

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No.: 2015-001056

Pamela Richey,

Appellant,

v.

Shirley W. Booth, Thomas J. Booth, and Estate of Lee C.
Williams,

Respondents.

RECORD ON APPEAL

R. Jamison Tinsley Jr.
212 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Attorney for Appellant

James Graham Padgett III
414 Monument St., Suite C
Greenwood, SC 29646
(864) 227-1570
Attorney for Respondent Estate of
Lee C. Williams

Jane H. Merrill
410 Main St.
Greenwood, SC 29646
(864) 229-1010
Attorney for Respondents Shirley W.
Booth and Thomas J. Booth

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TRUE COPY

BY [Signature]
ABBEVILLE COUNTY CLERK OF COURT

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ABBEVILLE)

EIGHTH JUDICIAL CIRCUIT

Pamela Richey,)

ORDER

Plaintiff,)

v.)

C.A. #2013-CP-01-284

Shirley W. Booth, Thomas J. Booth,
Estate of Lee C. Williams,)

Defendants.)

EMILY Y. MCGILL
CLERK OF COURT

2015 FEB 24 AM 9:09

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

This matter came before me upon separate motions of the Defendants Estate ("Lee") and Booth for summary judgment in the above-captioned action. I heard the motions on February 5, 2015, in Abbeville, South Carolina.

Based on the parties' arguments and the record before the Court, the Court grants summary judgment as to the Defendant Estate, with leave to file a claim against Lee's Estate, if available, and denies the motion for summary judgment as to the Defendants Booth, without prejudice and with leave to refile. *upon on-going discovery. (R)*

FACTUAL AND PROCEDURAL HISTORY

Plaintiff Pamela Richey ("Penny") and Lee have a history of litigation regarding allegations Lee took an amount of cash money, up to \$628,000, from Penny's father (also Lee's brother). This former litigation took place in the Probate Court for Abbeville County (2006-ES-01-169) and Common Pleas for Abbeville County (2007-CP-01-188¹). In both sets of pleadings, Penny alleged

¹Penny's allegations in probate court pleadings were consolidated into the 2007 common pleas case by way of counterclaim.

Lee took the cash from Penny's father and that Penny is the rightful owner of the cash money.

Penny and Lee actually litigated the 2007 Common Pleas case and participated in active discovery, including depositions of Lee and Defendant Shirley Booth, among others. Penny and Lee resolved the 2007 Common Pleas case by filing a stipulation of dismissal with prejudice, as well as, executing a mutual release and statement agreement. In exchange for Lee paying Penny \$32,500, and other consideration, Penny and Lee signed a:

"Mutual Release in settlement of all claims, disputes and differences from the beginning of time to the present relating to or arising out of the allegations and causes of action more specifically described in the pleadings [2007-CP-01-188]. Accordingly, [Lee] and [Penny], for themselves, and their heirs, legal representatives, successors, and assigns, expressly releases, acquits and forever discharges the other party and their heirs, legal representatives, successors, and assigns from all liability for claims, demands and causes of action, known or unknown, heretofore existing, relating to or arising out of the allegations and causes of action more specifically described in the pleadings [2007-CP-01-188]."

The case currently before the Court ("2013 Common Pleas case") concerns the same money in controversy as was litigated in the 2007 Common Pleas case. This 2013 Common Pleas case adds Defendants Booth (Lee's daughter and son-in-law) alleging that they took the same cash money from Lee that Lee allegedly took from Penny's father.

In response to Defendants' motions, Penny responded with an affidavit of Billy Garrett, Esq. (Penny's counsel in the 2007 Common Pleas case) outlining what Lee said to him after the resolution of the 2007 Common Pleas case and Mr. Garrett's opinion on the matter; as well as, two affidavits from Lee alleging that Lee did take the money and that the Defendants Booth then took the money from Lee.

ISSUES

- 1) Does the filed Stipulation of Dismissal with prejudice, and the Mutual Release and Settlement Agreement² in the 2007 Common Pleas case bar Plaintiff's 2013 Common Pleas case as to all Defendants?
- 2) Is Plaintiff's 2013 Common Pleas case barred under collateral estoppel as to all Defendants because the issues are the same as in the 2007 Common Pleas case?
- 3) Is Plaintiff's 2013 Common Pleas case barred under res judicata as to all Defendants because the claims are the same as in the 2007 Common Pleas case?
- 4) Is Plaintiff's 2013 Common Pleas case barred under Rule 60(b), SCRPC, as to all Defendants because the motion was not made within a reasonable period of time not to exceeding a year?

SUMMARY JUDGMENT STANDARD

Summary judgment should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. E.g., Shelton v. LS&K, Inc., 374 S.C. 294, 297, 648 S.E.2d 307 (Ct. App. 2007). In reviewing the record, the Court views all the properly cognizable evidence in the light most favorable to the nonmoving party. Dawkins v. Fields, 354 S.C. 58, 67-68, 580 S.E.2d 433 (2003); Shelton, 374 S.C. at 297.

²Admitted by Plaintiff as a genuine document under SCRPC 36, dated August 19, 2014.

When a summary judgment motion is made and supported by factual material, the opposing party may not rest upon the allegations of his pleading but must put forth specific facts demonstrating a genuine factual issue for trial. Rule 56(e), SCRPC. Where the nonmoving party bears the burden of proof on a claim in the case, it must provide the Court with evidence showing that there is a genuine issue of material fact with regard to each of the elements of its claim. Hansson v. Scalise Builders of S.C., 374 S.C. 352, 358, 650 S.E.2d 68 (2007). Rule 56, SCRPC, “mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof.” Id. at 357 (internal quotation marks omitted, ellipsis in original). It is not enough for the party with the burden of proof to make a factual showing as to some, but not all, of the elements of its claims; rather, to deny summary judgment, “the court must determine that a genuine issue of material fact exists for each essential element[.]” Id. at 358. “[A] complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” Baughman v. AT&T, 306 S.C. 101, 116, 410 S.E.2d 537, 546 (1991). “Summary judgment speaks in terms of “genuine issue of fact” [. . .].” Saluda Motor Lines, Inc. v. Crouch, 300 S.C. 43, 45, 386 S.E.2d 290, 291-292 (Ct. App. 1989). “It is not sufficient that a mere inference be created as relates to [the summary judgment] motion.” Id. “The issue as relates to a summary judgment must be genuine [. . .]. Id. “It is not sufficient that evidence create a far fetched inference.” Id.

RULES OF APPLICABLE LAW AND APPLICATION TO THE FACTS

1. Rule 41 (SCRPC) and the Principle of Contract

The Court dismissed the 2007 Common Pleas case upon agreement of the parties, with prejudice. A dismissal with prejudice is a final adjudication of the case. Freeman v. McBee, 280 S.C. 490, 493, 313 S.E.2d 325, 327 (Ct. App. 1984) (“Here, the complaint was dismissed *with* prejudice. In that situation, the dismissal operates as an adjudication on the merits terminating the action and concluding the rights of the parties.” (Citation omitted)).

The document entitled “Mutual Release and Settlement Agreement” is a release. See Bowers v. Dep’t of Transp., 360 S.C. 149, 153-54, 600 S.E.2d 543, 545 (Ct. App. 2004) (“The Release is a contract. See Hyman v. Ford Motor Co., 142 F.Supp.2d 735 (D.S.C.2001) (applying South Carolina law, contract principles invoked to determine validity of a release); Lowery v. Callahan, 210 S.C. 300, 300, 42 S.E.2d 457, 458 (1947) (noting that the “same principles of adequacy of consideration which apply to other contracts, govern as to releases”); 18 S.C. Jur. Release § 2 (2003) (“Because a release is a contract, principles of law applicable to contracts generally are also applicable to releases.”). “In construing terms in contracts, this Court must first look at the language of the contract to determine the intentions of the parties.” C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Fin. Comm’n, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988).

Penny was a party to previous actions seeking to recover the same money from Lee she seeks to recover in the 2013 Common Pleas case. Penny authorized the filing of a stipulation of dismissal with prejudice of the 2007 Common Pleas case, voluntarily settled the 2007 Common Pleas case releasing Lee, and accepted \$32,500 from Lee, as well as other consideration, in exchange for the release of all claims, known and unknown arising out of the same facts and

circumstances alleged in the 2013 Common Pleas case. I find the filing of the stipulation of dismissal pursuant to Rule 41, SCRCP, is a final adjudication.

I find the terms of the release are clear and unambiguous. Since the Release unambiguously sets forth the contracting parties' intent, this Court is bound by that clearly expressed intent without resort to extrinsic evidence. "Extrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible." C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Fin. Comm'n 373 S.E.2d at 586. Plaintiff admitted in her requests to admit that the release was genuine. She alleged no ambiguity in any pleading or affidavit. Accordingly, summary judgment is appropriate in favor of Defendant Estate of Lee Williams.

Conversely, I do not find summary judgment is appropriate in favor of the Defendants Booth. Despite the explicit language that the release applies to Lee and Penny and "their heirs, legal representatives, successors and assigns," the Defendants Booth were not parties to the 2007 Common Pleas case, nor to the Release. I deny the motion for summary judgment as to the Defendants Booth on this ground, without prejudice with leave to refile. *based upon on going discovery. RLn*

2. Collateral Estoppel and Res Judicata

Collateral estoppel, also known as issue preclusion, prevents a party from re-litigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. Judy v. Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct.App.2009).

The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was:

- (1) actually litigated in the prior action;
 - (2) directly determined in the prior action; and
 - (3) necessary to support the prior judgment.
- Beall v. Doe, 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 189-90 n. 1 (Ct.App.1984).

However, the doctrine of collateral estoppel should not be rigidly or mechanically applied. Carrigg v. Cannon, 347 S.C. 75, 81, 552 S.E.2d 767, 770 (Ct.App.2001). Thus, even if all the elements for collateral estoppel are met, when unfairness or injustice results or public policy requires it, courts may refuse to apply it. State v. Bacote, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998).

“The doctrine of collateral estoppel [. . .] rests generally on equitable principles.” S. Carolina Pub. Interest Found. v. Greenville Cnty., 401 S.C. 377, 386©87, 737 S.E.2d 502, 507 (Ct. App. 2013), reh'g denied (Jan. 23, 2013), cert. denied (May 7, 2014) (citations omitted). In Watson v. Goldsmith, 205 S.C. 215, 31 S.E.2d 317 (1944), our supreme court contrasted the origin of the doctrine of collateral estoppel with the origin of res judicata:

Estoppel rests generally on equitable principles; which res judicata does not, but upon the two maxims which were its foundation in the Roman law, *nemo debet bis vexari pro eadem causa* (no one ought to be twice sued for the same cause of action) and *interest reipublicae ut sit finis litium* (it is the interest of the state that there should be an end of litigation [])[.] ... Res judicata is rather a principle of public policy than the result of equitable considerations, which [the] latter estoppel is.

“Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.” Judy v. Judy, 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011) (citation omitted). “Under the doctrine of res judicata, a litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit.” Id. (citation and quotation marks omitted).

“Res judicata bars re-litigation of the same cause of action while collateral estoppel bars

re-litigation of the same facts or issues necessarily determined in the former proceeding.” Pye v. Aycock, 325 S.C. 426, 436, 480 S.E.2d 455, 460 (Ct.App.1997). In Beall v. Doe, this court distinguished the two concepts as follows:

“The doctrines of res judicata and collateral estoppel are, of course, two different concepts. A final judgment on the merits in a prior action will conclude the parties and their privies under the doctrine of res judicata in a second action based on the same claim as to issues actually litigated and as to issues which might have been litigated in the first action. Under the doctrine of collateral estoppel, on the other hand, the second action is based upon a different claim and the judgment in the first action precludes relitigation of only those issues actually and necessarily litigated and determined in the first suit. 281 S.C. 363, 369 n. 1, 315 S.E.2d 186, 190 n. 1 (Ct.App.1984) (citations and quotation marks omitted).”

Penny and Lee litigated the identical issues in the 2007 Common Pleas case as are set forth in the 2013 Common Pleas case. Essentially, Penny sued Lee again over the same money in the case at bar. Penny’s counsel conceded to the Court at oral argument both cases involved the same money.

I find the issues and claims, as to Lee, between the two cases are identical. The 2013 Common Pleas case is barred under both collateral estoppel and res judicata. Accordingly, summary judgment is appropriate in favor of Defendant Estate of Lee Williams.

As I found collateral estoppel and res judicata properly applied to Lee, I do not find these doctrines apply to bar the 2013 Common Pleas case against the Defendants Booth. I find this an appropriate circumstance not to apply collateral estoppel. Collateral estoppel is an equitable doctrine, and since information about the Booths alleged activity was not known by Penny until March 6, 2012, an injustice may occur if the allegations are not further reinvestigated. The

doctrine of collateral estoppel should not be rigidly or mechanically applied. Carrigg v. Cannon, 552 S.E.2d at 770. Thus, even if all the elements for collateral estoppel are met, when unfairness or injustice results or public policy requires it, courts may refuse to apply it. State v. Bacote, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998). I chose not to apply collateral estoppel under these circumstances.

I further conclude the doctrine of res judicata does not apply here because the Booths were not parties to the 2007 Common Pleas case. See Judy v. Judy, 712 S.E.2d at 414 (“Res judicata bars subsequent actions **by the same parties** when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.”) (Emphasis added.) Accordingly, I deny the motion for summary judgment as to the Defendants Booth on these grounds, without prejudice with leave to refile.

3. Rule 60(b), SCRCF

Rule 60, SCRCF is as follows:

“On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
(1) mistake, inadvertence, surprise, or excusable neglect;
(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
(3) fraud, misrepresentation, or other misconduct of an adverse party;
(4) the judgment is void;
(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality

of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. [. . .]”

The burden of proof under Rule 60(b), SCRCP, is clear and convincing evidence. Gainey v. Gainey, 382 S.C. 414, 427, 675 S.E.2d 792, 799 (Ct. App. 2009) (When a party asserts grounds for relief because of fraud, misrepresentation, or other misconduct of an adverse party under Rule 60(b)(3), SCRCP, the movant must prove her entitlement by clear and convincing evidence.”) (citation omitted).

In Chewning v. Ford Motor Company, 354 S.C. 72, 80, 579 S.E.2d 605, 610 (2003), the South Carolina Supreme Court discussed the rule that extrinsic fraud is necessary to set aside a judgment based on fraud under Rule 60(b), SCRCP. The court explained the difference between intrinsic and extrinsic fraud:

“Extrinsic fraud is ‘fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his case, there has never been a real contest before the court on the subject matter of the action.’

Intrinsic fraud, on the other hand, is fraud which was presented and considered in the trial. It is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud.”

Id. at 81, 579 S.E.2d 605, 579 S.E.2d at 610 (quoting Hilton Head Ctr. of S.C. v. Pub. Serv.

Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). Perjury by a party or a witness, use of forged documents, or failure to disclose documents by a party or witness are examples of intrinsic fraud.

Id.; Raby Constr., L.L.P. v. Orr, 358 S.C. 10, 21 n. 5, 594 S.E.2d 478, 483 n. 5 (2004). However, the subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud amounting to fraud on the court. Chewning, 354 S.C. at 82–84, 579 S.E.2d at 610–11. Any claim of fraud on the court must be accompanied by particularized allegations. Id. at 86, 579 S.E.2d 605, 579 S.E.2d at 613.

Penny filed the 2013 Common Pleas case after a year of “newly discovered evidence” and alleged no fraud upon the court. Actual discovery occurred and depositions were taken of Lee and Defendant Shirley Booth. Penny did not make her motion in a reasonable amount of time as to Lee. Rule 60(b), SCRPC. Therefore, Penny may not pursue the 2013 Common Pleas Case as her 60(b) motion should have been brought to relieve her from 2007 Common Pleas case adjudication. Accordingly, summary judgment is appropriate in favor of Defendant Estate of Lee Williams.

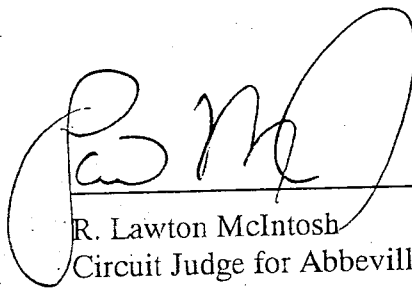
As I found Rule 60(b) properly applied to Lee as an additional sustaining ground to prevent Penny’s case against him, I do not find this rule limits Penny’s case against the Defendants Booth at this time. Rule 60(b) is a permissive rule. See Rule 60(b), SCRPC (“On motion and upon such terms as are just, the court **may** [...]”) (emphasis added). Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the trial court. Se. Hous. Found. v. Smith, 380 S.C. 621, 636, 670 S.E.2d 680, 688 (Ct. App. 2008) (citation omitted). There is simply no previous judgment or adjudication involving the Defendants Booth that this Court can grant relief from. I deny the motion for summary judgment as to the Defendants Booth on this ground, without prejudice with leave to refile.

CONCLUSION

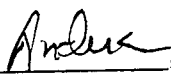
Because of Penny's stipulation of dismissal with prejudice, an enforceable release signed by her, the doctrine of collateral estoppel and res judicata, as well as Rule 60(b), SCRPC, the motion for summary judgment of Defendant Estate of Lee Williams must be granted. The Defendants Booth are in a slightly different position. At this time, I find the current state of the issues warrant that I deny the motion for summary judgment of the Defendants Booth.

It is therefore hereby ORDERED that the Defendant Estate of Lee Williams motion for summary judgment is granted, with leave to file a claim against Lee's Estate, if available, and the motion for summary judgment of the Defendants Booth is denied, without prejudice with leave to refile.

And IT IS SO ORDERED.



R. Lawton McIntosh
Circuit Judge for Abbeville County

 South Carolina
February 20, 2015.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013-CP-01-00284

Pamela Richey,
PLAINTIFF(S)

Shirley W. Booth, Thomas J. Booth, et al
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ 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 (formal order to follow) ☐ Statement of Judgment by the Court:

Plaintiff's Motion to Alter or Amend is denied without formal argument. No formal order is requested.

This order ☐ ends ☐ does not end the case
Additional Information for the Clerk :

ORDER INFORMATION
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
CLERK OF COURT
EMILY Y MCMAHAN
APR 2 PM 3:31
FILED

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

2155

Judge Code

Date

3-31-15

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

Pamela Richey,)

Plaintiff,)

vs.)

Shirley W. Booth, Thomas J. Booth, Estate)
of Lee C. Williams,)

Defendants.)

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No. 2013-CP-01-284

COMPLAINT

(JURY TRIAL DEMANDED)

EMILY Y MCMAHAN
CLERK OF COURT

2013 SEP 23 PM 4:57

FILED
STATE OF SOUTH CAROLINA
COURT OF ABBEVILLE

The Plaintiff would respectfully allege and show unto the Court the following:

PARTIES, JURISDICTION, AND VENUE

1. The Plaintiff is a citizen and resident of Abbeville County, South Carolina.
2. Upon information and belief, Defendants Shirley W. Booth and Thomas J. Booth are citizens and residents of Greenwood County, South Carolina.
3. Upon information and belief, Defendant Estate of Lee C. Williams is a duly opened estate in Abbeville County, South Carolina with Case No. 2013-ES-01-00171.
4. This Court has jurisdiction over all parties and subject matter raised herein, and venue is proper in Abbeville County.

FACTUAL ALLEGATIONS

5. The Plaintiff filed a lawsuit against her uncle Lee C. Williams ("Lee") that alleged he took \$400,000.00 from the Plaintiff's father and Lee's brother, Hugh A. Williams ("Hugh"), at the time of Hugh's death that was intended for the Plaintiff. This litigation occurred in Case Nos. 2006-ES-01-00169 and 2007-CP-01-188.

6. Lee denied taking the money, and the parties settled the case without Lee admitting to taking the money.

7. Prior to his death, Lee signed a sworn affidavit admitting that he did take the \$400,000.00 from Hugh, and Hugh intended for Lee to keep one-third (1/3) of the money to care for himself and his wife with the remaining two-thirds (2/3) of the money to be given to the Plaintiff upon Lee's death.

8. During the aforementioned litigation, Lee's daughter and son-in-law, Defendants Shirley W. Booth and Thomas J. Booth, wrongfully took the boxes of money from Lee's house without permission during October 2010 in the presence of witnesses.

9. Defendants Shirley W. Booth and Thomas J. Booth refused to return the money to Lee when he demanded that they do so.

**FIRST CAUSE OF ACTION – AGAINST DEFENDANT ESTATE OF LEE C.
WILLIAMS
(Conversion)**

10. The Plaintiff reiterates and realleges Paragraphs 1-9 as though set forth herein verbatim.

11. The decedent, Lee, took actions that constituted an unauthorized assumption and exercise of the right of ownership over the two-thirds (2/3) share of the money the Plaintiff was entitled to, to the exclusion of the Plaintiff.

12. Lee wrongfully detained the Plaintiff's two-thirds (2/3) share of the money without justification or excuse by refusing to surrender possession of the Plaintiff's share or promising to secure it on the Plaintiff's behalf until his death after the Plaintiff demanded possession of her share.

13. Lee willfully, intentionally, and recklessly converted the Plaintiff's share of the money with knowledge of and conscious indifference to the Plaintiff's lawful and absolute ownership right to that share.

**SECOND CAUSE OF ACTION – AGAINST DEFENDANTS SHIRLEY W. BOOTH AND
THOMAS J. BOOTH
(Conversion)**

14. The Plaintiff reiterates and realleges Paragraphs 1-13 as though set forth herein verbatim.

15. Defendants Booths took actions that constituted an unauthorized assumption and exercise of the right of ownership over the money, two-thirds (2/3) of which the Plaintiff was entitled to, to the exclusion of the Plaintiff when they took the money they had no right to.

16. Defendants Booths wrongfully detained the money without justification or excuse by refusing to surrender possession of the money to Lee or the Plaintiff after Lee demanded possession of the money.

17. Defendants Booths willfully, intentionally, and recklessly converted the money, two-thirds (2/3) of which belonged to the Plaintiff, with knowledge of and conscious indifference to the Plaintiff's lawful and absolute ownership right to her share of the money.

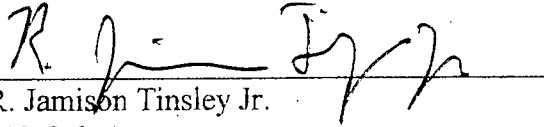
18. Lee attempted to get law enforcement to force Defendants Booths to return the money to no avail.

WHEREFORE, the Plaintiff prays:

1. For actual, incidental, consequential, punitive, and special damages such as should be awarded by a jury at the trial of this case;
2. For a trial by jury;
3. For costs and legal fees; and

4. For such other and further relief as the Court deems just, equitable, and proper.

TINSLEY & TINSLEY, P.C.
Attorney for Plaintiff



R. Jamison Tinsley Jr.
212 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Fax: (864)229-8001

Greenwood, South Carolina

September 18, 2013

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

Pamela Richey,

Plaintiff,

v.

Shirley W. Booth, Thomas J. Booth,
Estate of Lee C. Williams,

Defendants.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

ANSWER

2013-CP-01-284

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BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT

EMILY Y MCMAHAN
CLERK OF COURT

2014 JUN 30 AM 9:02

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

The Defendant Estate of Lee C. Williams ("Estate") by and through its Personal Representative answers the Complaint as follows:

FOR A FIRST DEFENSE

1. The Estate denies each and every allegation in the Complaint unless modified, explained, or admitted herein.
2. The Estate, upon information and belief, admits the allegations set forth in Paragraphs 1 and 2 of the Complaint.
3. The Estate admits the allegations set forth in Paragraphs 3 and 4 of the Complaint.
4. The Estate admits the allegations set forth in Paragraph 5 of the Complaint, but would allege and clarify, that it was Lee C. Williams that initiated the lawsuit referenced therein, and that the Plaintiff in this action filed a Counterclaim in 2007-CP-01-169.
5. The Estate admits the allegations set forth in Paragraph 6 of the Complaint.
6. While a document is purported to be such an affidavit, the Estate is without sufficient information as to admit or deny the allegations set forth in Paragraph 7 of the Complaint, therefore, the same is denied.

7. The Estate is without sufficient information as to admit or deny the allegations set forth in Paragraphs 8 and 9 of the Complaint, therefore, the same is denied.
8. The Estate denies the allegations set forth in Paragraphs 10, 11, 12, 13 and 14 of the Complaint.
9. The allegations set forth in Paragraph 15, 16 and 17 of the Complaint are not directed at the Estate; however, should a response be required the Estate is without sufficient information as to admit or deny the allegations, therefore, the same is denied.
10. The Estate is without sufficient information as to admit or deny the allegations set forth in Paragraph 18 of the Complaint, therefore, the same is denied.
11. The remainder of the Complaint and the prayer is hereby denied.

FIRST AFFIRMATIVE DEFENSE - RES JUDICATA

12. The Complaint describes actions taking place after a previously adjudicated suit by the Plaintiff and the Estate (then by Lee Williams individually) concerning **claims** that arise out of the same transactions or occurrences that were the subject of a previous action between the Plaintiff and Lee Williams (now deceased) filed at 2007-CP-01-169, settled and dismissed with prejudice; therefore, the Complaint is barred as to the Estate by *res judicata*.

SECOND AFFIRMATIVE DEFENSE - COLLATERAL ESTOPPEL

13. The Complaint necessarily requires the re-litigation of issues actually litigated between the Plaintiff and the Estate (then by Lee Williams individually) concerning **issues** that arise out of the same transactions or occurrences that were the subject of a previous action between the Plaintiff and Lee Williams (now deceased) filed at 2007-CP-01-169, the issues were directly determined in the prior action, necessary to support the outcome,

settled and dismissed with prejudice; therefore, the Complaint is barred as to the Estate by collateral estoppel.

14. Plaintiff actively participated in 2007-CP-01-169 and had a full and fair opportunity to previously litigate the issues she raises in her Complaint.

FIFTH AFFIRMATIVE DEFENSE - STATUTE OF LIMITATIONS

15. The Complaint is barred by the defense of Statute of Limitations.

FIFTH AFFIRMATIVE DEFENSE - ACCORD, SATISFACTION and RELEASE

16. The Complaint is barred by the accord, satisfaction and release created by that "Mutual Release and Settlement Agreement" dated May 11, 2011 for 2007-CP-01-169, a true copy being attached as Exhibit A.
17. Plaintiff and Estate (via Lee Williams individually at the time) mutually agreed to settle, and dismiss with prejudice, "all remedies sought as set forth in the pleadings [for 2007-CP-01-169] or remedies that could have been pled [in 2007-CP-01-169]," the actual terms of which are more specifically set forth in detail on Exhibit A.
18. The Estate (via Lee Williams individually at the time) paid consideration to Plaintiff and she accepted it.
19. The Release and Settlement Agreement released Lee Williams (living at the time) as well as his "heirs, legal representatives, successors and assigns from all liability for claims, demands and causes of action, known or unknown . . . relating to or arising out of the allegations and causes of action more specifically set forth in [2007-CP-01-169]."

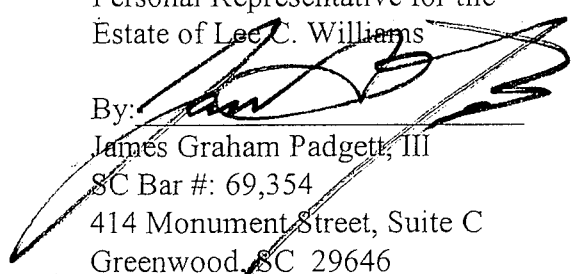
Wherefore, the Defendant Estate prays for the following relief:

1. For the Plaintiff's Complaint to be dismissed;
2. For attorney's fees and costs for defending this action;

3. For such other and further relief as this Court deems just, equitable, and proper.

BACOT & PADGETT, LLC

Attorneys for Sam Jeans,
Personal Representative for the
Estate of Lee C. Williams

By: 

James Graham Padgett, III

SC Bar #: 69,354

414 Monument Street, Suite C

Greenwood, SC 29646

Phone: (864) 227-1570

Fax: (864) 227-2610

at Greenwood, South Carolina

26 June, 2014

Ex. A

STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Lee C. Williams,
Plaintiff,
v.
Pamela P. Richey,
Defendant.

MUTUAL RELEASE
AND
SETTLEMENT AGREEMENT

C/A No 2007-CP-01-001

EMILY Y MCMAHAN
CLERK OF COURT

2014 JUN 30 AM 9:02

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

This Mutual Release, executed on May 11, 2011, by Lee C. Williams and Pamela P. Richey, is intended to effect the extinguishment of all remedies sought as set forth in the pleadings or remedies that could have been pled. In consideration of:

- 1) THIRTY-TWO THOUSAND FIVE HUNDRED AND NO/100 (\$32,500.00) DOLLARS to be paid by Lee C. Williams to Pamela P. Richey on or before May 24, 2011;
- 2) Relinquishment by Lee C. Williams of all right, title and interest in certain motor vehicles, described with specificity in the complaint, in favor of Pamela P. Richey;
- 3) Lee C. Williams resigning as the Co-Personal Representative of the Estate of Hugh Williams; and
- 4) Release of that certain lien on a Volvo motor vehicle owned by Sandra PETTIGRO;

Each party shall execute a stipulation of dismissal of the above-captioned action, with prejudice.

Disputes and differences have arisen between the parties with respect to the events described in the pleadings in the above-captioned action, the contents of which are incorporated herein by reference. In consideration described above, the Plaintiff and Defendant have agreed to execute this Mutual Release in settlement of all claims, disputes and differences from the beginning of time to the present relating to or arising out of the allegations and causes of action more specifically described in the pleadings. Accordingly, the Plaintiff and Defendant, for themselves, and their heirs, legal representatives, successors, and assigns, expressly releases, acquits and forever discharges the other party and their heirs, legal representatives, successors, and assigns from all liability for claims, demands and causes of action, known or unknown, heretofore existing, relating to or arising out of the allegations and causes of action more specifically described in the pleadings.

1.2.11 Pub

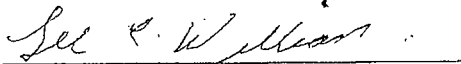
It is understood and agreed that this Mutual Release is not to be construed as an admission of liability on the part of any party. This Release is intended merely to avoid the costs, expenses, and uncertainty of litigation.

The undersigned further declares and represents that this Release has been read and fully understood the contents and effect hereof and does, by the execution hereof, fully commit and bind the undersigned, their heirs, legal representatives, successors and assigns to the terms and conditions of this Mutual Release, and that no promise, inducement or agreement not herein expressed has been made and that this Mutual Release contains the entire agreement between the parties, and that the terms of this Mutual Release are contractual and not a mere recital. Each party is satisfied with the services of their respective attorney.

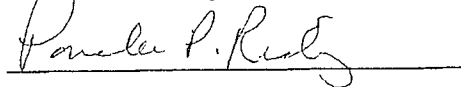
To the greatest extent possible, this Mutual Release shall remain confidential.

IN WITNESS WHEREOF, the Plaintiff has executed this Release on the day and year first above written.

Lee C. Williams

Handwritten signature of Lee C. Williams in cursive, underlined.

Pamela P. Richey

Handwritten signature of Pamela P. Richey in cursive, underlined.

State of South Carolina, County of Abbeville
In the Common Pleas Court, Eighth Judicial Circuit

Pamela Richey

Plaintiff,

vs.

Shirley W. Booth, Thomas J.
Booth, and Estate of Lee C.
Williams

Defendants.

Case No. 2013-CP-01-284

Defendants' Answer
and Counterclaim

To: Plaintiff Pamela Richey through her attorney, R. Jamison Tinsley:

Defendants Shirley W. Booth and Thomas J. Booth (Defendants Booth) answer the allegations of Plaintiff's Complaint and show the Court the following:

FOR A FIRST DEFENSE

1. Defendants Booth deny each and every allegation contained in Plaintiff's Complaint not specifically admitted, modified, or explained below.
2. Defendants Booth admit the allegations set forth in Paragraphs 1, 2, 3, and 4.
3. Upon information and belief, Defendants Booth admit Paragraph 5.
4. Defendants Booth lack sufficient knowledge to answer Paragraphs 6 and 7, and as such, same are denied.
5. Defendants Booth deny Paragraphs 8 and 9.
6. Paragraph 10 does not require a response. To the extent that a response is necessary Defendants Booth deny Paragraph 10.
7. Defendants Booth lack sufficient information to admit or deny the allegations in Paragraphs 11, 12 and 13, and as such, same are denied.
8. Paragraph 14 does not require a response. To the extent that a response is necessary Defendants Booth deny Paragraph 14.
9. Defendants Booth deny Paragraphs 15, 16 and 17.

10. Defendants Booth lack sufficient information to admit or deny the allegations in Paragraph 18 and as such, same are denied.

FOR A SECOND DEFENSE

(Failure to State Facts Sufficient to Constitute a Cause of Action)

11. Defendants Booth restate the preceding paragraphs as if repeated verbatim.
12. Plaintiff's Complaint should be dismissed pursuant to Rule 12(b)(6), SCRCF because it fails to state facts sufficient to constitute a cause of action.

FOR A THIRD DEFENSE

(Lack of Subject Matter Jurisdiction)

13. Defendants Booth restate the preceding paragraphs as if repeated verbatim.
14. Plaintiff's Complaint should be dismissed because this Court lacks subject matter jurisdiction to determine the issues raised in Plaintiff's Complaint.

FOR A FOURTH DEFENSE

(Unconstitutionality of Punitive Damages)

15. Defendants Booth restate the preceding paragraphs as if repeated verbatim.
16. Any imposition of punitive damages against the Defendants would violate the United States and South Carolina Constitutions.

FOR A FIFTH DEFENSE

(Res Judicata)

17. Defendants Booth restate the preceding paragraphs as if repeated verbatim.
18. Plaintiff's Complaint should be dismissed based on the doctrine of *res judicata*.

FOR A SIXTH DEFENSE

(Collateral Estoppel)

19. Defendants Booth restate the preceding paragraphs as if repeated verbatim.
20. Plaintiff's Complaint should be dismissed pursuant to the doctrine of collateral estoppel.

FOR A SEVENTH DEFENSE
(Statute of Limitations)

21. Defendants Booth restate the preceding paragraphs as if repeated verbatim.
22. Plaintiff's Complaint should be dismissed because it is barred by the applicable statute of limitations.

FOR AN EIGHTH DEFENSE
(Laches)

23. Defendants Booth restate the preceding paragraphs as if repeated verbatim.
24. Plaintiff's Complaint should be dismissed because it is barred by the equitable doctrine of laches.

FOR A NINTH DEFENSE
(Unclean Hands)

25. Defendants Booth restate the preceding paragraphs as if repeated verbatim.
26. Plaintiff's Complaint should be dismissed because it is barred by the equitable doctrine of unclean hands.

FOR A TENTH DEFENSE
(Waiver)

27. Defendants Booth restate the preceding paragraphs as if repeated verbatim.
28. Plaintiff's Complaint should be dismissed because it is barred by the doctrine of waiver.

FOR AN ELEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Defamation)

29. Defendants Booth restate the preceding paragraphs as if repeated verbatim.
30. Plaintiff is a citizen and resident of Abbeville County, South Carolina.
31. Defendants Shirley W. Booth and Thomas J. Booth (Defendants Booth) are citizens and residents of Greenwood County, South Carolina.
32. Upon information and belief, Defendant Estate of Lee C. Williams (Defendant Estate) is a duly opened estate in Abbeville County, South Carolina, with case number 2013-ES-01-00171.

33. Defendants Booth would show that Plaintiff has published defamatory and false statements with actual or implied malice about Defendants Booth.
34. Defendants Booth would show that Plaintiff's defamatory statements constitute defamation *per se* and damages should be presumed.
35. Plaintiff's defamatory statements have directly and proximately caused damages to Defendants Booth.
36. As a proximate result of Plaintiff's actions, Defendants Booth have suffered monetary damages including but not limited to, attorneys fees and the costs of defending this matter.

FOR A TWELFTH DEFENSE AND BY WAY OF COUNTERCLAIM

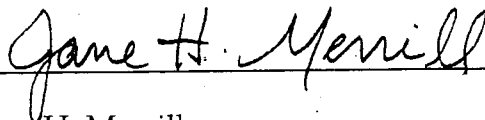
(Intentional Infliction of Emotional Distress)

37. Defendants Booth restate the preceding paragraphs as if repeated verbatim.
38. Plaintiff intentionally or recklessly inflicted severe emotional distress, or was substantially certain that such distress would result from her conduct.
39. Plaintiff's conduct is extreme and outrageous and exceeds all bounds of decency in a civilized community.
40. Plaintiff's actions have caused Defendants Booth emotional distress, and no reasonable person should be expected to endure it.
41. Plaintiff's actions have directly and proximately caused damages to Defendants Booth.

Wherefore, Defendants Booth pray for the following relief:

1. For actual, incidental, consequential, punitive, and special damages such as should be awarded by a jury at the trial of this case;
2. For a trial by jury;
3. For costs and legal fees; and,
4. For such other and further relief as the Court deems just, equitable, and proper.

HAWTHORNE MERRILL LAW, LLC

A handwritten signature in cursive script, reading "Jane H. Merrill", is written over a horizontal line.

Jane H. Merrill
410 Main St. | Greenwood, SC 29646
(864) 229-1010 | jane@hmlawsc.com
Attorney for Defendants Shirley W. Booth and
Thomas J. Booth

Greenwood, SC
December 20, 2013

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

Pamela Richey,

Plaintiff,

v.

Shirley W. Booth, Thomas J. Booth,

Estate of Lee C. Williams,

Defendants.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

NOTICE OF MOTION AND MOTION
FOR
SUMMARY JUDGMENT

C.A. #2013-CP-01-284

TRUE COPY
BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2014 NOV 10 PM 5:56
EMILY Y. MURPHY
CLERK OF COURT

TO: R. JAMISON TINSLEY, JR., ATTORNEY FOR PLAINTIFF PAMELA RICHEY:

The undersigned, as attorney for Sam Jeanes, Personal Representative for the Defendant Estate of Lee C. Williams, moves before the Court of Common Pleas for Greenwood County at the Greenwood County Courthouse, on the 10th day after service hereof, or at such other time as the Court may direct, for an Order pursuant to Rule 56 of the SCRPC granting summary judgment to the Defendant Sam Jeanes, Personal Representative for the Defendant Estate of Lee C. Williams.

Regarding Plaintiff's causes of action this instant case should be dismissed based on the following:

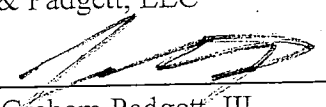
- 1) as a matter of contract, Plaintiff executed a "Mutual Release and Settlement Agreement"¹ for good and valuable consideration in a previous case - a case with similar issues - attached as Exhibit A;
- 2) this action attempts to re-litigate issues decided in two previous actions (Common Pleas and Probate Court) after a full and fair opportunity to previously explore the issues and should be barred under the doctrine of collateral estoppel;

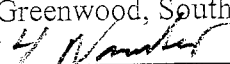
¹ Admitted by Plaintiff as a genuine document under SCRPC 36, dated August 19, 2014.

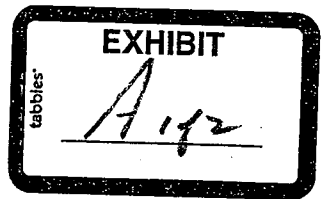
- 3) this action involves identical parties concerning claims arising out of the same occurrence that was the subject of a prior actions (Common Pleas and Probate Court) between the parties and should be barred under the doctrine of res judicata;
- 3) SCRCP 60 bars the causes of action set forth in this action after one year, and there this no allegation any fraud induced Plaintiff not to present a case in the previous actions (Common Pleas and Probate Court) or deprived Plaintiff of the opportunity to be heard in the previous actions (Common Pleas and Probate Court);

This motion is based on the pleadings filed in this case, attached affidavit with exhibits and the common and statutory law of the State of South Carolina as may be applicable.

Respectfully Submitted:
Bacot & Padgett, LLC

By: 
James Graham Padgett, III
Attorney for the Plaintiff
(SC Bar# 65,354)
414 Monument Street, Suite C
Greenwood, South Carolina 29646
(864) 227-1570; padgett@bacotlawfirm.com

at Greenwood, South Carolina
, 2014



STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Lee C. Williams,
Plaintiff,
v.
Pamela P. Richey,
Defendant.

MUTUAL RELEASE
AND
SETTLEMENT AGREEMENT

C/A No 2007-CP-01-00168

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2014 NOV 10 PM 1:56
EMILY Y. HODGINS
CLERK OF COURT

This Mutual Release, executed on May 11, 2011, by Lee C. Williams and Pamela P. Richey, is intended to effect the extinguishment of all remedies sought as set forth in the pleadings or remedies that could have been pled. In consideration of:

- 1) THIRTY-TWO THOUSAND FIVE HUNDRED AND NO/100 (\$32,500.00) DOLLARS to be paid by Lee C. Williams to Pamela P. Richey on or before May 24, 2011;
- 2) Relinquishment by Lee C. Williams of all right, title and interest in certain motor vehicles; described with specificity in the complaint, in favor of Pamela P. Richey;
- 3) Lee C. Williams resigning as the Co-Personal Representative of the Estate of Hugh Williams; and
- 4) Release of that certain lien on a Volvo motor vehicle owned by Sandra PETTIGRO;

Each party shall execute a stipulation of dismissal of the above-captioned action, **with prejudice**.

Disputes and differences have arisen between the parties with respect to the events described in the pleadings in the above-captioned action, the contents of which are incorporated herein by reference. In consideration described above, the Plaintiff and Defendant have agreed to execute this Mutual Release in settlement of all claims, disputes and differences from the beginning of time to the present relating to or arising out of the allegations and causes of action more specifically described in the pleadings. Accordingly, the Plaintiff and Defendant, for themselves, and their heirs, legal representatives, successors, and assigns, expressly releases, acquits and forever discharges the other party and their heirs, legal representatives, successors, and assigns from all liability for claims, demands and causes of action, known or unknown, heretofore existing, relating to or arising out of the allegations and causes of action more specifically described in the pleadings.

Lee C. Williams
P. Richey

It is understood and agreed that this Mutual Release is not to be construed as an admission of liability on the part of any party. This Release is intended merely to avoid the costs, expenses, and uncertainty of litigation!

The undersigned further declares and represents that this Release has been read and fully understood the contents and effect hereof and does, by the execution hereof, fully commit and bind the undersigned, their heirs, legal representatives, successors and assigns to the terms and conditions of this Mutual Release, and that no promise, inducement or agreement not herein expressed has been made and that this Mutual Release contains the entire agreement between the parties, and that the terms of this Mutual Release are contractual and not a mere recital. Each party is satisfied with the services of their respective attorney.

To the greatest extent possible, this Mutual Release shall remain confidential.

IN WITNESS WHEREOF, the Plaintiff has executed this Release on the day and year first above written.

Lee C. Williams

Lee C. Williams

Pamela P. Richey

Pamela P. Richey

State of South Carolina, County of Abbeville
In the Common Pleas Court, Eighth Judicial Circuit

Pamela Richey

Plaintiff,

vs.

Shirley W. Booth, Thomas J.
Booth, and Estate of Lee C.
Williams

Defendants.

Case No. 2013-CP-01-284

Notice of Motion and Motion
for Summary Judgment

**TO: JAMISON TINSLEY, ATTORNEY FOR PLAINTIFF PAMELA
RICHEY**

The undersigned, as attorney for Shirley W. Booth and Thomas J. Booth, moves before the Court of Common Pleas for Abbeville County at the Abbeville County Courthouse, on the 10th day after service hereof, or at such other time as the Court may direct, for an Order pursuant to Rule 56 of the SCRCPP granting summary judgment to Defendants Shirley W. Booth and Thomas J. Booth.

Regarding Defendants' causes of action this instant case should be dismissed based on the following:

1. As a matter of contract, Plaintiff executed a "Mutual Release and Settlement Agreement" for good and valuable consideration in a previous case- a case with similar issues- attached as Exhibit A;
2. This action attempts to re-litigate issues decided in two previous actions (Common Pleas and Probate Court) after a full and fair opportunity to previously explore the issues and should be barred under the doctrine of collateral estoppel;

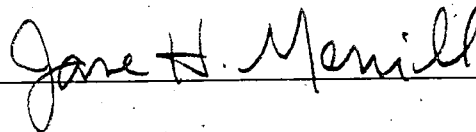
¹ Admitted by Plaintiff as a genuine document under SCRCPP 36, dated August 19, 2014.

3. This action involves identical parties concerning claims arising out of the same occurrence that was the subject of prior actions (Common Pleas and Probate Court) between the parties and should be barred under the doctrine of *res judicata*; and,

4. SCRCP 60 bars the causes of action set forth in this action after one year, and there is no allegation any fraud induced Plaintiff not to present a case in the previous actions (Common Pleas and Probate Court).

This Motion is based on the pleadings filed in this case, attached affidavit with exhibits and the common and statutory law of the State of South Carolina as may be applicable.

HAWTHORNE MERRILL LAW, LLC

A handwritten signature in cursive script, reading "Jane H. Merrill", is written over a horizontal line.

Jane H. Merrill
410 Main St. | Greenwood, SC 29646
864-229-1010 | jane@hmlawsc.com
Attorney for Defendants Booth

November 17, 2014
Greenwood, SC

STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Lee C. Williams,
Plaintiff,

v.

Pamela P. Richey,
Defendant.

MUTUAL RELEASE
AND
SETTLEMENT AGREEMENT

C/A No 2007-CP-01-00169

This Mutual Release, executed on May 11, 2011, by Lee C. Williams and Pamela P. Richey, is intended to effect the extinguishment of all remedies sought as set forth in the pleadings or remedies that could have been pled. In consideration of:

- 1) THIRTY-TWO THOUSAND FIVE HUNDRED AND NO/100 (\$32,500.00) DOLLARS to be paid by Lee C. Williams to Pamela P. Richey on or before May 24, 2011;
- 2) Relinquishment by Lee C. Williams of all right, title and interest in certain motor vehicles, described with specificity in the complaint, in favor of Pamela P. Richey;
- 3) Lee C. Williams resigning as the Co-Personal Representative of the Estate of Hugh Williams; and
- 4) Release of that certain lien on a Volvo motor vehicle owned by Sandra PETTIGRU;

Each party shall execute a stipulation of dismissal of the above-captioned action, **with prejudice.**

Disputes and differences have arisen between the parties with respect to the events described in the pleadings in the above-captioned action, the contents of which are incorporated herein by reference. In consideration described above, the Plaintiff and Defendant have agreed to execute this Mutual Release in settlement of all claims, disputes and differences from the beginning of time to the present relating to or arising out of the allegations and causes of action more specifically described in the pleadings. Accordingly, the Plaintiff and Defendant, for themselves, and their heirs, legal representatives, successors, and assigns, expressly releases, acquits and forever discharges the other party and their heirs, legal representatives, successors, and assigns from all liability for claims, demands and causes of action, known or unknown, heretofore existing, relating to or arising out of the allegations and causes of action more specifically described in the pleadings.

for v. Pub

It is understood and agreed that this Mutual Release is not to be construed as an admission of liability on the part of any party. This Release is intended merely to avoid the costs, expenses, and uncertainty of litigation.

The undersigned further declares and represents that this Release has been read and fully understood the contents and effect hereof and does, by the execution hereof, fully commit and bind the undersigned, their heirs, legal representatives, successors and assigns to the terms and conditions of this Mutual Release, and that no promise, inducement or agreement not herein expressed has been made and that this Mutual Release contains the entire agreement between the parties, and that the terms of this Mutual Release are contractual and not a mere recital. Each party is satisfied with the services of their respective attorney.

To the greatest extent possible, this Mutual Release shall remain confidential.

IN WITNESS WHEREOF, the Plaintiff has executed this Release on the day and year first above written.

Lee C. Williams

Lee C. Williams

Pamela P. Richey

Pamela P. Richey

COPY

STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

Pamela Richey,)

Plaintiff,)

vs.)

Shirley W. Booth, Thomas J. Booth, Estate)
of Lee C. Williams,)

Defendants.)

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No. 2013-CP-01-284

**PLAINTIFF'S MOTION TO ALTER OR
AMEND**

TRUE COPY

BY *[Signature]*
ARBEVILLE COUNTY CLERK OF COURT

EMILY Y. MCCLAIN
CLERK OF COURT

2015 MAR 12 AM 9:15

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

Pursuant to Rule 59 of the S.C. Rules of Civil Procedure, Plaintiff respectfully requests that the Court reconsider and amend its Order in this matter that was issued February 20, 2015; filed February 24; and received by Plaintiff's counsel on February 26, for the following reasons discussed herein.

The Court dismissed Plaintiff's cause of action in circuit court against Defendant Estate of Lee C. Williams ("the Estate") on the grounds that it was barred because Plaintiff signed an enforceable release in a previous case against Lee C. Williams, the doctrines of collateral estoppel and res judicata, and Rule 60(b), SCRPC. Plaintiff is hereby requesting the Court to declare that the Estate must remain a party to this action and join in Plaintiff's cause of action against Defendants Booths or file a cross-claim against the Booths for the money Plaintiff is seeking from the Booths. A copy of this lawsuit was filed in the probate court case to be heard in circuit court.

Plaintiff is a named devisee in Lee C. Williams' will. Item II of the will states "I give and bequeath the proceeds, if any, from a lawsuit filed by me against Shirley W. Booth and Thomas J. Booth for the recovery of money which belonged to Hugh A. Williams taken from me

to PAMELA "PENNY" RICHEY." (See Exhibit A.) While Lee C. Williams did not file a lawsuit against the Booths during his lifetime, his affidavit, which was produced to the Court at the summary judgment hearing, details the basis for the lawsuit that was filed by Plaintiff to recover the money against the Booths. Plaintiff was required to file the lawsuit and name the Estate because the personal representative had taken no action to attempt to recover the proceeds that Plaintiff was entitled to pursuant to the will.

Although the dispute between Plaintiff and Lee C. Williams is res judicata and collateral estoppel, Plaintiff is a third-party beneficiary by contract and will of the money at dispute between Lee C. Williams and the Booths wherein the Booths are alleged to have taken a portion or all of the money Lee C. Williams had at the time of his death. Plaintiff does not dispute that the funds in question became solely owned by Lee C. Williams at the conclusion of that case. Lee C. Williams was attempting to get his money back from the Booths. Out of the funds, he wanted Plaintiff to have one-third (1/3), his attorney to have one-third (1/3), and his estate to have the remaining one-third (1/3). This intention was expressed in his Last Will and Testament prepared by Paul Agnew, Esq., of the Abbeville County Bar.

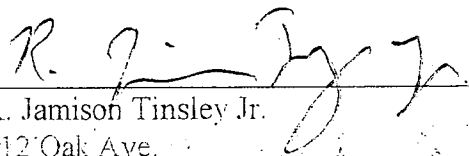
Plaintiff has also filed a petition in the probate court that requests the court either require the Estate's personal representative to pursue the claim against the Booths. The petition alternatively asks the probate court to remove the personal representative and appoint another personal representative or special administrator to carry out the terms of the will. (See Exhibit B.) Plaintiff's petition is based on the personal representative breaching his fiduciary duty to the Estate and Plaintiff, as a devisee of the estate, by failing to attempt to recover the funds from the Booths as required by the will. This failure by the personal representative violated the personal representative's duty to distribute the assets of the Estate. See S.C. Code Ann. §62-3-703(a).

The personal representative also breached its duty to take possession of assets that rightfully belong to the Estate. See §62-3-709 and -711(a).

The petition also requested that the Probate Court remove the matter of construing Item II of the will to this Court because of this pending lawsuit. S.C. Code Ann. 62-1-302(d)(2).

Plaintiff, therefore, asks this Court to reconsider its earlier ruling and issue a declaratory judgment that the Estate must attempt to pursue the funds from the Booths as required by the will and not to dismiss the Estate from the lawsuit because of the personal representatives duty to pursue these funds.

TINSLEY & TINSLEY, P.C.
Attorney for Plaintiff



R. Jamison Tinsley Jr.
212 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Fax: (864) 377-8278

Greenwood, South Carolina

March 9, 2015

EXHIBIT A

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABERDEEN
2015 MAR 12 AM 9:15
EMILY Y. MCANULTAN
CLERK OF COURT

Last Will and Testament

I, LEE C. WILLIAMS, a resident of and domiciled in the County of ABBEVILLE, State of SOUTH CAROLINA, do hereby make, publish and declare this to be my Last Will and Testament hereby revoking any and all other Wills and Codicils at any time heretofore made by me.

ITEM I

I direct that all of my just debts, secured and unsecured, be paid as soon as practicable after my death.

ITEM II

I give and bequeath the proceeds, if any, from a lawsuit filed by me against Shirley W. Booth and Thomas J. Booth for the recovery of money which belonged to Hugh A. Williams taken from me to PAMELA "PENNY" RICHEY.

ITEM III

Subject to the payment of any legal debts or legal claims established against my estate, including, but not limited to my funeral expenses, expenses of my last illness, expenses and costs of administration, legal expenses, and federal and state estate taxes, if any, I give, devise and bequeath all my remaining monies and the rest, residue and remainder of my property owned by me at the time of my death, whether real, personal, or mixed, of whatsoever nature and wheresoever situate, whether acquired before or after the execution of this will to CHUCK NASH; BOBBY JOE WILLIAMS; SAMUEL JEANS; BRENDALYN JOHNSON; JUANITA AKERS; KATIE LEE NASH; DYLAN BOOTH; and JEB BOOTH in approximately equal shares.

ITEM IV

I hereby nominate, constitute and appoint executor of this my Last Will and Testament, SAMUEL E. JEANS and direct that he shall serve without bond.

ITEM V

If KATIE LEE NASH is under the age of eighteen (18) years at the date of my death, I hereby nominate, constitute and appoint CHUCK NASH as trustee of KATIE LEE NASH, and direct that he shall serve without bond.

If DYLAN BOOTH and JEB BOOTH are under the age of eighteen (18) years at the date of my death, I hereby nominate, constitute and appoint T. J. BOOTH as trustee of DYLAN BOOTH and JEB BOOTH, and direct that he shall serve without bond.

ITEM VI

By way of illustration and not of limitation and in addition to any inherent, implied, or statutory powers granted to executors generally, my executor is specifically authorized and empowered: to allot, assign, buy, care for, collect, contract with respect to, to continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for, and in general to exercise all of the powers in the management of similar property owned in his own right, upon such terms and conditions as to my executor may deem best, and to execute and deliver any and all instruments and to do all acts which my executor may deem proper or necessary to carry out the purposes of this Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order. Any substitute or successor executor shall have all the powers granted to the original executor.

ITEM VII

Whenever my executor herein named is directed to distribute any property in fee simple to a person who is under the age of eighteen (18) at the date of distribution, my executor shall transfer, convey and assign such property to himself as trustee and hold the property of such individual in trust for his or her using so much of the net income and principal of the property as my trustee shall deem necessary to provide for the proper support, medical care and education of such individual, taking into consideration to the extent my trustee deems advisable any other income or resources of such individual or of his or her parents. Such individual's property shall be paid over and distributed to him or her upon attaining age eighteen (18) or if he or she shall sooner die, to his or her estate.

Whenever my trustee determines it appropriate to pay any money or benefit of any individual for whom a trust is created hereunder, such amounts shall be paid out to my trustee in such of the following ways as my trustee deems best: (1) directly to such beneficiary; (2) to the legally appointed guardian of such beneficiary; (3) to some relative or friend for the support, medical care, and education of such beneficiary; (4) by my trustee using such amounts directly for such beneficiary's support, medical care and education. In holding any property for an individual under the provisions of this Item, my trustee shall have all of the power, discretionary or otherwise, heretofore conferred upon him as executor.

ITEM VIII

If any beneficiary and I should die as a result of a common accident or calamity or otherwise under such circumstances as would render it doubtful whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Will that said beneficiary predeceased me.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 5 day of April, 2012.

The foregoing Will consisting of four typewritten pages, this included, the three preceding pages thereof, bearing on the left hand margin the initials of the Testator was this 5th day of April, 2012, signed, sealed, published and declared by the said Testator as and for his Last Will and Testament and in the presence of us, who at his request, and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses hereto.

Heather D. Osborne of Abbeville, SC

Stephanie D. Cooper of Abbeville, SC

STATE OF SOUTH CAROLINA)

PROOF OF WILL

COUNTY OF ABBEVILLE)

WE, LEE C. WILLIAMS, Heather D. Osborne, and Stephanie D. Cooper the Testator and the witnesses, respectively, whose names are signed to the attached, or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the Testator signed and executed the instrument as his last Will and that he had signed willingly, (or willingly directed another to sign for his), and that he executed it as his free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the Testator signed the Will as witnesses and to the best of his knowledge the Testator was at the time eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Lee C. Williams
LEE C. WILLIAMS

Heather D. Osborne
(WITNESS)

Stephanie D. Cooper
(WITNESS)

STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

Subscribed, sworn to, and acknowledged before me by LEE C. WILLIAMS, the Testator, and subscribed and sworn to me by Heather D. Osborne, and Stephanie D. Cooper, this 5th day of April, 2012.

[Signature]
(NOTARY PUBLIC FOR SOUTH CAROLINA)
My commission expires: 1/16/2018

EXHIBIT B

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABERDEEN
2015 MAR 12 AM 9:15
EMILY MCCLELLAN
CLERK OF COURT

COPY

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

ESTATE OF LEE C. WILLIAMS

Pamela P. Richey,

Petitioner,

vs.

Samuel Jeanes, as Personal Representative
of the Estate of Lee C. Williams,

Respondent.

IN THE PROBATE COURT

EIGHTH JUDICIAL CIRCUIT

Case No. 2013-ES-01-00171

**PETITION TO REQUIRE PERSONAL
REPRESENTATIVE TO PURSUE
FUNDS**

Petitioner ("Ms. Richey") would respectfully allege and show unto the Court the following:

1. Ms. Richey is a named devisee in Decedent's will. A devisee is "any person designated in a will to receive a devise." (S.C. Code Ann. §62-1-201(8).) A devise is a "testamentary disposition of real or personal property." (Id. (7).)

2. Respondent ("Personal Representative") is the duly appointed personal representative of Decedent's estate.

3. Item II of Decedent's will states "I give and bequeath the proceeds, if any, from a lawsuit filed by me against Shirley W. Booth and Thomas J. Booth for the recovery of money which belonged to Hugh A. Williams taken from me to PAMELA "PENNY" RICHEY." (Emphasis in original.)

4. "The intention of a testator as expressed in the testator's will controls the legal effect of the testator's dispositions." (S.C. Code Ann. 62-2-601(a).)

5. The will also controls the disposition of property acquired by the testator's estate after the testator's death. (S.C. Code Ann. 62-2-602.)

6. On March 6, 2012, Decedent ("Lee Williams") signed an affidavit that admitted he took between \$400,000.00 and \$500,000.00 from Ms. Richey's father, who wanted Lee Williams to keep one-third (1/3) of the money and give the remaining two-thirds (2/3) to Ms. Richey upon Lee Williams' death. The affidavit further stated that Lee Williams' daughter, Shirley W. Booth, and son-in-law, Thomas J. Booth, took the money from Lee Williams while he and Ms. Richey were engaged in litigation regarding the ownership of this money and then refused to return the money to Lee Williams. The affidavit then stated that Lee Williams and Ms. Richey had hired Billy J. Garrett, Jr., Esq., to attempt to recover the money from the Booths.

The affidavit specified:

"If I die before any litigation is concluded, it's my desire that my personal representative continue the litigation. If necessary, I desire that Penny continue the litigation so that she can attempt to recover one-third (1/3) of money for my estate and one-third (1/3) of the money for her. I want this affidavit to be attached to my Last Will and Testament. If I die before litigation is concluded, or if any of my one-third (1/3) share of the money is left at the time of my death, it's my desire that my personal representative pay my share or the remainder of my share of this money directly to Penny.

It's my intention that Penny inherit any money that I receive on account of litigation against my daughter and son-in-law. I intend to amend my will to add this provision, but in case I don't have time to amend my will, I want everyone to know my intention."

(See "Exhibit A.")

7. The Personal Representative witnessed Lee Williams' affidavit.

8. Not long after signing the affidavit and will, Lee Williams became ill and had to live in a nursing home for the rest of his life.

9. Because of Lee Williams' illness, the litigation against the Booths was never initiated during his lifetime.

10. On September 23, 2013, Ms. Richey filed a Summons and Complaint in the Court of Common Pleas against the Booths alleging that they converted the money described in Lee Williams' affidavit that her father intended for her to have two-thirds (2/3) of.

11. Ms. Richey also named Lee Williams' estate as a defendant in the above-referenced case and served the Summons and Complaint on the Personal Representative.

12. South Carolina law requires a personal representative to

"settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will ... as expeditiously and efficiently as is consistent with the best interests of the estate. He shall use the authority conferred upon him by ... the terms of the will ... for the best interests of successors to the estate."

(S.C. Code Ann. §62-3-703(a).)

13. South Carolina law also specifies that a personal representative has the same standing to sue or be sued as the decedent had immediately prior to death. (S.C. Code Ann. §62-3-703(c).)

14. South Carolina law also requires a personal representative to "take possession or control of, the decedent's property" and specifies that "a personal representative has the same power over the title to property of the estate that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate." (S.C. Code Ann. 62-3-709 and -711(a).)

15. The Personal Representative breached the fiduciary duty he owed to the Estate and to Ms. Richey, in her capacity as a beneficiary of the Estate, by not taking any steps to try to recover the moneys mentioned in Lee Williams' will that Lee Williams claimed the Booths took.

16. Because of the Personal Representative's breach of his fiduciary requirements, the Court should require he participate in Ms. Richey's lawsuit against the Booths as she attempts to

recover the money contemplated in Lee Williams' will so that she can receive this money she is entitled to under Lee Williams' will if the lawsuit is successful.

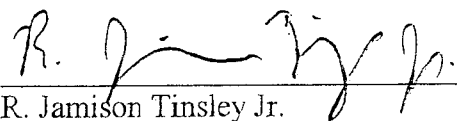
17. Or in the alternative, the Court should appoint a successor personal representative or special administrator to participate in Ms. Richey's lawsuit against the Booths as she attempts to recover the money contemplated in Lee Williams' will so that she can receive this money she is entitled to under Lee Williams' will if the lawsuit is successful.

18. The Court should also remove the issue of construing Item II of the will to the circuit court pursuant to Section 62-1-302(d)(2) because of the lawsuit filed in circuit court regarding those potential lawsuit proceeds.

WHEREFORE, Ms. Richey prays for the following relief:

1. An order of the Court requiring the Personal Representative to participate in Ms. Richey's lawsuit against the Booths and assist in attempting to recover the money she is entitled to under Item II of Lee Williams' will;
2. Alternatively, an order of the Court appointing a successor personal representative or special administrator to participate in Ms. Richey's lawsuit against the Booths and assist in attempting to recover the money she is entitled to under Item II of Lee Williams' will;
3. An order of the Court removing jurisdiction of the construction of Item II to circuit court; and
4. Such other and further relief as the Court deems just, equitable, and proper.

TINSLEY & TINSLEY, P.C.
Attorney for Petitioner


R. Jamison Tinsley Jr.

212 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Fax: (864) 377-8278

Greenwood, South Carolina

March 9, 2015

EXHIBIT A

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABERDEEN
2015 MAR 12 AM 9:15
EMILY Y. HARRIS
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)
_____)

AFFIDAVIT OF LEE C. WILLIAMS

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, LEE C. WILLIAMS,
WHO AFTER BEING DULY SWORN, DEPOSES AND SAYS:

My name is Lee C. Williams. I live at 1233 Main Street South, Abbeville, S.C. 29620. My telephone number is 864-366-4953. I'm at least eighteen (18) years old and competent to give this affidavit of my own personal knowledge.

I was previously involved in litigation against my niece Pamela "Penny" Richey in Abbeville County. Penny alleged that I had taken at least \$400,000.00 in cash from her father, Hugh A. Williams, who was my brother, at the time of Hugh's death. I denied taking the money. Penny and I resolved this litigation without me admitting that I took the money.

It's now my intent to let Penny and the Court know that I did take the money from my brother Hugh. Hugh never believed in banks. Hugh had between \$400,000.00 and \$500,000.00 in cash when he died. Hugh wanted me to keep one-third (1/3) of the money for myself to care for my disabled wife and me, and Hugh wanted me to keep the remaining two-thirds (2/3) of the money for Penny, with the understanding that I would give Penny's share of the money to her upon my death.

During my litigation with Penny, my daughter, Shirley W. Booth, and her husband, Thomas J. Booth, learned about Hugh's cash money that I was keeping in my house. Last year, Shirley and Thomas came to my house and took this money without my permission. I've asked Shirley and Thomas to return this money, but they refuse.

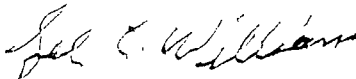
I've hired attorney Billy Garrett to represent me in attempting to recover the money from Shirley and Thomas. I've agreed to pay Mr. Garrett one-third (1/3) of the money that he recovers

for me, and Penny has agreed to pay Mr. Garrett one-third (1/3) of the money that he recovers for her.

If I die before any litigation is concluded, it's my desire that my personal representative continue the litigation. If necessary, I desire that Penny continue the litigation so that she can attempt to recover one-third (1/3) of money for my estate and one-third (1/3) of the money for her. I want this affidavit to be attached to my Last Will and Testament. If I die before litigation is concluded, or if any of my one-third (1/3) share of the money is left at the time of my death, it's my desire that my personal representative pay my share or the remainder of my share of this money directly to Penny.

It's my intention that Penny inherit any money that I receive on account of litigation against my daughter and son-in-law. I intend to amend my will to add this provision, but in case I don't have time to amend my will, I want everyone to know my intention.

FURTHER THE AFFIANT SAYETH NOT.



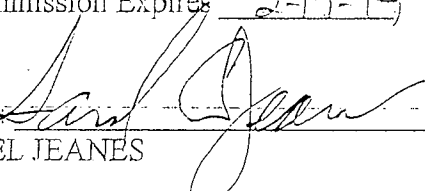
LEE C. WILLIAMS

SWORN TO AND SUBSCRIBED before)
me this 6 day of March, 2012.)



Notary Public for South Carolina)

My Commission Expires 2-17-19)

Witness 
SAMUEL JEANES

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF ABBEVILLE

) EIGHTH JUDICIAL CIRCUIT

Pamela Richey,

TRUE COPY

[Signature]
ABBEVILLE COUNTY CLERK OF COURT

RETURN OF

Plaintiff,

) SAM JEANES, PERSONAL

v.

) REPRESENTATIVE OF THE ESTATE OF

) LEE C. WILLIAMS TO

Shirley W. Booth, Thomas J. Booth,
Estate of Lee C. Williams,

) PLAINTIFF'S MOTION TO ALTER OR
) AMEND

Defendants.

) C.A. #2013-CP-01-284

TO: R. JAMISON TINSLEY, JR., ATTORNEY FOR PLAINTIFF PAMELA RICHEY:

The undersigned, as attorney for Sam Jeanes, Personal Representative of the Defendant Estate of Lee C. Williams, makes this return to the Plaintiff's Motion to reconsider the judgment filed February 24, 2015, with the Clerk of Court for Abbeville County¹. Plaintiff's motion should be dismissed. Plaintiff motion raises new evidence, causes of action and requests for relief not before the Court at the hearing, although they that could have been. This is not permitted.

Plaintiff seeks new relief using the Last Will and two new causes of action: 1) a declaratory judgment and 2) a theory of third party beneficiary. A Rule 59, SCRCP, motion is not the place for new information. The Last Will was not an exhibit in evidence before the Court at the hearing, and allegations concerning the Last Will are not even in Plaintiff's Complaint.

A party cannot use Rule 59(e) [SCRCP] to present to the court an issue the party could have raised prior to judgment but did not. See Hickman v. Hickman, 301 S.C. 455, 456-57, 392 S.E.2d 481, 482 (Ct. App. 1990), 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

¹ Copy of filed Order attached.

S.E.2d 481, 482 (Ct. App. 1990), 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."); Smith v. Stoner, 594 F.Supp. 1091, 1118 (N.D.Ind.1984) ("Issues which could have been presented to the court for consideration previously, but which were not, are not the proper subject of Rule 59(e) relief; the issues are waived."); Johnson v. City of Richmond, 102 F.R.D. 623, 623 (E.D.Va.1984) ("I do not conceive of Fed.R.Civ.P. 59(e) as serving the office of providing a disappointed suitor with a post-judgment opportunity to argue that which could have been argued pre-judgment."); see also Rule 59, SCRCF, comments (This rule 59 is substantially the Federal Rule.) Plaintiff waived any issues concerning the Last Will because she could have brought it before the Court, but did not.

Plaintiff admits she cannot proceed with her case in her motion when she says, "[. . .] the dispute between Plaintiff and Lee C. Williams [Defendant Estate] is res judicata and [subject to] collateral estoppel." She is now asking the Court to declare the Defendant Estate continue in the litigation against the Defendants Booth. This request for a declaratory judgment "that the Estate must pursue these funds" is raised in Plaintiff's motion for the first time, as well as, in a Petition in Probate Court dated 13 days (copy unfiled) after the Court issued its Order granting summary judgment to the Defendant Estate. This is beyond the scope of the pleadings, Estate's motion for summary judgment and Order of February 24, 2105. Plaintiff could have sought this course of action in its Complaint or in Probate Court before the hearing. See Stevens &

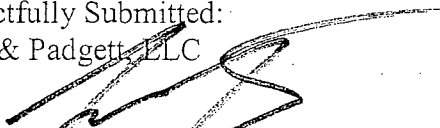
Wilkinson of S. Carolina, Inc. v. City of Columbia, 409 S.C. 563, 567, 762 S.E.2d 693, 695

(2014) (a party cannot use a Rule 59(e) motion to advance an issue the party could have raised to

the circuit court prior to judgment, but did not. (internal citations omitted.)) Plaintiff chose not to.

Lastly, Plaintiff alleges in the second to last paragraph that the “assets [money] rightfully belong to the estate.” This is the ultimate question for a finder of fact, if the law allows such. It does not. Pursuant to the reasons set forth this Court’s previous Order filed February 24, 2015, this may be a matter for the Probate Court; however, Plaintiff’s motion to reconsider in the court of common pleas should be dismissed.

Respectfully Submitted:
Bacot & Padgett, LLC

By: 
James Graham Padgett, III
Attorney for the Plaintiff
(SC Bar# 65,354.)
414 Monument Street, Suite C
Greenwood, South Carolina 29646
(864) 227-1570; padgett@bacotlawfirm.com

at Greenwood, South Carolina
17 March, 2015.

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABERDEEN
2015 MAR 23 AM 9:35
EMILY HOLMAN
CLERK OF COURT

1 **February 5, 2015**

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had)

4 THE COURT: All right. This is Pamela Richey
5 versus Shirley W. Booth, Thomas J. Booth, and the estate
6 of Lee C. Williams. All right. I've read the motion
7 for summary judgment and accompanying materials, but
8 I'll be glad to hear from you.

9 MR. PADGETT: May it please the Court, Your
10 Honor?

11 THE COURT: Yes, sir.

12 MR. PADGETT: One of the motions for summary
13 judgment is mine. And I'm Tripp Padgett. I'm the
14 attorney for the Estate of Lee Williams. Also present
15 is Jane Merrill. She represents the defendants Booth.
16 And then Jameson Tinsley; he represents Ms. Richey.

17 THE COURT: Good to see you again, Mr.
18 Tinsley.

19 MR. TINSLEY: Good to see you, Your Honor.

20 MR. PADGETT: This isn't really -- this should
21 not be, I think, a complicated case. This is the

22 plaintiff's second bite at the apple because we've been
23 here before. Any combination of the four grounds in my
24 motion for summary judgment can give the Court the
25 ability to grant summary judgment, either based on

1 contract, issue preclusion, res judicata or Rule 60 of
2 the Rules of Civil Procedure.

3 Now, I do need to give the Court a brief procedural
4 background and a series of cases. And I put that
5 together in this notebook, which I've given Jameson a
6 copy and Ms. Merrill a copy of that, too.

7 THE COURT: Okay.

8 MR. PADGETT: Once Your Honor gets it, you'll
9 see that the first thing in there is a table of contents
10 that sets forth what's behind it. But just behind that
11 table of contents is a -- you'll see a chart. It's a
12 matrix; okay. The pleading file date is along the top.
13 Next, is the active case number. Then you have the
14 parties. And you'll see there are three cases. There
15 is an Abbeville County Probate Court matter that is
16 2006-ES-169. Then there was a 2007 case, '07-188. And
17 then the case we're here today for, 2013-284. All
18 right. Those parties, you'll see, are very similar
19 parties. All of the claims next to the brief factual
20 summary, it's all about Mr. Lee Williams during his life
21 allegedly taking money, up to six hundred and twenty-

22 eight thousand dollars in cash, from Ms. Richey's
23 deceased father. He's now deceased, as well.

24 So all allegations either were or start with Mr.
25 Williams taking cash, boxes of cash. If you look down

1 on that matrix, as well, you'll see that admission of
2 prior suits. In this case, the 2013 case, paragraph
3 five, in each one of these notations are supported
4 behind the matrix. All right. I pulled the paragraph
5 out for you, as well. But admission in prior suits.
6 Ms. Richey admits that there were prior suits. She
7 admits the prior suits were settled at paragraph six of
8 this current 2013 pleading. As to allegations that Lee
9 Williams took money intended for Penny Richey, those are
10 three paragraphs in each pleading. The probate court
11 pleading, the 2007 pleading, and the 2013 pleading.
12 Those are also set out for you in the -- I don't have
13 those pages numbered, but that's set out behind that
14 matrix, page two, every paragraph. And each one of
15 those paragraphs deal with Mr. Lee Williams having
16 taken, secreted or converted more or less six hundred
17 and twenty-eight thousand dollars in cash.

18 There was a stipulation of dismissal filed with
19 prejudice in the 2007 case. That is at tab five. It's
20 also in the summary documents that you have right now.
21 There's also a mutual release and settlement agreement
~~22 entered into in the 2007 case. That is at tab four for~~
23 the Court to look at, as well. That was also attached
24 to my motion for summary judgment.

25 Now, the first way the Court can grant summary

1 judgment, as my motion says, by contract. We entered
2 into a contract, paid money for that contract, thirty --
3 how much was it? Thirty ---

4 THE COURT: Thirty-two five.

5 MR. PADGETT: Thirty-two five. That was paid
6 for all claims that were pled or could have been pled,
7 but they all -- basically it was about money being
8 taken. So we signed that settlement and release
9 agreement on that date. There's also an admission by
10 Mr. Tinsley that that document is a genuine copy of a
11 settlement, the mutual release and settlement agreement,
12 by request to admit, August 19th, 2014. The stipulation
13 of dismissal, again, was pursuant to Rule 41 and it was
14 with prejudice.

15 Now, with prejudice, as the Court is well aware, I
16 know I'm stating what the Court already knows, but where
17 the parties agree to dismiss an action with prejudice,
18 that dismissal operates as adjudication on the merits,
19 terminating the action and concluding the rights of the
20 parties. That's Freeman versus McBee, 280 S.C. 490.

21 And if the contract is not enough for the Court to
~~22 grant summary judgment, then we have the issue of issue~~
23 preclusion. And that, of course, stands for the
24 principal that one ought not to be twice sued for the
25 same cause of action. And it is in the interest of the

1 state that there should be an end to litigation. This
2 was already dealt with. Issue preclusion deals with
3 issues. And the issue here was Lee Williams taking up
4 to six hundred and twenty-eight thousand dollars in
5 cash.

6 If issue preclusion or collateral estoppel is not
7 enough for the Court or the Court needs more, the Court
8 can look to res judicata. Res judicata, as the Court is
9 also aware, has to do with the facts and circumstances
10 leading up to the action. The facts and circumstances,
11 even though Mr. Tinsley wants to add some information
12 about what happened after the suit was settled, it still
13 starts with the same facts and circumstances that Lee
14 Williams took cash in boxes. They allege now four
15 hundred thousand. But in the previous case it was up to
16 six hundred and twenty-eight thousand. We have the same
17 parties, at least the estate is the same party. And the
18 same allegations, the same facts and circumstances.

19 Lastly, under the Rules of Civil Procedure, 60(b),
20 that allows for newly discovered evidence. You've got
21 to bring that within a year. There's no allegation of
22 extrinsic fraud here. Extrinsic fraud, it means they
23 were tricked so that they didn't go through the
24 discovery process. In requests to admit, Mr. Tinsley
25 has admitted that in the previous 2007 case they engaged

1 in discovery, actually served interrogatories. Those
2 interrogatories were answered and that depositions were
3 taken and specifically Ms. Booth and Mr. Williams'
4 depositions were taken in that 2007 case.

5 As to the standard of summary judgment, this Court
6 is well aware of that, even though I understand that the
7 actual amount of civil cases that happen are much fewer
8 compared to the criminal cases, that as relates to
9 summary judgment, that issue must be genuine. It is not
10 sufficient that the evidence create a far-fetched
11 inference.

12 But what we have here, Your Honor, is we've already
13 been here. We've already deal with this issue. It was
14 paid for with money. It was released and it was
15 dismissed with prejudice in the 2007 case. And that
16 2007 case file, I believe, Ms. Payne has, should the
17 Court need to look at that original court file.

18 I'll be happy to take any questions Your Honor may
19 have.

20 THE COURT: The release from -- that is
21 Exhibit A to your motion releasing Williams versus
22 Pamela C. Richey.

23 MR. PADGETT: There is a case number issue if
24 that's what Your Honor's looking at.

25 THE COURT: No, I'm looking at -- I'm just

1 trying to make sure we had the same parties in interest.

2 MR. PADGETT: In that case, it was -- in the
3 2007 case, it was a little interesting. Mr. Williams
4 actually brought the case. These claims for the money
5 came in a counterclaim. And since Mr. Williams has
6 passed, it's not the exact same parties, but we had an
7 heir who's an additional party to Mr. Williams, as well
8 as the estate.

9 THE COURT: So basically, as I understand the
10 allegations in the prior lawsuit, Ms. Richey contends
11 that up to six hundred and twenty-eight thousand dollars
12 were taken. There's a release settling that case. In
13 the present case, she now says four hundred, but also
14 some other folks removed boxes that contained money. Is
15 that correct?

16 MR. PADGETT: That's correct.

17 THE COURT: Now, Mr. Tinsley, is that still
18 one in the same four hundred thousand dollars, part of
19 the six hundred and twenty-eight thousand dollars?

20 MR. TINSLEY: It is our understanding that,
21 yes, it is the same money. And I have some affidavits
22 to hand up.

23 THE COURT: Sure.

24 MR. TINSLEY: If I could just briefly address
25 the affidavits.

1 MR. PADGETT: Please, please, go ahead and
2 deliver those, just address those while ---

3 THE COURT: Have you provided ---

4 MR. PADGETT: I did receive those. There are
5 allegations in there that may be subject to -- well, any
6 affidavit has to be admitted pursuant to the rules of
7 evidence, too. There could be hearsay in there.
8 Deadman's statute.

9 THE COURT: Have you seen them?

10 MR. PADGETT: Yes, I have. Deadman's statute.

11 And at the end Mr. Garrett, former counsel ---

12 THE COURT: Give me specific objections to
13 specific language and I'll be glad to entertain them.

14 MR. PADGETT: Okay. Let me start with the
15 first one, is the last paragraph ---

16 THE COURT: Are you talking about Mr.
17 Garrett's deposition?

18 MR. PADGETT: Mr. Garrett's affidavit.

19 THE COURT: Affidavit. Excuse me. I'm sorry.

20 MR. PADGETT: Twenty-two. I further believe
21 and it was my opinion. Mr. Garrett is not an expert in

~~22 this case. There has been no expert identified in this~~

23 case. But he is opining as to -- let's see. Well,
24 you've got opinion testimony there.

25 THE COURT: All right.

1 MR. PADGETT: Just about every other paragraph
2 starting with three -- well, no. It says that Lee
3 Williams said. Lee Williams said. Lee Williams said.
4 Lee Williams said. In an affidavit that you also have
5 from Lee Williams, it says I hired Billy Garrett to
6 represent me and he's going to get a third of the money.
7 Well, Mr. Garrett's -- under the information before the
8 Court right now, Mr. Garrett's got a financial interest
9 in this outcome. So the deadman's statute would not
10 allow this affidavit. I've got that. The deadman's
11 statute is a very, very long statute. But basically ---

12 THE COURT: I'm familiar with it.

13 MR. PADGETT: Yeah. You know, if you've got
14 an interest in it then he can't testify to something
15 that's going to help you out. Well, this testimony is
16 basically self-serving because it helps him get a fee
17 based on the information before the Court right now.
18 Let's see. And it's -- his affidavit, Mr. Garrett's
19 affidavit stands for the proposition that Mr. Williams
20 came by his office some time after we concluded the 2007
21 case and say mea culpa; I did take it, but I want Penny
22 to have a third, I'm going to keep a third and Mr.

23 Garrett can have a third. But I think you don't even
24 get to that, to the -- I think the procedural part of
25 this case is what stops it in its tracks. They've been

1 here before. They did depositions. We went though
2 extensive discovery. Thirty-two five was paid for a
3 release and the case was dismissed with prejudice.

4 THE COURT: Mr. Tinsley, okay, I'll be glad to
5 here from you.

6 MR. TINSLEY: Certainly, the deadman's
7 statute, I can clear that up. Mr. Garrett got out of
8 the case. He has no financial interest in it.

9 THE COURT: I think he was referring to Mr.
10 Williams' affidavit.

11 MR. TINSLEY: Yes, sir, Your Honor. And at
12 one point Mr. Garrett was hired to represent Mr.
13 Williams and Ms. Richey. But Mr. Williams passed. No
14 suit was filed. At that point, Mr. Garrett felt like he
15 was a fact witness so he couldn't provide counsel in the
16 case. Ms. Richey then retained me. And Mr. Garrett
17 does not have any financial stake in this case that I'm
18 aware of. And I think I'm aware of the arrangements
19 since she has hired me and I'm the only -- sole counsel
20 with any financial stake on this side.

21 THE COURT: Why doesn't the release signed in
22 ~~2007 bar your claims?~~

23 MR. TINSLEY: Because, Your Honor, I think
24 that the contract -- it is fraud. We have this evidence
25 that he came -- he came to Mr. Garrett and said -- well,

1 he said he said, I'm here to right a wrong. I did take
2 that money. And while the case was going on in October
3 ---

4 THE COURT: Give me any case law or cites that
5 says when you enter a release and you release all
6 claims, known or unknown, claimed or unclaimed, asserted
7 or not, that fraud will let you set aside that
8 settlement and go forward in an action stemming from
9 conduct that is six or seven years outside the statute
10 of limitations?

11 MR. TINSLEY: Well, and I think and against --
12 against Mr. Padgett, at this point, I think we have a
13 claim as a beneficiary because Mr. Williams in his will
14 left ---

15 THE COURT: Why is this in Circuit Court then?

16 MR. TINSLEY: Well, we also have a claim
17 against the Booths, which I don't think Probate Court is
18 the proper -- would be the proper venue for it.

19 THE COURT: Okay. Well, let's look at the
20 Estate of Lee Williams. Have you filed a claim in the
21 Probate Court?

22 MR. TINSLEY: We've filed a suit and attached
23 it ---

24 THE COURT: Have you filed a claim in Probate
25 Court; yes or no?

1 MR. TINSLEY: No, sir, Your Honor, other than
2 this lawsuit.

3 THE COURT: Why not?

4 MR. TINSLEY: Honestly, the lawsuit, we just
5 filed it with them as a claim, but nothing separate.

6 THE COURT: Okay.

7 MR. TINSLEY: And, you know, maybe we should
8 have, but I didn't -- since the money went to the
9 Booths, I wasn't sure at that point that the estate even
10 had ownership.

11 THE COURT: Well, what you're telling me, Mr.
12 Tinsley, is that in the original action back in 2007 it
13 was alleged that up to six hundred and twenty-eight
14 thousand, is the number I read, was taken by Mr.
15 Williams.

16 MR. TINSLEY: Yes, sir, Your Honor.

17 THE COURT: Mr. Williams and your client enter
18 into an agreement, mutual release and settlement
19 agreement, that's dated ---

20 MR. PADGETT: It's in the first sentence of
21 the first page.

22 THE COURT: May 11th, 2011. She was paid
23 thirty-two thousand five hundred dollars and some other
24 relief and everybody says we're going home. We're done;
25 right?

1 MR. TINSLEY: Yes, sir.

2 THE COURT: So in 2013, a couple years later,
3 this suit that you filed now involves, at least in
4 partial part, that exact same money; is that correct?

5 MR. TINSLEY: I think all -- yes, sir. I
6 think it's a portion of that money that we think we can
7 track to what Mr. Williams said the Booths took from
8 him.

9 THE COURT: Okay. Go ahead, please, sir.

10 MR. TINSLEY: And it is our position, and he
11 did leave a -- there's a provision in his will that his
12 PR give any money that is recovered from the Booths,
13 based on these same allegations to Penny Richey, my
14 client.

15 THE COURT: That's a probate issue, though;
16 isn't it?

17 MR. TINSLEY: And ---

18 THE COURT: It just seems to me if there are
19 claims against his estate -- has the money been found in
20 his estate?

21 MR. TINSLEY: Not this specific, not this
22 specific cash, Your Honor, no, sir.

23 THE COURT: All right. I keep cutting you
24 off. Go ahead.

25 MR. TINSLEY: And so that is our position in

1 regards to the estate, is that -- I think they have a --
2 that the personal representative has a duty -- and I
3 know I'm getting into money with the Circuit Court in
4 this lawsuit with the Booths and them and what's Probate
5 Court -- has a duty to pursue this money, as he was also
6 a witness, the Personal Representative, Mr. Jeans, was
7 also a witness to Mr. Williams' affidavit. And the will
8 has specific language and the affidavit specifically
9 requires that he seek this money. And so we just name
10 them. And they -- you know, maybe procedurally it
11 should have been done in Probate Court, but we've named
12 them here and we're seeking this money that it is our
13 position that the Booths took from Mr. Williams, based
14 off Mr. Williams' own sworn affidavit that he did take
15 from Penny Richey.

16 And with regards to the ---

17 THE COURT: So you're saying that the Booths
18 took from the original alleged thief and they stole from
19 him?

20 MR. TINSLEY: That is our claim, Your Honor.

21 THE COURT: Okay.

22 MR. TINSLEY: And that the money belongs to
23 her (a) because it was hers, intended by her father.
24 Because what Mr. Williams' affidavit says is that his
25 brother, my client's father, gave him this money to give

1 to Ms. Richey upon his death, Mr. Williams' death, her
2 uncle's death. He was allowed -- he testified he was
3 allowed to keep -- use one-third of it to take care of
4 him and his wife. And then the other two-thirds his
5 brother wanted to go to Ms. Richey.

6 THE COURT: Well, assuming Mr. Williams was
7 lying when he signed the mutual release and settlement
8 agreement, and then some years later he says, okay,
9 well, I was telling a story. What effect does that have
10 on it? Have you got any case law that says that you can
11 set it aside based on his lies, alleged lies?

12 MR. TINSLEY: I don't have any case law on
13 that point. And ---

14 THE COURT: I mean, the reason I'm saying
15 that, I mean, in the practice of law you see people on a
16 regular basis who settle wreck cases or whatever,
17 maintaining, I'm not at fault. I'm not at fault. I'm
18 not at fault. But they know they're at fault. They
19 sign the release, but it's still a bar to any subsequent
20 case; isn't it?

21 MR. TINSLEY: I think it's a little different
22 here where he's given specific testimony that he didn't
23 take the money. He didn't take the money. And then he
24 specifically contradicts it after the release saying, I
25 did take the money. All that discovery, you know, that

1 was all lies.

2 THE COURT: Well, you touched on it earlier.

3 There's a distinction between intrinsic and extrinsic

4 fraud on the Court.

5 MR. PADGETT: That is correct, Your Honor.

6 THE COURT: What is the difference between the

7 two?

8 MR. PADGETT: Well, that only applies to the

9 Rule 60(b) motion that could have been brought. And the

10 Court in -- let's see. It is discussed as to a 60(b)

11 motion. And in 60(b) it talks about ---

12 THE COURT: What is the definition of

13 extrinsic fraud.

14 MR. PADGETT: Yes, sir. All right. Extrinsic

15 fraud. And extrinsic fraud is the only one that counts.

16 Extrinsic fraud is fraud that induces a person not to

17 present a case or deprives a person of the opportunity

18 to be heard. Relief is granted for extrinsic fraud on

19 the theory that because the fraud prevented the party

20 from fully exhibiting and trying his case. There has

21 never been a real contest before the Court on the

~~22 subject matter of the action.~~

23 Intrinsic fraud, on the other hand, is fraud which

24 was presented and considered in the trial. It is fraud

25 which misleads a court to determine issues and induces a

1 court to find for the party perpetrating the fraud.
2 Those are the two definitions. I can give the Court
3 this case. It's a ---

4 THE COURT: Well, I'm somewhat familiar with
5 it because I recall it. But in the extrinsic fraud
6 would be grounds to set aside and go forward.

7 MR. PADGETT: Under 60(b). And that's number
8 four on my list. Because we've got a contract, we've
9 got an issue preclusion, we've got res judicata, and
10 then 60(b). The Court could choose one, two, and three,
11 kick it out. 60(b), I'm not so much with. Or just the
12 contract by itself. I'll remind the Court, the
13 stipulation of dismissal with prejudice is a pretty
14 strong statement.

15 THE COURT: Well, I don't disagree. I'm just
16 curious, the distinction between this release and the
17 dismissal with prejudice in a 60(b) seems like they're
18 really you saying the same thing.

19 MR. PADGETT: Well, but he never brought a
20 60(b) motion. What my argument is, is he should have
21 brought a 60(b) motion within the year. He never did.

22 THE COURT: Well, that was dated --- you know,
23 the release is May 11th. This is March 12th. Okay.
24 It's been a year. And the order of dismissal is the
25 same time as the release.

1 MR. PADGETT: Generally the same time. I
2 think the stipulation was filed -- I mean dated May
3 28th, filed on June 2nd.

4 THE COURT: Okay. All right. Mr. Tinsley, I
5 cut you off. I'm sorry. Go ahead.

6 MR. TINSLEY: I'm sorry, Your Honor, I lost my
7 place of where I was. You know, I mean, I don't really
8 have more to add on the issue of the estate.

9 THE COURT: I'm going to grant the motion as
10 to the estate. I think the estate for all four of the
11 grounds are out. I also don't think that it's a proper
12 action against the estate up in Circuit Court. It's
13 without prejudice to you to be able to file it in
14 Circuit Court -- I mean, Probate Court, to pursue any
15 potential claims you may have at that point.

16 As to the Booths; now, you represent the Booths?

17 MS. MERRILL: Yes, sir, I do. I'm Jane
18 Merrill. I ---

19 THE COURT: And why would that not constitute
20 new information since this affidavit of Mr. Williams is
21 not dated until March the 1st of 2012?

22 ~~MS. MERRILL: I'm sorry. What was your~~
23 question? I didn't quite understand it.

24 THE COURT: Why would this not constitute new
25 information so that this lady, Ms. Richey, could go

1 against your clients based on what Mr. Williams said in
2 March of 2012?

3 MS. MERRILL: I think it possibly could, Your
4 Honor, had it been brought in a more timely fashion.
5 But this suit wasn't filed until, I believe, August, but
6 maybe October of 2013. I think if you go back to the
7 mutual release and settlement agreement, the last
8 paragraph says that the plaintiff and defendant, which
9 was Ms. Richey and Mr. Williams -- Mr. Williams is Ms.
10 Booth's father -- for themselves and their heirs, legal
11 representatives, successors and assigns, expressly
12 releases, acquits and forever discharges the other party
13 and their heirs, legal representatives, successors and
14 assigns from all liability for claims, demands, and
15 causes of action, known or unknown.

16 And I believe -- I think we all agree that she is
17 -- Ms. Booth is an heir at law because she is Mr.
18 Williams' daughter. So I think if you go back to that,
19 that would be enough to grant the motion. But I also
20 think that this information may have been new
21 information, but it wasn't acted on for more than a year
~~22 after it was received. It was signed March 6th, I~~
23 believe, of 2012.

24 THE COURT: It was March 1st.

25 MS. MERRILL: And this suit wasn't brought for

1 more than a year after that.

2 THE COURT: Okay. Any other grounds that you
3 have?

4 MS. MERRILL: And, Your Honor, I would point
5 out to you the one case, Carolina Renewal versus SCDOT.
6 It's 385 S.C. 550. And the pinpoint for this one is
7 554-55. And it states, as far back as 1982, our Supreme
8 Court held the doctrine of collateral estoppel barred
9 the plaintiff from re-litigating an issue even though
10 the defendant was not a party or in privity with a party
11 to the initial action. So I think it could also be --
12 summary judgment could be granted on that ground, as
13 well, Your Honor.

14 THE COURT: Okay. All right. Mr. Tinsley.

15 MR. TINSLEY: Your Honor, I don't think that
16 heir language here is appropriate.

17 THE COURT: Why wouldn't the release be
18 inclusive of Ms. Booth since she's an heir?

19 MR. TINSLEY: She's not, I mean, she's not a
20 named beneficiary in his will. But our claim against
21 her is separate. It's for taking her money from, at
~~22 that point, it's like a bailman where Mr. Williams was~~
23 holding it from her. And our claim is that they came in
24 his house and wrongfully took Ms. Richey's money. And,
25 you know, our claim against her is separate from him.

1 It's not a trickle-down ---

2 THE COURT: When did the Booths allegedly
3 take this money?

4 MR. TINSLEY: October of 2010.

5 THE COURT: And your suit was filed when?

6 MR. TINSLEY: It was either August or
7 September of '13. And, you know, I don't know, it would
8 be pure speculation for the delay. I didn't get
9 involved until ---

10 THE COURT: Well, let me ask you this. I know
11 your client feels very aggrieved, and the kind of money
12 you're talking about, I don't necessarily blame her.
13 But, you know, after a while there's a point in time
14 when you've got to just go ahead and go home and put it
15 to bed.

16 Now, is it your client's contention that they
17 didn't know anything about the other monies until March
18 the 1st, 2012 by the Booths, their actions?

19 MR. TINSLEY: That's correct. They didn't
20 know. Ms. Richey didn't know anything about that until
21 ---

22 THE COURT: I mean, the concern I have is just
23 at the end of the day that somebody's going to get hit
24 with frivolous claims and have to pay a lot of
25 attorney's fees on things that it just sounds like

1 you're not going to be able to prove.

2 One thing, your client obviously has a financial
3 interest in the outcome of this case. You do have some
4 deadman statute problems. I mean, I just don't know
5 where you're going to be able to go with that. Also,
6 why would you not be barred by collateral estoppel?
7 These issues were litigated and determined, even though
8 the Booths were not part of that case. They don't have
9 to be. It can be used as defensive if the same issues
10 were previously tried and found against your client,
11 which apparently -- at least resolved against your
12 client?

13 MR. TINSLEY: Well, Your Honor, I would say
14 that the issue here wasn't determined then, them taking
15 the money from Mr. Williams when it was in his
16 possession because that wasn't litigated in the prior
17 action. None of that came to light until after.

18 THE COURT: Well, but you've got to back it
19 up. You know, your client was saying that six hundred
20 and twenty-eight thousand or up to six hundred twenty-
21 eight thousand dollars is my money; right?

22 MR. TINSLEY: That's correct.

23 THE COURT: And I'm assuming Lee Williams;
24 because he's the thief -- and I don't mean that term
25 slander-wise, but in other words, he took it; right?

1 MR. TINSLEY: Yes, sir.

2 THE COURT: Then we worked it out, settled the
3 case and it's done; right, in May of 2011. And she got
4 paid money for it. So even if your theory is correct
5 that the Booths made a separate taking from Mr.
6 Williams, that was his money at that point; wasn't it?

7 MR. TINSLEY: Like I say, we -- I don't think
8 it is.

9 THE COURT: The reason I was asking about the
10 extrinsic and intrinsic fraud because then if you
11 discovered that there is some kind of extrinsic fraud,
12 even if this is characterized by extrinsic fraud, don't
13 you have -- aren't you having some time limits to bring
14 your suit?

15 MR. TINSLEY: Well, I would say against the
16 Booths when they wrongfully took ownership ---

17 THE COURT: It's all derivative; is it not? I
18 mean, I just don't see how it couldn't be.

19 MR. TINSLEY: Well, I mean, I guess that ---

20 THE COURT: I mean, listen, I want you to
21 explain it to me. I feel for anybody who's had that
22 kind of money allegedly taken from them. And if I can
23 come up with a way to give them a chance to get some
24 relief, I'd be glad to. I just don't know that there
25 is.

1 MR. TINSLEY: Yes, sir, Your Honor. I mean,
2 she brought her suit against the Booths within a year
3 and a half, and I understand what you're saying about
4 the derivative in this. But when she knew that they
5 were involved, within a year and a half she brought it.
6 Also, in that Carolina Renewal case it says -- and I'm
7 sure the Court's aware of it.

8 THE COURT: The Carolina Renewal, I'm not
9 familiar ---

10 MR. TINSLEY: That's the one she just cited
11 to. I've just got some language that even if all of the
12 elements for collateral estoppel are met, when
13 unfairness or injustice results or policy requires it,
14 courts may refuse to apply it. And I just have a hard
15 time getting around the actual ---

16 THE COURT: Well, I hear you.

17 MR. TINSLEY: --- actually litigated because
18 when there's this ---

19 THE COURT: I tell you what I'm going to do.
20 I think that probably at the end of the day the Booths
21 are going to be -- they'll prevail. But this is a

22 motion for summary judgment. The standard is fairly
23 low. I'm going to deny it as to the Booths. I'm
24 granting it as to the estate. I'm going to let you try
25 to prove your case. You might want to explain to your

1 client frivolous lawsuits and sanctions and attorney's
2 fees that can be associated with that, because I mean, I
3 think that's a real threat for your client; okay? So
4 would you prepare me an order incorporating all of that?

5 MR. PADGETT: I can, Your Honor. Under what
6 grounds were -- was it granted?

7 THE COURT: All of your grounds that you
8 alleged.

9 MR. PADGETT: Okay. Thank you.

10 THE COURT: I know there must be some bad
11 blood in here. I want one party to walk out before the
12 other. I don't want them to have any communication with
13 each other.

14 Mr. Padgett, I'm going to get your hand-ups back.
15 Or do you want to make these part of the -- I guess we
16 need to make them Exhibits.

17 MR. PADGETT: Well, I can take it out of the
18 notebook so it doesn't mess up the file.

19 THE COURT: Okay. Let's do that.

20 MS. MERRILL: And, Your Honor, I'm not arguing
21 with your ruling. If I could just add one thing for the
22 record?

23 THE COURT: Yes, ma'am, you may.

24 MS. MERRILL: I just wanted to cite that
25 mutuality is no longer a requirement in collateral

1 estoppel. I wanted add that.

2 THE COURT: Say that again.

3 MS. MERRILL: Mutuality, as far as the
4 parties, is no longer ---

5 THE COURT: Yeah.

6 MS. MERRILL: I'm just trying to preserve the
7 record, Judge, and make sure I've cited to what I need
8 to.

9 THE COURT: Sure.

10 MS. MERRILL: And that's in Doe versus Doe,
11 346 S.C. 145.

12 THE COURT: Well, I think the language that
13 Mr. Tinsley quoted as to public policy and in the spirit
14 of justice is what I was basing my denial on as much as
15 anything at this stage.

16 MS. MERRILL: Yes, sir. Thank you.

17 THE COURT: Yes, ma'am. Do you want to draft
18 your own order or do you want to let Mr. Padgett go
19 ahead and put it in his.

20 MS. MERRILL: I think -- I know he'll share it
21 with all of us.

~~22 THE COURT: He'll pass it around?~~

23 MS. MERRILL: I feel certain, yes, sir. I'm
24 not concerned. We'll pass it around and if something
25 needs to be tweaked ---

1 THE COURT: Okay.

2 MS. MERRILL: --- I think we can work that
3 out.

4 THE COURT: Make sure that the dismissal of
5 the estate is without prejudice. If they need to go
6 file in Probate Court, if they can file in Probate
7 Court. I don't want them to be prevented by an order
8 from doing so or trying to.

9 MR. PADGETT: Okay.

10 THE COURT: Okay.

11 MS. MERRILL: Your Honor, I want to clarify,
12 your denial of the Booth summary judgment motion is
13 based on the unfair prejudice language that you just
14 cited; is that correct?

15 THE COURT: Yes, ma'am, it is. And based on
16 the affidavit, the new affidavit that was filed by Mr.
17 Williams that was, you know, recent. They had no real
18 knowledge -- the plaintiff had no knowledge or way to
19 know the information until the affidavit, from what I
20 can see.

21 MS. MERRILL: Okay. Thank you.

~~22 THE COURT: All right. And I may very well ---~~
23 I might be incorrect as to the release part of it. But
24 I think at this stage getting a little more discovery,
25 then re-file it or do whatever; okay?

1 MR. TINSLEY: Thank you, Your Honor.

2 THE COURT: Thank you, guys. The affidavits,
3 Mr. Tinsley, didn't you submit the handwritten
4 affidavit, the typewritten affidavit and the ---

5 MR. TINSLEY: And Billy Garrett's.

6 THE COURT: --- affidavit of Billy Garrett?
7 Okay. I'm going to make those Plaintiff's 1, 2, 3. And
8 then the others from Mr. Padgett will be Defense,
9 whatever they are. Just the whole notebook. Just do
10 one. Okay. That would be a group.

11 MS. MERRILL: And can that be for both
12 defendant's, Your Honor?

13 THE COURT: Yes, ma'am.

14 MS. MERRILL: Instead of just giving you the
15 same paperwork.

16 THE COURT: Absolutely. Yours are exactly the
17 same?

18 MS. MERRILL: Yes, sir.

19 THE COURT: Okay.

20 MS. MERRILL: Mr. Padgett and I met yesterday
21 and we're on the same page with what we were submitting
22 to Court, just trying to prevent duplication:

23 THE COURT: Absolutely.

24 MS. MERRILL: Thank you.

25 THE COURT: Thank you so much.

Jury Voir Dire

1 (WHEREUPON, Plaintiff's Exhibit Numbers 1, 2, and 3
2 were marked and admitted into evidence.)

3 (WHEREUPON, Defendant's Exhibit Number 1 was marked
4 and admitted into evidence.)

5 (WHEREUPON, the court stood at recess in this
6 case.)

7

8 [END OF REQUESTED TRANSCRIPT OF RECORD]

9

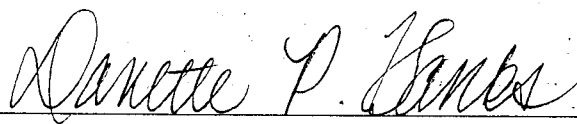
CERTIFICATE OF REPORTER

I, the undersigned Danette P. Hanks, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Abbeville County, South Carolina, on the 5th day of February, 2015.

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I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 2, 2015



Circuit Court Reporter

PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
P-1	Handwritten affidavit of Lee C. Williams	31	31
P-2	Typewritten affidavit of Billy J. Garrett, Jr.	31	31
P-3	Typewritten affidavit of Lee C. Williams	31	31

DEFENDANT'S EXHIBITS

D-1	Various documents submitted by Defendants	31	31

COURT'S EXHIBITS

	(NONE)		

March 1, 2012

To Whom It May Concern:

I, Lee C. Williams wish to make known that the money that was in my possession was given to me in the amount of between \$400,000 and \$500,000 by Hugh A. Williams.

I was to distribute this money as needed to ^{Pamela W. (Penney)} ~~Rickey~~ Rickey because Hugh A. Williams was concerned that she would not know how to handle this large amount of money.

This was not Carlos' money. All the monies awarded to her & which ^{we} ~~she~~ saved was used up.

Hugh gave me permission to use a third of the money if needed for my personal expenses.

Tony & Shirley Booth both came into my home & removed this money, which was cash, without my permission. I came in and found them taking the money.

Shirley made the statement that she got all she wanted and she would not be back.

Shirley knew through the depositions of the Civil Case between (Penny) Richey & myself ^{Pamela W. Richey} that the money could possibly belong ^{to Pamela W. Richey} to ~~Penny~~ Richey. Without revealing whose money this was, I asked Shirley many times to return the money.

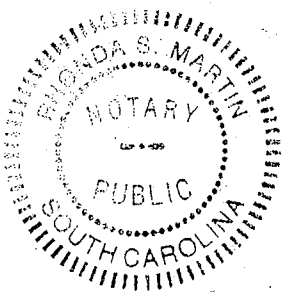
I am declaring today that ~~the~~ ^{all of the} money ^{she took} was never mine. It belonged to Hugh A Williams to be issued to ~~Penny~~ Pamela W. (Penny) Richey as needed.

Upon my death all the money would go to Pamela W. (Penny) Richey).

LEE C. WILLIAMS

L. C. Williams

Witness: Grace Tanner
@ 8:25 PM, 3/1/2012



Rhonda S. Martin

March 1, 2012

COPY

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ABBEVILLE)

EIGHTH JUDICIAL CIRCUIT

Pamela Richey,)

Case No. 2013-CP-01-284

Plaintiff,)

**AFFIDAVIT OF BILLY J. GARRETT
JR.**

vs.)

Shirley W. Booth, Thomas J. Booth, Estate)
of Lee C. Williams,)

Defendants.)

Billy J. Garrett Jr., having first been duly sworn, hereby deposes and states as follows:

1. I am at least eighteen (18) years old and competent to give this affidavit. This affidavit is based on personal knowledge.

2. I practice law in Greenwood, S.C., and have been a licensed member of the South Carolina Bar Association since November 1983. I represented Pamela Richey in Case No. 2007-CP-01-169, in which she was sued by her uncle Lee C. Williams and filed a counterclaim against him.

3. As I recall, at the time of his deposition and at all times during the pendency of that action, Ms. Richey alleged that Mr. Williams took more than \$400,000.00 from her father Hugh A. Williams at the time of Hugh A. Williams' death.

4. At the time of his deposition and at all times during the pendency of that action, Lee Williams, who was an Abbeville City Council member, denied taking the money, and the parties settled the case with no admission from Lee Williams that he took his brother's money. Mr. Williams' position was that his brother Hugh A. Williams left only a small amount of money in his safe and there was never \$400,000.00 to \$500,000.00.

5. The case settled, and after the time to set aside a judgment had passed, Lee Williams asked to meet with me at my office. He had previously attempted to meet with me, and I refused to meet with him because I wasn't sure that I could ethically. My best recollection is that I called Tripp Padgett to confirm that he no longer represented Lee Williams, and Mr. Padgett informed me that he did not. Lee Williams informed me that he did take between \$400,000.00 and \$500,000.00 from Hugh A. Williams' safe before Hugh A. Williams died. Lee Williams said that he wanted to clear his conscience, and he was sorry.

6. On May 16, 2012, I met Lee Williams at his house and interviewed him and Denise Johnson who had worked for him for seven (7) years and who had continued to work without pay since September 2011.

7. Lee Williams, by affidavit dated March 6, 2012, and witnessed by his named P.R. Samuel E. Jeanes, said that Hugh A. Williams' wanted him to keep one-third (1/3) of the money to care for Lee Williams and his wife. Hugh A. Williams instructed Lee Williams to give the remaining two-thirds (2/3) of the money to Ms. Richey upon Lee Williams' death.

8. Lee Williams further informed me that on October 29, 2010, his daughter, Shirley W. Booth, and her husband, Thomas J. Booth, stole the money from his house without his permission.

9. Lee Williams said he and Denise Johnson arrived at his home on October 29, 2010, and saw Tony Booth carrying the black box containing the Hugh A. Williams' money out of his house through the rear door. Shirley Booth was standing in Lee Williams' kitchen while holding a satchel of belongings and said "I won't be back."

10. Lee Williams said the money from Hugh A. Williams was in two (2) black boxes that he never saw again after the Booths left his house on October 29, 2010.

11. Lee Williams said that he called Sheriff Goodwin on Nov. 1, 2010, to report the theft of the boxes of money by the Booths.

12. Lee Williams said that he spoke with Shirley W. Booth on June 21, 2011, or June 22, 2012, regarding the money, and she told him "I'm giving you nothing. You ain't getting nothing."

13. Lee Williams said he waited six (6) months and then decided to call the Abbeville City Police to report the incident.

14. Lee Williams said about a week later he went to the Abbeville Police Station and gave a statement describing the theft of the money.

15. Lee Williams said Officer Gillian then came out and said that a couple people had said Lee had dementia, and the officer could not tell. Lee Williams did not appear to have dementia when I interviewed him in May 2012 and was time and fact specific.

16. Mr. Williams said the police then took the case to Judge McNeil in Abbeville who said there was not enough evidence to bring criminal charges.

17. In a separate interview, I interviewed Denise Johnson, his caregiver, who said that she witnessed the events on Oct. 29, 2010, and confirmed Lee Williams' account of the events involving the Booths.

18. Ms. Johnson was an Abbeville High School graduate with a history of working in nursing homes and had no criminal record. I found her account outside of Lee Williams' presence consistent with what Mr. Williams had previously told me.

19. Lee Williams and Ms. Richey then both hired me to attempt to recover that money from Shirley W. Booth and Thomas J. Booth.

20. Lee Williams expressed his intention that should he die prior to the conclusion of the litigation that the personal representative of his estate continue the litigation and distribute any money recovered to Ms. Richey.

21. Because of my knowledge of what Lee Williams told me, personally I felt I had become a witness and lost my ability to act as counsel for either Ms. Richey or Lee Williams' estate.

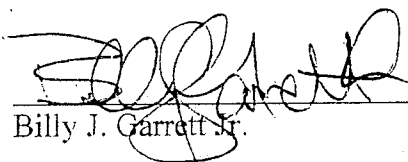
22. I further believed and it was my opinion that Ms. Richey's action had to be filed against the Estate of Lee Williams to recover money that then belonged to Lee Williams but were allegedly stolen by the Booths during his case against Ms. Richey. Ms. Richey then had a claim to the money as a third-party beneficiary of the Estate of Lee Williams.

23. Lee Williams signed a sworn affidavit consistent with the above statements, and he and Ms. Richey each signed a conflict waiver that allowed me to represent each of them.

24. Lee Williams died on August 18, 2013, before litigation began.

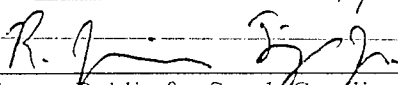
25. I contacted Mrs. Richey about my decision not to continue in representation because of Mr. Williams' passing as well as his instructions in his will prepared by Mr. Paul Agnew. I could not then sue his estate.

FURTHER THE AFFIANT SAYETH NOT.


Billy J. Garrett Jr.

SWORN TO AND SUBSCRIBED BEFORE ME

this 3 day of February, 2015


Notary Public for South Carolina
My Commission Expires: 11/30/2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)
_____)

AFFIDAVIT OF LEE C. WILLIAMS

PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED, LEE C. WILLIAMS,
WHO AFTER BEING DULY SWORN, DEPOSES AND SAYS:

My name is Lee C. Williams. I live at 1233 Main Street South, Abbeville, S.C. 29620. My telephone number is 864-366-4953. I'm at least eighteen (18) years old and competent to give this affidavit of my own personal knowledge.

I was previously involved in litigation against my niece Pamela "Penny" Richey in Abbeville County. Penny alleged that I had taken at least \$400,000.00 in cash from her father, Hugh A. Williams, who was my brother, at the time of Hugh's death. I denied taking the money. Penny and I resolved this litigation without me admitting that I took the money.

It's now my intent to let Penny and the Court know that I did take the money from my brother Hugh. Hugh never believed in banks. Hugh had between \$400,000.00 and \$500,000.00 in cash when he died. Hugh wanted me to keep one-third (1/3) of the money for myself to care for my disabled wife and me, and Hugh wanted me to keep the remaining two-thirds (2/3) of the money for Penny, with the understanding that I would give Penny's share of the money to her upon my death.

During my litigation with Penny, my daughter, Shirley W. Booth, and her husband, Thomas J. Booth, learned about Hugh's cash money that I was keeping in my house. Last year, Shirley and Thomas came to my house and took this money without my permission. I've asked Shirley and Thomas to return this money, but they refuse.

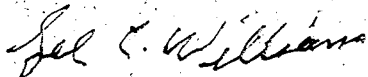
I've hired attorney Billy Garrett to represent me in attempting to recover the money from Shirley and Thomas. I've agreed to pay Mr. Garrett one-third (1/3) of the money that he recovers

for me, and Penny has agreed to pay Mr. Garrett one-third (1/3) of the money that he recovers for her.

If I die before any litigation is concluded, it's my desire that my personal representative continue the litigation. If necessary, I desire that Penny continue the litigation so that she can attempt to recover one-third (1/3) of money for my estate and one-third (1/3) of the money for her. I want this affidavit to be attached to my Last Will and Testament. If I die before litigation is concluded, or if any of my one-third (1/3) share of the money is left at the time of my death, it's my desire that my personal representative pay my share or the remainder of my share of this money directly to Penny.

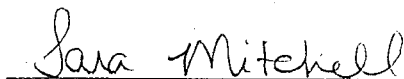
It's my intention that Penny inherit any money that I receive on account of litigation against my daughter and son-in-law. I intend to amend my will to add this provision, but in case I don't have time to amend my will, I want everyone to know my intention.

FURTHER THE AFFIANT SAYETH NOT.



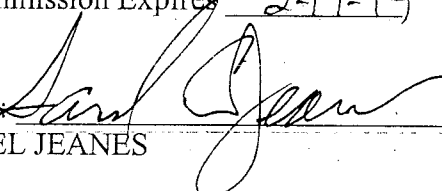
LEE C. WILLIAMS

SWORN TO AND SUBSCRIBED before)
me this 6 day of March, 2012.)

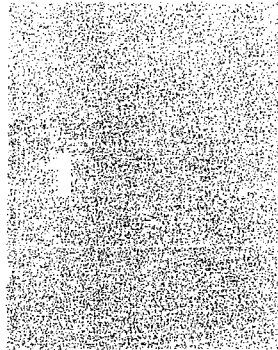


Notary Public for South Carolina)

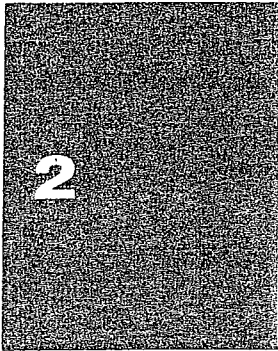
My Commission Expires 2-17-19)

Witness 

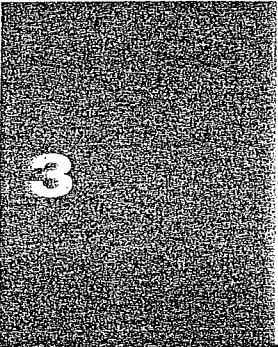
SAMUEL JEANES



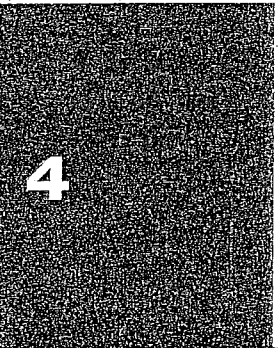
2006-ES-01-169
Probate



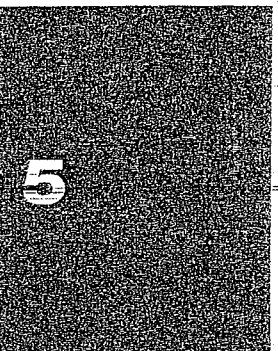
2007-CP-01-188
Common Pleas



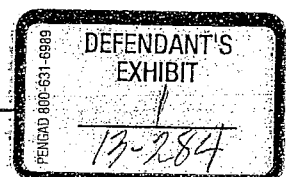
2013-CP-01-284
Common Pleas



Mutual Release + Settlement
Agreement and Plaintiff
request to Admit
2007-CP-01-188



Stipulation of Dismissal
with Prejudice
2007-CP-01-188



STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF ABBEVILLE)

IN RE: ESTATE OF HUGH A. WILLIAMS
CASE NUMBER: 2006-ES-01-00169

PAMELA P. RICHEY,

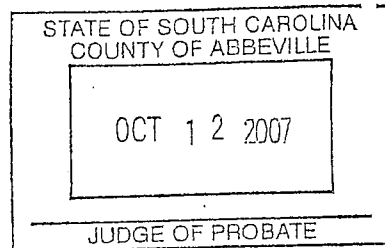
Petitioner,

v.

LEE C. WILLIAMS,

Respondent.

SUMMONS



TO: THE RESPONDENT LEE C. WILLIAMS:

This SUMMONS requires you to answer the attached Petition and to serve a copy of your Answer on the subscribers at their office, 109 Oak Avenue, Greenwood, S.C. 29646, within THIRTY(30) DAYS after service thereof, exclusive of the day of such service, and if you fail to answer the said Petition within that time, judgment by default will be rendered against you for the relief demanded in the Petition.

THE GARRETT LAW FIRM, P.C.
Attorney for the Petitioner

By: 
Billy J. Garrett, Jr.
109 Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Fax: (864) 229-8001

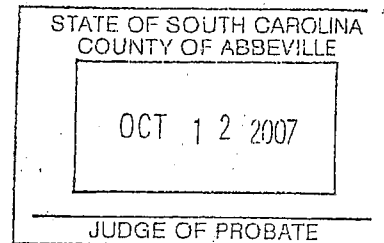
Greenwood, South Carolina

October 8th, 2007

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF ABBEVILLE)

IN RE: ESTATE OF HUGH A. WILLIAMS
CASE NUMBER: 2006-ES-01-00169

PAMELA P. RICHEY,)
Petitioner,)
v.) PETITION
LEE C. WILLIAMS,)
Respondent.)



The Petitioner, while reserving motions filed and to be filed, would respectfully allege and show unto the Court as follows:

JURISDICTION AND VENUE

1. The Petitioner is a citizen and resident of Abbeville County, South Carolina.
2. The Respondent is a citizen and resident of Abbeville County, South Carolina.
3. The Petitioner is the Decedent's daughter, and the Respondent is the Decedent's brother.
4. The Decedent's estate is currently being probated in Abbeville County, South Carolina.
5. This Court has personal jurisdiction over the parties and subject matter jurisdiction over the issues raised herein, and venue is proper in Abbeville County, South Carolina.

GENERAL ALLEGATIONS

6. Upon information and belief, the Respondent has taken, secreted, and converted

\$628,000.00 in cash, more or less, which belonged to the Decedent and which was devised to the Petitioner in the Decedent's will.

7. Upon information and belief, the Respondent used the Decedent's money to open two (2) \$100,000.00 certificates of deposit for the Petitioner at Abbeville Savings & Loan.

8. Upon information and belief, the Respondent used the Decedent's money to buy two (2) vehicles for the Petitioner, and upon information and belief there is money left over.

9. Upon information and belief, the Respondent has original documents evidencing where the Decedent loaned money to the Respondent.

FOR A FIRST CAUSE OF ACTION

(Assets to Be Included in Decedent's Estate)

10. The Petitioner hereby incorporates the relevant portions of Paragraphs 1 to 9 into this her First Cause of Action as if fully set forth herein verbatim.

11. The Petitioner is informed and believes that the Court should issue an order requiring the Respondent to return \$628,000.00 in cash, more or less, to the estate and that the money should be distributed according to the Decedent's will.

12. The Petitioner is informed and believes that the Court should issue an order finding that the two (2) vehicles are estate assets and that the vehicles should be distributed according to the Decedent's will.

13. The Petitioner is informed and believes that the Court should issue an order finding that any money of the Decedent's not used to purchase the two (2) vehicles is an estate asset and should be distributed according to the Decedent's will.

14. The Petitioner is informed and believes that the Court should issue an order requiring

COUNTY OF ABBEVILLE

OCT 12 2007

JUDGE OF PROBATE

the Respondent to produce all original documents evidencing where the Decedent loaned money to the Respondent.

FOR A SECOND CAUSE OF ACTION

(Accounting)

15. The Petitioner hereby incorporates the relevant portions of Paragraphs 1 to 14 into this her Second Cause of Action as if fully set forth herein verbatim.

16. The Petitioner is informed and believes that the Respondent should be required to provide an in-depth accounting of all monies and all other property taken from the Decedent prior to and after the Decedent's death.

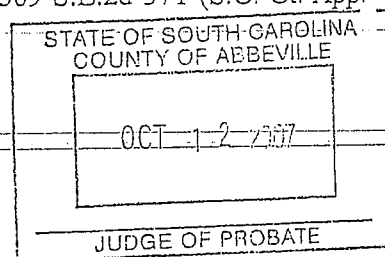
17. The Petitioner is informed and believes that the Respondent should be required to produce all original documents evidencing where the Decedent loaned money to the Respondent.

FOR A THIRD CAUSE OF ACTION

(Breach of Fiduciary Duties)

18. The Petitioner hereby incorporates the relevant portions of Paragraphs 1 to 17 into this her Third Cause of Action as if fully set forth herein verbatim.

19. Upon information and belief, the Respondent took advantage of the Decedent's trust in the Respondent and the Respondent's poor physical and mental health when he took, secreted, and converted \$628,000.00 in cash, more or less, from the Decedent and which was devised to the Petitioner in the Decedent's will. As the Decedent's brother and confidant, the Respondent had a fiduciary duty to the Decedent by virtue of his special control over and relationship with the Decedent. See Macauley v. Wachovia Bank of South Carolina, 569 S.E.2d 371 (S.C. Ct. App. 2002).



20. The existence of the Respondent's fiduciary relationship with the Decedent creates a presumption that the Respondent exercised undue influence over the Decedent.

21. The Respondent breached his fiduciary duties to the Decedent while alive and to his estate since his death.

22. The Petitioner is informed and believes that the Court should find that the Respondent breached his fiduciary duties to the Decedent and that the Respondent should be required to account for all estate assets, including but not limited to original loan documents, and to return the same to the estate.

FOR A FOURTH CAUSE OF ACTION

(Attorney Fees and Costs)

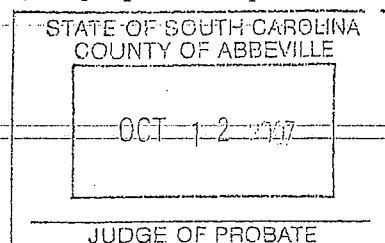
23. The Petitioner hereby incorporates the relevant portions of Paragraphs 1 to 22 into this her Fourth Cause of Action as if fully set forth herein verbatim.

24. The Petitioner is informed and believes that the Respondent should be responsible for her reasonable attorney fees and costs because the Respondent's conduct necessitated that the Petitioner hire an attorney to correct the inequities.

PRAYER

WHEREFORE, the Petitioner prays:

1. For judgment against the Respondent upon one or more causes of action.
2. For an accounting.
3. For attorney fees and costs.
4. For such other and further relief as this Court deems just, proper, and equitable.



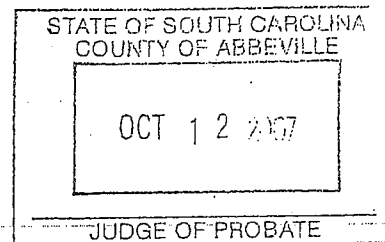
THE GARRETT LAW FIRM, P.C.
Attorney for the Petitioner

By: Billy J. Garrett, Jr.
Billy J. Garrett, Jr.
109 Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Facsimile: (864) 229-8001

Greenwood, South Carolina

October 8, 2007

(Handwritten initials)



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE	)	EIGHTH JUDICIAL CIRCUIT
LEE C. WILLIAMS,	)	
Plaintiff,	)	AMENDED ANSWER AND
v.	)	COUNTERCLAIM
PAMELA P. RICHEY,	)	C/A No.: 2007-CP-01-188
Defendant.	)	(JURY TRIAL DEMANDED)

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2008 FEB 18 AM 9:20
EMILY Y MCMAHAN
CLERK OF COURT

The Defendant, while reserving any motions filed or to be filed, and while amending her answer to the Plaintiff's Complaint and counterclaiming against the Plaintiff, would respectfully allege and show unto the Court as follows:

FOR A FIRST DEFENSE

(General Denial)

1. The Defendant denies all allegations in the Plaintiff's Complaint except those allegations which are specifically admitted, explained, or modified.

FOR A SECOND DEFENSE

(Specific Denial)

2. The Defendant hereby incorporates the relevant portions of Paragraph 1 into this her Second Defense as if fully set forth herein verbatim.

3. Admits Paragraph 1.

4. Paragraph 2 was omitted from the Plaintiff's Complaint.

5. Admits Paragraph 3.

TRUE COPY
Emily Y McMahon
ABBEVILLE COUNTY CLERK OF COURT

2

6. Admits Paragraph 4.
7. Admits Paragraph 5.
8. Denies Paragraph 6 and demands strict proof thereof.
9. Denies Paragraph 7 and demands strict proof thereof.
10. Admits that portion of Paragraph 8 which alleges that the vehicles were purchased with checks written from the Plaintiff's checking account. However, this money belonged to the late Hugh A. Williams (hereinafter the "Decedent"), who is the Plaintiff's brother and the Defendant's father. Denies the remainder of Paragraph 8 and demands strict proof thereof. The Plaintiff purchased the vehicles without asking the Defendant's permission.
11. Denies Paragraph 9 and demands strict proof thereof.
12. Admits the first sentence of Paragraph 10. Denies the second sentence of Paragraph 10 and demands strict proof thereof. The vehicles were purchased with money that belonged to the Decedent.
13. Admits Paragraph 11.
14. Admits Paragraph 12. The Defendant did so for good reason.
15. Denies Paragraph 13 and demands strict proof thereof. The vehicles were purchased with money that belonged to the Decedent.
16. Paragraph 14 does not require a response from the Defendant.
17. Denies Paragraph 15 and demands strict proof thereof.
18. Denies Paragraph 16 and demands strict proof thereof.
19. Denies Paragraph 17 and demands strict proof thereof.
20. Denies Paragraph 18 and demands strict proof thereof.

21. Denies Paragraph 19 and demands strict proof thereof.
22. Paragraph 20 does not require a response from the Defendant.
23. Denies Paragraph 21 and demands strict proof thereof.
24. Denies Paragraph 22 and demands strict proof thereof.
25. Denies Paragraph 23 and demands strict proof thereof.
26. Paragraph 24 does not require a response from the Defendant.
27. Denies Paragraph 25 and demands strict proof thereof.
28. Denies Paragraph 26 and demands strict proof thereof.
29. Denies Paragraph 27 and demands strict proof thereof.
30. Denies Paragraph 28 and demands strict proof thereof.
31. Paragraph 29 does not require a response from the Defendant.
32. Denies Paragraph 30 and demands strict proof thereof.
33. Denies Paragraph 31 and demands strict proof thereof.
34. Denies Paragraph 32 and demands strict proof thereof.
35. Denies Paragraph 33 and demands strict proof thereof.
36. Denies Paragraph 34 and demands strict proof thereof.
37. Paragraph 35 does not require a response from the Defendant.
38. Denies Paragraph 36 and all subparts and demands strict proof thereof.
39. Paragraph 37 does not require a response from the Defendant.
40. Denies Paragraph 38 and demands strict proof thereof.
41. Denies Paragraph 39 and demands strict proof thereof.
42. Denies Paragraph 40 and demands strict proof thereof.

43. Denies Paragraph 41 and demands strict proof thereof.
44. Denies Paragraph 42 and demands strict proof thereof.
45. Paragraph 43 does not require a response from the Defendant.
46. Denies Paragraph 44 and demands strict proof thereof.
47. Paragraph 45 does not require a response from the Defendant.
48. Denies Paragraph 46 and all subparts and demands strict proof thereof.
49. Denies Paragraph 47 and demands strict proof thereof.
50. Denies the relief sought in the Prayer and demands strict proof thereof.

FOR A THIRD DEFENSE

(Failure to State Facts Sufficient to Constitute a Cause of Action)

51. The Defendant hereby incorporates the relevant portions of Paragraphs 1 through 50 into this her Third Defense as if set out herein verbatim.

52. The Plaintiff's Complaint should be dismissed pursuant to SCRCivP 12(b)(6) because it fails to state facts sufficient to constitute a cause of action.

FOR A FOURTH DEFENSE

(Unconstitutionality of Punitive Damages)

53. The Defendant hereby incorporates the relevant portions of Paragraphs 1 through 52 into this her Fourth Defense as if set out herein verbatim.

54. Any imposition of punitive damages against the Defendant would violate the United States and South Carolina constitutions.

GENERAL ALLEGATIONS REGARDING DEFENDANT'S COUNTERCLAIM

55. The Defendant hereby incorporates the relevant portions of Paragraphs 1 through 54

into these her General Allegations as if set out herein verbatim.

56. Upon information and belief, the Plaintiff has taken, secreted, and converted \$628,000.00 in cash, more or less, which belonged to the Decedent and which was devised to the Defendant in the Decedent's will.

57. Upon information and belief, the Plaintiff used the Decedent's money to open two (2) \$100,000.00 certificates of deposit for the Defendant at Abbeville Savings & Loan.

58. Upon information and belief, the Plaintiff used the Decedent's money to buy two (2) vehicles for the Defendant, and upon information and belief there is money left over.

59. Upon information and belief, the Plaintiff has original documents evidencing where the Decedent loaned money to the Plaintiff.

FOR A FIRST CAUSE OF ACTION

(Assets to Be Included in Decedent's Estate)

60. The Defendant hereby incorporates the relevant portions of Paragraphs 1 through 59 into this her First Cause of Action as if fully set forth herein verbatim.

61. The Defendant is informed and believes that the Court and jury should require the Plaintiff to return \$628,000.00 in cash, more or less, to the Decedent's estate and that the money should be distributed according to the Decedent's will.

62. The Defendant is informed and believes that the Court and jury should find that the two (2) vehicles are estate assets and that the vehicles should be distributed according to the Decedent's will.

63. The Defendant is informed and believes that the Court and jury should find that any money of the Decedent's not used to purchase the two (2) vehicles is an estate asset and should be

distributed according to the Decedent's will.

64. The Defendant is informed and believes that the Court and jury should require the Plaintiff to produce all original documents evidencing where the Decedent loaned money to the Plaintiff.

FOR A SECOND CAUSE OF ACTION

(Accounting)

65. The Defendant hereby incorporates the relevant portions of Paragraphs 1 through 64 into this her Second Cause of Action as if fully set forth herein verbatim.

66. The Defendant is informed and believes that the Plaintiff should be required to provide an in-depth accounting of all monies and all other property taken from the Decedent prior to and after the Decedent's death.

67. The Defendant is informed and believes that the Plaintiff should be required to produce all original documents evidencing where the Decedent loaned money to the Plaintiff.

FOR A THIRD CAUSE OF ACTION

(Breach of Fiduciary Duties)

68. The Defendant hereby incorporates the relevant portions of Paragraphs 1 through 67 into this her Third Cause of Action as if fully set forth herein verbatim.

69. Upon information and belief, the Plaintiff took advantage of the Decedent's trust in the Plaintiff and the Decedent's poor physical and mental health when he took, secreted, and converted \$628,000.00 in cash, more or less, from the Decedent and which was devised to the Defendant in the Decedent's will. As the Decedent's brother and confidant, the Plaintiff had a fiduciary duty to the Decedent by virtue of his special control over and relationship with the

Decedent. See Macaulay v. Wachovia Bank of South Carolina, 569 S.E.2d 371 (S.C. Ct. App. 2002).

70. The existence of the Plaintiff's fiduciary relationship with the Decedent creates a presumption that the Plaintiff exercised undue influence over the Decedent.

71. The Plaintiff breached his fiduciary duties to the Decedent while alive and to his estate since his death.

72. The Defendant is informed and believes that the Court and jury should find that the Plaintiff breached his fiduciary duties to the Decedent and that the Plaintiff should be required to account for all estate assets, including but not limited to original loan documents, and to return the same to the estate.

FOR A FOURTH CAUSE OF ACTION

(Attorney Fees and Costs)

73. The Defendant hereby incorporates the relevant portions of Paragraphs 1 through 72 into this her Fourth Cause of Action as if fully set forth herein verbatim.

74. The Defendant is informed and believes that the Plaintiff should be responsible for her reasonable attorney fees and costs because the Plaintiff's conduct necessitated that the Defendant hire an attorney to correct the inequities.

PRAYER

WHEREFORE, the Defendant prays:

1. That this Court dismiss the Plaintiff's claims with prejudice.
2. For judgment against the Plaintiff upon one or more causes of action.
3. For an accounting by the Plaintiff.

4. For reasonable attorney fees and costs as permitted by case law and statutes such as she can prove at trial.

5. For a trial by jury.

6. For such other and further relief as this Court deems just, proper, and equitable.

THE GARRETT LAW FIRM, P.C.
Attorney for the Defendant

By: Billy J. Garrett
Billy J. Garrett, Jr.
109 Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Facsimile: (864) 229-8001

Greenwood, South Carolina

February 15, 2008

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

Pamela Richey,

Plaintiff,

vs.

Shirley W. Booth, Thomas J. Booth, Estate
of Lee C. Williams,

Defendants.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No. 2013-CP-01- 384

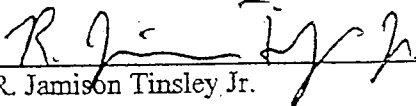
SUMMONS

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2013 SEP 23 PM 4:57
EMILY Y MCANAHAN
CLERK OF COURT

TO: THE DEFENDANT AND/OR THE DEFENDANT'S ATTORNEY

This **SUMMONS** requires you to answer the attached Complaint and to serve a copy of your Answer on the subscribers at their office, 212 Oak Avenue, Greenwood, S.C. 29646, within **THIRTY (30) DAYS** after service thereof, exclusive of the day of such service, and if you fail to answer the said Complaint within that time, judgment by default will be rendered against you for the relief demanded in the Complaint.

TINSLEY & TINSLEY, P.C.
Attorney for Plaintiff


R. Jamison Tinsley Jr.
212 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Fax: (864) 229-8001

Greenwood, South Carolina

September 18, 2013

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

PAMELA RICHEY

Plaintiff(s)

vs.

SHIRLEY W. BOOTH, THOMAS J. BOOTH,
AND ESTATE OF LEE C. WILLIAMS

Defendant(s)

Submitted By: R. JAMISON TINSLEY JR.
Address: 212 OAK AVE., GREENWOOD, SC 29646

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 01- 284

SC Bar #: 79903
Telephone #: (864)223-0770

Fax #:

Other:

E-mail: TINSLEYR@GMAIL.COM

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

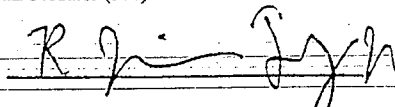
*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

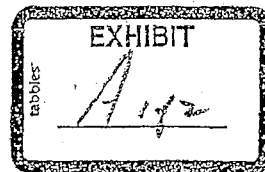
- | | | | |
|--|--|---|--|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20__-CP-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☒ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| ☐ Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| ☐ Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:



Date: SEPTEMBER 18, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.



STATE OF SOUTH CAROLINA)
)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Lee C. Williams,
Plaintiff,

v.

Pamela P. Richey,
Defendant.

MUTUAL RELEASE
AND
SETTLEMENT AGREEMENT

C/A No 2007-CP-01-00169

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2014 NOV 10 PM 1:57
EMILY Y. HODGINS
CLERK OF COURT

This Mutual Release, executed on May 11, 2011, by Lee C. Williams and Pamela P. Richey, is intended to effect the extinguishment of all remedies sought as set forth in the pleadings or remedies that could have been pled. In consideration of:

- 1) THIRTY-TWO THOUSAND FIVE HUNDRED AND NO/100 (\$32,500.00) DOLLARS to be paid by Lee C. Williams to Pamela P. Richey on or before May 24, 2011;
- 2) Relinquishment by Lee C. Williams of all right, title and interest in certain motor vehicles, described with specificity in the complaint, in favor of Pamela P. Richey;
- 3) Lee C. Williams resigning as the Co-Personal Representative of the Estate of Hugh Williams; and
- 4) Release of that certain lien on a Volvo motor vehicle owned by Sandra PETTIGRO;

Each party shall execute a stipulation of dismissal of the above-captioned action, with prejudice.

Disputes and differences have arisen between the parties with respect to the events described in the pleadings in the above-captioned action, the contents of which are incorporated herein by reference. In consideration described above, the Plaintiff and Defendant have agreed to execute this Mutual Release in settlement of all claims, disputes and differences from the beginning of time to the present relating to or arising out of the allegations and causes of action more specifically described in the pleadings. Accordingly, the Plaintiff and Defendant, for themselves, and their heirs, legal representatives, successors, and assigns, expressly releases, acquits and forever discharges the other party and their heirs, legal representatives, successors, and assigns from all liability for claims, demands and causes of action, known or unknown, heretofore existing, relating to or arising out of the allegations and causes of action more specifically described in the pleadings.

It is understood and agreed that this Mutual Release is not to be construed as an admission of liability on the part of any party. This Release is intended merely to avoid the costs, expenses, and uncertainty of litigation.

The undersigned further declares and represents that this Release has been read and fully understood the contents and effect hereof and does, by the execution hereof, fully commit and bind the undersigned, their heirs, legal representatives, successors and assigns to the terms and conditions of this Mutual Release, and that no promise, inducement or agreement not herein expressed has been made and that this Mutual Release contains the entire agreement between the parties, and that the terms of this Mutual Release are contractual and not a mere recital. Each party is satisfied with the services of their respective attorney.

To the greatest extent possible, this Mutual Release shall remain confidential.

IN WITNESS WHEREOF, the Plaintiff has executed this Release on the day and year first above written.

Lee C. Williams

Lee C. Williams

Pamela P. Richey

Pamela P. Richey

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

Lee C. Williams,

Plaintiff,

v.

Pamela P. Richey,

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

STIPULATION OF DISMISSAL

Civil Case No: 2007-CP-⁰¹⁻⁰⁰¹⁸⁸~~24-00169~~

WHEREAS, the Plaintiff, Lee C. Williams, and Defendant, Pamela P. Richey, have agreed that the above-entitled action be dismissed with prejudice;

NOW, THEREFORE, pursuant to Rule 41 of the South Carolina Rules of Civil Procedure, the parties hereby stipulate and agree that this action be dismissed with prejudice.

This 27 day of May, 2011.

C. Greenwood, South Carolina

TRUE COPY
BY Emily McMahon
ABBEVILLE COUNTY CLERK OF COURT

I SO MOVE:

James Graham Padgett, III
Attorney for Plaintiff

I SO CONSENT:

Billy J. Garrett
Attorney for the Defendant

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2011 JUN 2 AM 9 32
EMILY Y MCMAHAN
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

Pamela Richey,

Plaintiff,

vs.

Shirley W. Booth, Thomas J. Booth, Estate
of Lee C. Williams,

Defendants.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

Case No. 2013-CP-01-284

PLAINTIFF'S RESPONSES TO
DEFENDANT ESTATE OF LEE C.
WILLIAMS' REQUEST TO ADMIT

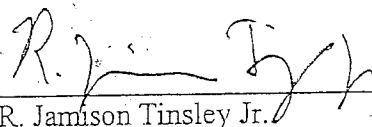
TO: JAMES GRAHAM PADGETT, III, ATTORNEY FOR SAM JEANES, PERSONAL
REPRESENTATIVE FOR THE ESTATE OF LEE C. WILLIAMS

1. The genuineness of the Mutual Release and Settlement Agreement executed on
May 11, 2011, by Lee C. Williams and Pamela P. Richey.

RESPONSE:

Admit.

TINSLEY & TINSLEY, P.C.
Attorney for Plaintiff



R. Jamison Tinsley Jr.
212 Oak Ave.
Greenwood, SC 29646
(864) 223-0770
Fax: (864) 377-8278

Greenwood, South Carolina

August 19, 2014

Pleading File Date	October 11, 2007	February 18, 2008	September 23, 2013
Case Number	2006-ES-01-169	2007-CP-01-188	2013-CP-01-284
Parties/Court	Pamela P. Richey v. Lee C. Williams (<i>Abbeville Probate</i>)	Lee Williams v. Pamela P. Richey (see counterclaim allegations) (<i>Abbeville CP</i>)	Pamela Richey v. Shirley W. Booth, Thomas J. Booth, Estate of Lee C. Williams (<i>Abbeville CP</i>)
Brief factual summary	claim for \$628,000 plus	action to recover vehicles/counterclaim for \$628,000	claim for a portion of \$628,000 plus
	Pleading Paragraph	Pleading Paragraph	Pleading Paragraph
Admission of prior suits	n/a	n/a	5
Admission prior suits settled	n/a	n/a	6
Allegation Williams took money intended for Penny Richey	6, 11, 19	56, 61, 69	11, 12, 13
Stipulation of Dismissal	No (consolidated into 2007-CP-01-188)	Yes, with prejudice	pending
Mutual Release and Settlement Agreement	No (consolidated into 2007-CP-01-188)	Yes -Admitted as genuine in RTA 8/19/14-	pending

Pleading File Date	October 11, 2007	February 18, 2008	September 23, 2013
Case Number	2006-ES-01-169	2007-CP-01-188	2013-CP-01-284
Parties/Court	Pamela P. Richey v. Lee C. Williams (<i>Abbeville Probate</i>)	Lee Williams v. Pamela P. Richey (see counterclaim allegations) (<i>Abbeville CP</i>)	Pamela Richey v. Shirley W. Booth, Thomas J. Booth, Estate of Lee C. Williams (<i>Abbeville CP</i>)
Admission of prior suits	n/a	n/a	5

5. The Plaintiff filed a lawsuit against her uncle Lee C. Williams ("Lee") that alleged he took \$400,000.00 from the Plaintiff's father and Lee's brother, Hugh A. Williams ("Hugh"), at the time of Hugh's death that was intended for the Plaintiff. This litigation occurred in Case Nos. 2006-ES-01-00169 and 2007-CP-01-188.

Pleading File Date	October 11, 2007	February 18, 2008	September 23, 2013
Case Number	2006-ES-01-169	2007-CP-01-188	2013-CP-01-284
Parties/Court	Pamela P. Richey v. Lee C. Williams (<i>Abbeville Probate</i>)	Lee Williams v. Pamela P. Richey (see counterclaim allegations) (<i>Abbeville CP</i>)	Pamela Richey v. Shirley W. Booth, Thomas J. Booth, Estate of Lee C. Williams (<i>Abbeville CP</i>)
Admission prior suits settled	n/a	n/a	6

6. Lee denied taking the money, and the parties settled the case without Lee admitting to taking the money.

Pleading File Date	October 11, 2007	February 18, 2008	September 23, 2013
Case Number	2006-ES-01-169	2007-CP-01-188	2013-CP-01-284
Parties/Court	Pamela P. Richey v. Lee C. Williams (<i>Abbeville Probate</i>)	Lee Williams v. Pamela P. Richey (see counterclaim allegations) (<i>Abbeville CP</i>)	Pamela Richey v. Shirley W. Booth, Thomas J. Booth, Estate of Lee C. Williams (<i>Abbeville CP</i>)
Allegation Williams took money intended for Penny Richey	6, 11, 19	56, 61, 69	11, 12, 13

6. Upon information and belief, the Respondent has taken, secreted, and converted \$628,000.00 in cash, more or less, which belonged to the Decedent and which was devised to the Petitioner in the Decedent's will.

11. The Petitioner is informed and believes that the Court should issue an order requiring the Respondent to return \$628,000.00 in cash, more or less, to the estate and that the money should be distributed according to the Decedent's will.

19. Upon information and belief, the Respondent took advantage of the Decedent's trust in the Respondent and the Respondent's poor physical and mental health when he took, secreted, and converted \$628,000.00 in cash, more or less, from the Decedent and which was devised to the Petitioner in the Decedent's will. As the Decedent's brother and confidant, the Respondent had a fiduciary duty to the Decedent by virtue of his special control over and relationship with the Decedent. See Macaulay v. Wachovia Bank of South Carolina, 569 S.E.2d 371 (S.C. Ct. App. 2002).

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

56. Upon information and belief, the Plaintiff has taken, secreted, and converted \$628,000.00 in cash, more or less, which belonged to the Decedent and which was devised to the Defendant in the Decedent's will.

61. The Defendant is informed and believes that the Court and jury should require the Plaintiff to return \$628,000.00 in cash, more or less, to the Decedent's estate and that the money should be distributed according to the Decedent's will.

69. Upon information and belief, the Plaintiff took advantage of the Decedent's trust in the Plaintiff and the Decedent's poor physical and mental health when he took, secreted, and converted \$628,000.00 in cash, more or less, from the Decedent and which was devised to the Defendant in the Decedent's will. As the Decedent's brother and confidant, the Plaintiff had a fiduciary duty to the Decedent by virtue of his special control over and relationship with the Decedent. See Macaulay v. Wachovia Bank of South Carolina, 569 S.E.2d 371 (S.C. Ct. App. 2002).

11. The decedent, Lee, took actions that constituted an unauthorized assumption and exercise of the right of ownership over the two-thirds (2/3) share of the money the Plaintiff was entitled to, to the exclusion of the Plaintiff.

12. Lee wrongfully detained the Plaintiff's two-thirds (2/3) share of the money without justification or excuse by refusing to surrender possession of the Plaintiff's share or promising to secure it on the Plaintiff's behalf until his death after the Plaintiff demanded possession of her share.

13. Lee willfully, intentionally, and recklessly converted the Plaintiff's share of the money with knowledge of and conscious indifference to the Plaintiff's lawful and absolute ownership right to that share.

Pleading File Date	October 11, 2007	February 18, 2008	September 23, 2013
Case Number	2006-ES-01-169	2007-CP-01-188	2013-CP-01-284
Parties/Court	Pamela P. Richey v. Lee C. Williams (Abbeville Probate)	Lee Williams v. Pamela P. Richey (see counterclaim allegations) (Abbeville CP)	Pamela Richey v. Shirley W. Booth, Thomas J. Booth, Estate of Lee C. Williams (Abbeville CP)
Stipulation of Dismissal	No (consolidated into 2007-CP-01-188)	Yes, with prejudice	pending

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

Lee C. Williams,

Plaintiff,

v.

Pamela P. Richey,

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

STIPULATION OF DISMISSAL

Civil Case No: 2007-CP-01-188
21-00187

WHEREAS, the Plaintiff, Lee C. Williams, and Defendant, Pamela P. Richey, have agreed that the above-entitled action be dismissed with prejudice:

NOW, THEREFORE, pursuant to Rule 41 of the South Carolina Rules of Civil Procedure, the parties hereby stipulate and agree that this action be dismissed with prejudice:

This 27 day of May, 2011.

_____, South Carolina

TRUE COPY
ABBEVILLE COUNTY CLERK OF COURT

I SO MOVE:

James Graham Padgett, III
Attorney for Plaintiff

I SO CONSENT:

Billy J. Gohert
Attorney for the Defendant

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2011 JUN 2 PM 3 32
EMILY HONANAH
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

Lee C. Williams,

Plaintiff,

v.

Pamela P. Richey,

Defendant.

IN THE COURT OF COMMON PLEAS

EIGHTH JUDICIAL CIRCUIT

STIPULATION OF DISMISSAL

Civil Case No: 2007-CP-⁰¹⁻⁰⁰¹⁸⁸~~24-00169~~

WHEREAS, the Plaintiff, Lee C. Williams, and Defendant, Pamela P. Richey, have agreed that the above-entitled action be dismissed with prejudice;

NOW, THEREFORE, pursuant to Rule 41 of the South Carolina Rules of Civil Procedure, the parties hereby stipulate and agree that this action be dismissed with prejudice.

This 27 day of May, 2011.

C. Greenwood, South Carolina

TRUE COPY
Emily Y. McMahon
ABBEVILLE COUNTY CLERK OF COURT

I SO MOVE:

James Graham Padgett, III
Attorney for Plaintiff

I SO CONSENT:

Billy J. Garrett
Attorney for the Defendant

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2011 JUN 2 AM 9 32
EMILY Y MCMAHON
CLERK OF COURT

Pleading File Date	October 11, 2007	February 18, 2008	September 23, 2013
Case Number	2006-ES-01-169	2007-CP-01-188	2013-CP-01-284
Parties/Court	Pamela P. Richey v. Lee C. Williams (Abbeville Probate)	Lee Williams v. Pamela P. Richey (see counterclaim allegations) (Abbeville CP)	Pamela Richey v. Shirley W. Booth, Thomas J. Booth, Estate of Lee C. Williams (Abbeville CP)
Mutual Release and Settlement Agreement	No (consolidated into 2007-CP-01-188)	Yes	pending

STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Lee C. Williams,
Plaintiff,
v.
Pamela P. Richey,
Defendant.

MUTUAL RELEASE
AND
SETTLEMENT AGREEMENT

CASE NO. 2007-CP-01-00169

FILED
CLERK OF COURT
JAN 11 11 57 AM
SOUTH CAROLINA
COUNTY OF ABBEVILLE

This Mutual Release, executed on May 11, 2011, by Lee C. Williams and Pamela P. Richey, is intended to effect the extinguishment of all remedies sought or set forth in the pleadings or remedies that could have been pled. In consideration of:

- 1) THIRTY-TWO THOUSAND FIVE HUNDRED AND NO/100 (\$32,500.00) DOLLARS to be paid by Lee C. Williams to Pamela P. Richey on or before May 24, 2011;
- 2) Release and discharge by Lee C. Williams of all right, title and interest in certain motor vehicle, identified with specificity in the complaint, in favor of Pamela P. Richey;
- 3) Lee C. Williams resigning as the Co-Personal Representative of the Estate of King Williams and
- 4) Release of that certain 1998 Volvo motor vehicle owned by Plaintiff, CERT423.

Each party shall execute a stipulation of dismissal of the above-captioned action, with prejudice.

Disputes and differences have arisen between the parties with respect to the events described in the pleadings in the above-captioned action, the results of which are incorporated herein by reference. In consideration described above, the Plaintiff and Defendant have agreed to execute this Mutual Release in settlement of all claims, disputes and differences from the beginning of time to the present relating to or arising out of the allegations and causes of action more specifically described in the pleadings. Accordingly, the Plaintiff and Defendant, for themselves, and their heirs, legal representatives, successors, and assigns, expressly release, acquit and forever discharge the other party and their heirs, legal representatives, successors, and assigns from all liability for claims, demands and causes of action, known or unknown, heretofore existing, relating to or arising out of the allegations and causes of action more specifically described in the pleadings.

It is understood and agreed that this Mutual Release is not to be construed as an admission of liability on the part of any party. This Release is intended merely to avoid the costs, expenses, and uncertainty of litigation.

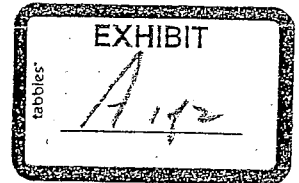
The undersigned further declares and represents that this Release has been read and fully understood the contents and effect hereof and does, by the execution hereof, fully commit and bind the undersigned, their heirs, legal representatives, successors and assigns to the terms and conditions of this Mutual Release, and that no promise, inducement or agreement not herein expressed has been made and that this Mutual Release contains the entire agreement between the parties, and that the terms of this Mutual Release are contractual and not a mere recital. Each party is satisfied with the services of their respective attorney.

To the greatest extent possible, this Mutual Release shall remain confidential.

IN WITNESS WHEREOF, the Plaintiff has executed this Release on the day and year first above written.

Lee C. Williams
Lee C. Williams

Pamela P. Richey
Pamela P. Richey



STATE OF SOUTH CAROLINA)
COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Lee C. Williams,
Plaintiff,

v.

Pamela P. Richey,
Defendant.

MUTUAL RELEASE
AND
SETTLEMENT AGREEMENT

C/A No 2007-CP-01-00169

FILED
STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
2014 NOV 10 PM 1:57
EMILY Y. JONAS
CLERK OF COURT

This Mutual Release, executed on May 11, 2011, by Lee C. Williams and Pamela P. Richey, is intended to effect the extinguishment of all remedies sought as set forth in the pleadings or remedies that could have been pled. In consideration of:

- 1) THIRTY-TWO THOUSAND FIVE HUNDRED AND NO/100 (\$32,500.00) DOLLARS to be paid by Lee C. Williams to Pamela P. Richey on or before May 24, 2011;
- 2) Relinquishment by Lee C. Williams of all right, title and interest in certain motor vehicles, described with specificity in the complaint, in favor of Pamela P. Richey;
- 3) Lee C. Williams resigning as the Co-Personal Representative of the Estate of Hugh Williams; and
- 4) Release of that certain lien on a Volvo motor vehicle owned by Sandra PETTERO;

Each party shall execute a stipulation of dismissal of the above-captioned action, with prejudice.

Disputes and differences have arisen between the parties with respect to the events described in the pleadings in the above-captioned action, the contents of which are incorporated herein by reference. In consideration described above, the Plaintiff and Defendant have agreed to execute this Mutual Release in settlement of all claims, disputes and differences from the beginning of time to the present relating to or arising out of the allegations and causes of action more specifically described in the pleadings. Accordingly, the Plaintiff and Defendant, for themselves, and their heirs, legal representatives, successors, and assigns, expressly releases, acquits and forever discharges the other party and their heirs, legal representatives, successors, and assigns from all liability for claims, demands and causes of action, known or unknown, heretofore existing, relating to or arising out of the allegations and causes of action more specifically described in the pleadings.

It is understood and agreed that this Mutual Release is not to be construed as an admission of liability on the part of any party. This Release is intended merely to avoid the costs, expenses, and uncertainty of litigation.

The undersigned further declares and represents that this Release has been read and fully understood the contents and effect hereof and does, by the execution hereof, fully commit and bind the undersigned, their heirs, legal representatives, successors and assigns to the terms and conditions of this Mutual Release, and that no promise, inducement or agreement not herein expressed has been made and that this Mutual Release contains the entire agreement between the parties, and that the terms of this Mutual Release are contractual and not a mere recital. Each party is satisfied with the services of their respective attorney.

To the greatest extent possible, this Mutual Release shall remain confidential.

IN WITNESS WHEREOF, the Plaintiff has executed this Release on the day and year first above written.

Lee C. Williams

Lee C. Williams

Pamela P. Richey

Pamela P. Richey

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.



R. Jamison Tinsley Jr.

212 Oak Ave.

Greenwood, SC 29646

(864) 223-0770

Attorney for Appellant

RECEIVED
FEB 22 2016
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of Common Pleas

R. Lawson McIntosh, Circuit Court Judge

Case No. 2015-001056

Pamela Richey,

Appellant,

v.

Shirley W. Booth, Thomas J. Booth, and
Estate of Lee C. Williams,

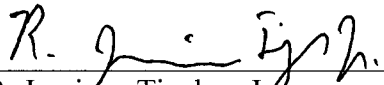
Respondents.

RECEIVED
FEB 22 2016
SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the original unbound and fourteen (14) bound copies of The Record On Appeal on the S.C. Court of Appeals by U.S. Mail Delivery, postage pre-paid a copy on February 19, 2016, to S.C. Court of Appeals, Clerk of Court Jenny Abbott Kitchings at 1220 Senate St., Columbia, South Carolina 29201.

February 19, 2016



R. Jamison Tinsley, Jr.
212 Oak Avenue
Greenwood, South Carolina 29646
Phone: (864) 223-0770
FAX: (864) 377-8278
Email: Tinslerj@gmail.com
Attorney for Appellant