deemed incapacitated. This is what the trial court ruled, in holding that no vacancy occurred in this case as a matter of law. However, such holding ignores Section 62-7-704(a)(6), which dictates that the vacancy was created upon the appointment of Suddes. The trial court's holding to the contrary was error.

C. The trial court erred in disregarding the fiduciary nature of the successor independent trusteeship, which requires the consent of the person appointed.

The position of successor independent trustee must be accepted by the putative successor trustee, and "mandatory" language cannot force the same on an unwilling party.

Under South Carolina law, a fiduciary relationship cannot typically be established by the unilateral action of one party. *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003); *Brown v. Pearson,* 326 S.C. 409, 483 S.E.2d 477 (Ct. App. 1997). For the

fiduciary relationship to be established, "[t]he other party must have *actually accepted* or induced the confidence placed in him." *Steele v. Victory Sav. Bank,* 295 S.C. 290, 368 S.E.2d 91 (Ct. App. 1988) (Emphasis supplied).

Despite the foregoing, the trial court nevertheless held that the language of the Trust dictated that Bunn and Lochmandy automatically became successor individual trustees upon the incapacity of Marilyn Bunn. To reach this holding, not only was it necessary for the trial court to disregard S.C. Code Section 62-7-701 (as well as Section 62-7-704, which defines "vacancy"), but the law regarding fiduciary obligations, as well. As set forth hereinabove, whether Bunn and Lochmandy failed to accept (or rejected) the position of trustee is a question of fact precluding summary judgment. The trial court's ruling that Bunn and Lochmandy automatically became the successor individual trustees by unilateral action of the Trust language, despite the fiduciary nature of such position, both disregards South Carolina law and skirts entirely the issue of whether Bunn and Lochmandy failed (passively or otherwise) to accept the trustee position. This was error.

IV. The trial court disregarded the legal presumptions due the Appellant at the summary judgment stage.

The Appellant should have benefitted from a number of legal presumptions during the Respondents' summary judgment motion, but did not.

A. The Appellant was improperly burdened with the duty to present evidence of rejection of the successor individual trusteeship.

The Appellant, as the non-movant in the Respondents' summary judgment motion,

should not have the burden of proving that Bunn and Lochmandy failed to take action, when the Respondents failed to prove action had been taken in the first place, and it was error for the trial court to hold otherwise.

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Miller v. Blumenthal Mills, Inc.,* 365 S.C. 204, 616 S.E.2d 722 (Ct. App. 2005); *McCall v. State Farm Mut. Auto. Ins. Co.,* 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004).

In its Order, the trial court found that the Appellant had failed to produce evidence of the rejection of the trusteeship by Bunn or Lochmandy. (R. p. 8) Not only does this holding ignore the evidence that was presented by the Appellant's affidavit, it also imposes a severe burden on the Appellant as the non-movant. Given that the Respondents, via summary judgment motion, were trying to avoid a trial on the issue of, among other things, whether Bunn or Lochmandy rejected the trusteeship position, the Respondents had the burden of demonstrating to the Court that Bunn and Lochmandy, in fact, did *not* reject such position. Instead, the trial court allowed that burden to be shifted to the Appellant, holding that he had failed to produce evidence of such rejection by Bunn and Lochmandy (again, despite the language of the Appellant's undisputed affidavit). The trial court's shifting of the burden in this regard was error.

B. The trial court disregarded the evidence presented by the Appellant regarding lack of removal terms in the Trust relating for the successor independent trustee, as well as evidence of Bunn and Lochmandy's failure to accept – and rejection – of the

trusteeship.

In his affidavits, the Appellant presented specific evidence and specific reasons for the lack of removal terms relating to him (and thus, that he did not "stand in the shoes" of the corporate trustee for removal purposes), as well as evidence of Bunn and Lochmandy's failure to accept and rejection of the trusteeship, all of which the Court disregarded. This was error.

In determining whether any triable issues of fact exist, the court must view the evidence *and all reasonable inferences that may be drawn from the evidence* in the light most favorable to the non-moving party. *Lord v. D & J Enterprises, Inc.*, 407 S.C. 544, 757 S.E.2d 695 (2014). The Fourth Circuit has held that the non-movant in a motion for summary judgment is entitled to have the credibility of his evidence as forecast assumed, his version of all that is in dispute accepted, all internal conflicts in it resolved favorably to him, and the most favorable of possible alternative inferences from it drawn in his behalf. *Sosebee v. Murphy,* 797 F.2d 179 (4th Cir. 1986).

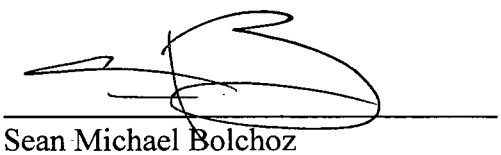
The Appellant's affidavits included the following evidence:

- That Bunn and Lochmandy failed, for eight months, to take any steps to accept the position of successor individual trustee; (R. pp. 147, 148, 171)
- That Bunn and Lochmandy, by their inaction, rejected the position of successor individual trustee; (R. pp. 147, 148, 171) and
- That it was the specific intent of the Settlors that the Appellant, as successor independent trustee, was not to be subject to the same removal terms as (expressly) applicable to the corporate trustee. (R. p. 147)

The Respondents submitted nothing that refuted the Appellant's affidavit.[9] Nevertheless, the trial court dismissed the Appellant's affidavit and the evidence contained therein, referring in communications to counsel that such consisted of mere "legal conclusions", and opining that it "describes no active rejection" by Bunn and Lochmandy of the trusteeship. (R. p. 192) Clearly, the trial court did not either assume the credibility of the Appellant, nor view the evidence and all inferences that might be drawn from the same in the Appellant's favor. This was error.

CONCLUSION

The trial court in the instant case committed reversible error by granting partial summary judgment to the Respondents, and the trial court's order granting partial summary judgment should be reversed.



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[9]As indicated hereinabove, Respondent Lochmandy's July 16, 2015 affidavit (R. p. 178), which purports to evidence her acceptance of the trusteeship, merely underscores that the issue of acceptance and rejection of the trusteeship is a material – and clearly disputed – question of fact.

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

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Final Brief contains all material proposed to be included by any of the parties and not any other material.

April 15, 2016

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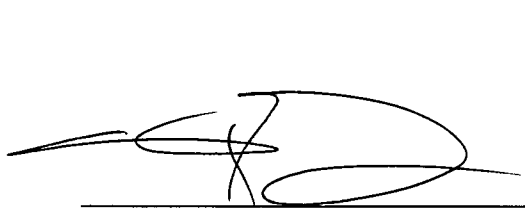
PROOF OF SERVICE

I certify that I have served Respondents with the Appellant's Final Brief and Final Reply Brief by depositing a copy of same in the United States Mail, postage prepaid on April 15, 2016, addressed to their attorney of record, Robert E. Sumner, Esquire at Moore & Van Allen, PLLC, Post Office Box 22828, Charleston, South Carolina 29413.

April 15, 2016



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