

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Irvin G. Condon, Probate Court Judge

Circuit Court Case No. 2014-CP-10-4336

Probate Court Case No. 2013-GC-10-1029

Appellate Case No. 2016-001141

RECEIVED

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SC Court of Appeals

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

v.

Keith S. Wellin, ... Respondent.

RECORD ON APPEAL
Volume 1 of 5

Robert H. Brunson, SC Bar No. 11987

Merritt G. Abney, SC Bar No. 71893

Patrick C. Wooten, SC Bar No. 77985

NELSON MULLINS RILEY & SCARBOROUGH LLP

151 Meeting Street / Sixth Floor

Post Office Box 1806

Charleston, SC 29402-1806

Robert H. Hood, Esq.

Molly H. Craig, Esq.

James B. Hood, Esq.

William G. DesChamps, IV, Esq.

Hood Law Firm, LLC

PO Box 1508

Charleston, SC 29402-1508

A. Mattison Bogan, SC Bar No. 72629

NELSON MULLINS RILEY & SCARBOROUGH LLP

1320 Main Street / 17th Floor

Post Office Box 11070

Columbia, SC 29211-1070

Attorneys for Respondent

Edward G.R. Bennett, Esq.

PO Box 369

Charleston, SC 29402-0369

*Attorneys for Appellants Peter Wellin, Cynthia Wellin
Plum and Marjorie Wellin King*

Tiffany N. Provence, Esq.

Provence Messervy

300 North Cedar Street, Suite A

Summerville, SC 29483

Attorneys for Special Conservator

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
IN THE MATTER OF: KEITH S. WELLIN)
)
PETER WELLIN, CYNTHIA WELLIN)
PLUM AND MARJORIE WELLIN KING,)
)
Petitioners)
)
VS.)
)
KEITH S. WELLIN)
Respondent)

IN THE PROBATE COURT
CASE NO: 2013-GC10-0129

The matter comes before the Court on the Petition of Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King for the appointment of a Conservator for Keith S. Wellin. The Court finds as follows:

1. That the Petitioners filed a Petition for Appointment of Conservator for Keith S. Wellin on July 19, 2013, which was assigned Case # 2013-GC10-0129 by the Charleston County Probate Court (hereinafter, the "Petition").
2. That the Respondent and the Petitioners have come to an agreement regarding the Petition.

Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

- A. Edward G. R. Bennett, Esq. is hereby appointed as Special Conservator for Keith S. Wellin to serve without bond.
- B. Edward G. R. Bennett, Esq. is hereby appointed as Special Trustee for the Keith S. Wellin Florida Revocable Living Trust, u/a/d December 11, 2001, as subsequently amended and restated (hereinafter, the "Revocable Trust") to serve without bond.
- C. The role of Edward G. R. Bennett, Esq. is to ensure that transfers of assets are not made without fair and adequate consideration (except the completion of existing charitable pledges and routine annual charitable giving, but excluding major charitable gifts) to any person, including the Respondent's wife, Wendy C. H. Wellin; provided, however, that transfers may be made to accounts held in the name of Wendy C. H. Wellin (or jointly with Wendy C. H. Wellin) if such transfers are for the purpose of paying expenses approved under paragraph E, below. Edward G. R. Bennett, Esq. shall have no duties or responsibilities that normally would accrue to a Conservator or a Trustee, other than those specifically set forth in this Order. Edward G. R. Bennett, Esq. shall have no authority as to the sale, investment and/or reinvestment of the assets of Keith S. Wellin or the Revocable Trust. No third party dealing with Keith S. Wellin or the Revocable Trust shall be required to obtain authorization from Edward G. R. Bennett, Esq. for any transaction relating to the sale, investment and/or reinvestment of any such assets.

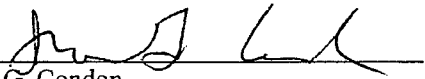
Handwritten signature/initials

- D. Edward G. R. Bennett, Esq. shall not be required to file an inventory and appraisal or any accounting with this Court, unless otherwise ordered by the Court. However, upon his appointment, Edward G. R. Bennett shall prepare (or shall have prepared by a Certified Public Accountant of his choosing) for the Court's benefit, a confidential inventory of the real and financial assets of Keith S. Wellin and the Revocable Trust which inventory shall be available to the Court, but which shall not be required to be produced except by order of this Court.
- E. The assets of Keith S. Wellin and the Revocable Trust may continue to be used for the customary living expenses of Keith S. Wellin and his wife, Wendy C. H. Wellin. The assets of Keith S. Wellin and the Revocable Trust may continue to be used to pay attorney's fees, expenses, and costs incurred in relation to the litigation pending between the Respondent and the Petitioners in the United States District Court for the State of South Carolina (C/A No. 2:13-cv-01831-DCN) and the Court of Chancery in the State of Delaware (C.A. No. 8723-VCL), and the mediation ordered below, specifically including, but not limited to, fees to the Hood Law Firm, Evans, Carter, Kunes & Bennett, P.A., McCarter & English, LLP and the Law Offices of Gedney M. Howe, III, P.A.
- F. Edward G. R. Bennett, Esq. shall be authorized to obtain any and all records or statements of account for any assets of Keith S. Wellin and/or the Revocable Trust as he should deem appropriate.
- G. The parties shall mediate before Thomas J. Wills at a time agreed upon between the parties and Thomas J. Wills.
- H. The Petition shall be stayed pending the outcome of the mediation. *(Captioned)*
- I. Pending the outcome of the mediation, Keith S. Wellin shall not be required by this Court to submit to any medical examinations regarding his competency. This Order is not intended to have any effect on proceedings in other litigation. *(Captioned)*
- J. No adjudication of Keith S. Wellin's competency has been made, and this Order shall not be construed as making any finding that Keith S. Wellin is incapacitated or lacks capacity to manage his assets or affairs.
- K. Edward G. R. Bennett, Esq., as Special Conservator for Keith S. Wellin, and as Special Trustee for the Revocable Trust, shall be compensated by Keith S. Wellin and/or the Revocable Trust for his service as Special Conservator and Special Trustee at his customary hourly rate.
- L. Edward G. R. Bennett, Esq., as Special Conservator for Keith S. Wellin, and as Special Trustee for the Revocable Trust, shall be compensated by Keith S. Wellin and/or the Revocable Trust for (i) any and all fees, expenses, and costs incurred in connection with the fulfillment or performance of his duties as Special Conservator or Special Trustee, and (ii) any fees, expenses, and costs owed to any attorneys or law firms retained or hired to assist him in performing his duties as Special Conservator and/or Special Trustee.
- M. Edward G. R. Bennett, Esq., is specifically granted the authority to retain the law firm of Evans, Carter, Kunes & Bennett, P.A. to assist him in the fulfillment or performance of

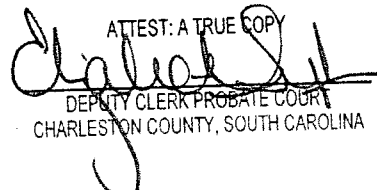
his duties as Special Conservator or Special Trustee, and the payment of such fees, expenses, or costs shall not constitute a conflict of interest.

AND IT IS SO ORDERED.

Executed this 15 day of August, 2013
Charleston, South Carolina



Irvin G. Condon
Judge of Probate, Charleston County Probate Court

ATTEST: A TRUE COPY


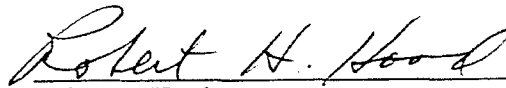
DEPUTY CLERK PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA


BK
3/15

CONSENT OF KEITH S. WELLIN

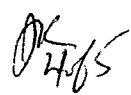
I have reviewed this Proposed Order and do hereby consent to the appointment of a Special Conservator and Special Trustee, to the mediation ordered herein, and the additional orders of the Court.

Charleston, South Carolina
August 14, 2013



Robert H. Hood
Molly H. Craig
James B. Hood

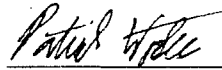
Attorneys for Keith S. Wellin (individually and
as Trustee of the Keith S. Wellin Florida
Revocable Living Trust u/a/d December 11,
2001, as subsequently amended and restated)



CONSENT OF PETER J. WELLIN, CYNTHIA W. PLUM, AND MARJORIE W. KING

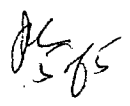
I have reviewed this Proposed Order and do hereby consent to the appointment of a Special Conservator and Special Trustee, to the mediation ordered herein, and the additional orders of the Court.

Charleston, South Carolina
August 13, 2013



Robert H. Brunson
Bryson M. Geer
Patrick C. Wooten

Attorneys for Peter J. Wellin, Cynthia W. Plum,
and Marjorie W. King



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE PROBATE COURT

) CASE NO. 2013 GC 10 129

Lester S. Schwartz, as Trust Protector
of the Wellin Family 2009 Irrevocable
Trust, Plaintiff

vs.

Peter J. Wellin, Cynthia W. Plum and
Marjorie W. King, Individually and as Co-
Trustees and Beneficiaries of the Wellin
Family 2009 Irrevocable Trust, Friendship
Management, LLC, Cynthia W. Plum as
Manager of Friendship Management, LLC,
Friendship Partners, LP and Keith S.
Wellin, Individually and as Trustee of the
Keith S. Wellin Florida Revocable Living
Trust u/a/d December 11, 2011, as Trustee
of the KSW 2011 Qualified Grantor
Retained Annuity Trust, and Trustee of the
KSW 2012 Qualified Grantor Retained
Annuity Trust u/a/d November 28, 2012
Defendant(s).

**ORDER GRANTING EX PARTE
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE FOR
PRELIMINARY INJUNCTION**

This matter came before this Court for an emergency hearing on December 20, 2013, involving upon the Motion for Temporary Restraining Order and Order to Show Cause for Preliminary Injunction filed by Plaintiff Lester S. Schwartz, as Trust Protector of the Wellin Family 2009 Irrevocable Trust. The Defendants to this action are Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King, Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust; Friendship Management, LLC; Cynthia W. Plum as Manager of Friendship Partners, LP; and Keith S. Wellin, Individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2011, as Trustee of the KSW 2011 Qualified

Grantor Retained Annuity Trust, and as Trustee of the KSW 2012 Qualified Grantor Retained Annuity Trust u/a/d November 28, 2012.

Plaintiff moves the Court to issue a temporary restraining order against the Defendants Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King, Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust; Friendship Management, LLC; and Cynthia W. Plum as Manager of Friendship Partners, LP to immediately restrain, enjoin, and prevent said Defendants from being able to sell, trade, negotiate, gift, alienate, hide, convert, or otherwise dispose of the proceeds of the sale of the 896 Class A Berkshire Hathaway common shares transferred to Friendship Partners, LP by Keith S. Wellin in 2003 or from participating in, authorizing, or allowing any such transactions without the express, written, and notarized consent of the Plaintiff or further order of this Court. Plaintiff also seeks to restrain, enjoin, and prevent said Defendants from being able to sell, trade, negotiate, gift, alienate, hide, convert, or otherwise dispose of the 98.90% limited partnership interest in Friendship Partners, LP, which Keith S. Wellin sold to the Wellin Family 2009 Irrevocable Trust in 2009, without the express, written, and notarized consent of the Plaintiff. Finally, Plaintiff further moves the Court to issue an order to said Defendants requiring them to show cause why a subsequent preliminary injunction should not be entered to restrain, enjoin, and prevent said Defendants from being able to sell, trade, negotiate, gift, alienate, hide, convert, or otherwise dispose of the proceeds received from the sale of the 896 Class A Berkshire Hathaway common shares and/or the 98.90% limited partnership interest in Friendship Partners, LP pending the resolution of the merits of this action, without the express, written, and notarized consent of the Plaintiff or further Order of this Court.

Keith S. Wellin is an 86 year old entrepreneur and Wall Street investor who amassed a sizable net worth of over the years by making prudent investments, one of which was the purchase of many Class A Berkshire Hathaway common shares (hereinafter "BRKa"). In his later years, Keith S. Wellin, as Grantor, created the Wellin Family 2009 Irrevocable Trust as part of this estate planning and in which he made provision for his children, grandchildren, and future generations of the Wellin family.

Defendants Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King are adult children of Keith S. Wellin, the Grantor, and were named as Co-Trustees under the Wellin Family 2009 Irrevocable Trust document. Article III of the Trust provides that it shall be governed by South Dakota law. The Trustee of the Trust is defined as Keith S. Wellin's children (Peter J. Wellin, Marjorie W. King, Cynthia W. Plum) and a Corporate Trustee, South Dakota Trust Company, LLC of Sioux Falls, South Dakota. South Dakota Trust Company, LLC previously served as Corporate Trustee and was subsequently replaced by Brown Brothers Harriman Trust Company of Delaware, N.A. ("Brown Brothers"). After Brown Brothers was substituted as Corporate Trustee in place of South Dakota Trust Company, Brown Brothers later subsequently attempted to resign as Corporate Trustee.

Keith S. Wellin also formed a company known as Friendship Partners, LP and transferred substantial amounts of BRKa stock into that partnership. Keith S. Wellin owned 98.90% of Friendship Partners, LP and Friendship Management, LLC, which is a limited liability company whose members are Keith S. Wellin's three adult children and the Wellin Family 2009 Irrevocable Trust.

Without approval of a Corporate Trustee, and during the period after Brown Brothers had attempted to resign as Corporate Trustee, Defendants Peter J. Wellin, Cynthia W. Plum and

Marjorie W. King, who are remaining Trustees and the children of Keith S. Wellin, unilaterally took it upon themselves to sell all the shares of Berkshire Hathaway and to liquidate Friendship Partners, LLC, a company created by the Grantor Keith S. Wellin, without consideration of the interests of future beneficiaries of the Trust and without regard to the express language of the Trust which directs that distributions are to be made on need and for only certain purposes.

Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King are not the only beneficiaries of the Trust. Instead, the Trust clearly was intended to benefit Keith S. Wellin's grandchildren and future generations of the Wellin family. Article IV of the Wellin Family 2009 Irrevocable Trust describes Keith S. Wellin's (the Grantor's) intentions and expressly provides that the Trustee shall first pay to the beneficiary, or his or her living descendants, such amounts from the Trust income that the Trustee in its sole and absolute discretion shall deem needed for their health, support, maintenance or education (including a college education and professional or post-graduate study) or any other reasonable purpose. The Trust further provides that such payments of income, if any, shall be made according to the beneficiaries' respective needs and without regard to equality of distribution. Likewise, in addition to payments of income, the Wellin Family 2009 Irrevocable Trust provides that the Trustees may pay to any beneficiary or to his or her living descendants, so much of the Trust principal as the Trustee in its sole discretion shall deem necessary or advisable for their health, support, maintenance, or education (including a college education and professional or post-graduate study), or any other reasonable purpose. Such principal payments are to be made on the basis of need and without regard to equality of distribution.

Plaintiff Lester S. Schwartz was duly appointed the Trust Protector of the Wellin Family 2009 Irrevocable Trust. As Trust Protector, Plaintiff is charged with responsibility to effectuate

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the purposes of the Trust, the intentions of the Grantor, and to protect all the beneficiaries. In his capacity as Trust Protector, Plaintiff's Verified Complaint raises a number of claims against Defendants, including claims for breach of fiduciary duty, conversion, removal of Trustees, restitution, recovery of attorneys' fees, and a cause of action for Temporary Restraining Order and Preliminary Injunction.

After reviewing the pleadings, exhibits, and documents on record and carefully considering the arguments of counsel, I find that the motion should be granted and hereby make the following findings of fact and/or conclusions of law:

FINDINGS OF FACT AND/OR CONCLUSIONS OF LAW

1. "Actions seeking relief by injunction are equitable in nature." City of Myrtle Beach v. Juel P. Corp., 344 S.C. 43, 522 S.E.2d 153 (Ct. App. 1999), rev'd other grounds, 543 S.E.2d 538 (2001). Whether a temporary injunction should be granted rests in the sound discretion of the judge to whom the application is addressed. Seabrook v. Carolina Power & Light Co., 159 S.C. 1, 156 S.E. 1 (1930); Brandt v. Gooding, 630 S.E.2d 259 (S.C. 2006).

2. Applicable trust law also gives this Court a wide arsenal of legal and equitable powers to remedy a breach of trust. The South Dakota Trust Code provides that "[p]ending a final decision on a request to remove a trustee, the court may order such appropriate relief as may be necessary to protect the trust property or the interests of the beneficiaries." S.D. Codified Laws § 55-3-20.1. Similarly, § 62-7-706(c) of the South Carolina Trust Code provides that "pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under Section 62-7-1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries." Id. § 62-7-706(c) (emphasis added). Pending a final decision on the merits, this Court may suspend or remove a

trustee, appoint a special fiduciary to possess and administer the trust property, reduce or deny compensation to the trustee, set aside wrongful acts of the trustee, and "order any other appropriate relief." Id. § 62-7-1001(b)(5)-(10).

3. Under South Carolina law, a party seeking to obtain injunctive relief generally must demonstrate that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. FOC Lawshe Ltd. Partnership v. International Paper Co., 352 S.C. 408, 574 S.E.2d 228 (Ct. App. 2002). Our Supreme Court has clarified that there is no additional requirement that the trial judge must "balance the equities" before issuing an injunction. Poynter Investments, Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15, 17 (2010).

4. The purpose of an injunction is to preserve the status quo during litigation in order to prevent irreparable injury to the requesting party and to preserve the ability of the court to render complete relief. County Council of Charleston v. Felkel, 244 S.C. 480, 137 S.E.2d 577, 578 (1964) ("The sole object of a temporary injunction is to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation."); see also JAMES F. FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE 511 (2nd ed., 1996) ("A temporary injunction preserves the status quo pending the completion of the case."). An injunction is appropriate to preserve the status quo so that a party can enforce a disputed legal right. Seaboard Air Line Ry. v. Atlantic Coast Line R., 71 S.E. 39 (S.C. 1911).

5. "Irreparable injury means that the injunction is reasonably necessary to protect the rights of the plaintiff pending the litigation." FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE at 508; Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co., 22 F.3d 546,

551 (4th Cir. 1994) (“Generally, ‘irreparable injury is suffered when monetary damages are difficult to ascertain or are inadequate.’” (citation omitted)). The element of irreparable harm is satisfied when it is difficult to calculate the amount of damages, such that an equitable remedy is necessary to make the aggrieved party whole. Bethel Methodist Episcopal Church v. City of Greenville, 211 S.C. 442, 45 S.E.2d 841 (1947) (“Irreparable injury, as used in the law of injunction, does not necessarily mean that the injury is beyond the possibility of compensation in damages.”).

6. South Carolina law has long recognized that an injunction is the appropriate remedy to abate an alleged waste of property or assets while ownership of the same property or assets is being litigated. Kinsler v. Clarke, 1837 WL 1551 (S.C. Ct. App. 1837); Grosshuesch v. Cramer, 367 S.C. 1, 623 S.E.2d 833 (2005); Felkel, 137 S.E.2d at 578. In Grosshuesch, our Supreme Court observed that “the quintessential hallmark of an injunction” is the “preservation of the property at issue until the matter has been adjudicated.” 623 S.E.2d at 833. The Court in that case granted a preliminary injunction against a trustee which prevented the trustee from exercising any control over the trust assets (including funds in a Merrill Lynch investment account) pending the outcome of the litigation and which ordered a full accounting.

7. A party seeking an injunction is “not required to prove an absolute legal right when seeking a preliminary injunction, but [she] must present a reasonable question as to the existence of such a right.” AJG Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505, 509 (Ct. App. 2009); see also Williams v. Jones & Amerman, 92 S.C. 342, 75 S.E. 705 (1912) (“This does not mean an absolute legal right or certainty of success but rather that he has a fair question to raise as to the existence of such a right.”). Courts have broadly construed this element and a litigant is required to do little more than state a cause of action or make a prima facie showing.

County of Richland v. Simpkins, 348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002); Childs v. Columbia, 87 S.C. 566, 70 S.E. 296 (1911).

8. "The determination of whether to grant an injunction should not be based on the merits of the underlying case except insofar as the merits may assist the trial court in determining whether a prima facie showing has been made." MailSource, L.L.C. v. M.A. Bailey & Assocs., 356 S.C. 363, 588 S.E.2d 635, 638 (Ct. App. 2003). "Once a prima facie showing has been made entitling the plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." Helsel v. City of N. Myrtle Beach, 307 S.C. 29, 413 S.E.2d 824, 826 (1992).

9. "[W]hether there is an adequate remedy at law for a wrong, [is a] question[] that [is] not decided by narrow and artificial rules." Kirk v. Clark, 191 S.C. 205, 4 S.E.2d 13, 15 (1939). "The adequacy of a legal remedy is a pragmatic determination based upon the certainty of fixing damages, the practicality of obtaining relief, and the efficiency of the legal remedy in the particular circumstances." FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE at 508. "[I]f the available legal remedy in a given case reduces itself to a matter of words, rather than to a matter of efficacy, because of its impracticability, or because the threatened acts may continue during the progress of an action at law, or because successive actions at law would be necessary to protect the plaintiff's rights, equity will hold that the existence of the legal remedy is not an obstacle to the exertion of the equitable power." Columbia Broadcasting Sys., Inc. v. Custom Recording Co., 258 S.C. 465, 189 S.E.2d 305, 312 (1972).

10. This Court finds that Plaintiff has demonstrated that (1) the Wellin Family 2009 Irrevocable Trust will suffer irreparable harm if an injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. This Court

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further finds that a temporary restraining order is needed to preserve this Court's ability to render complete relief and to protect the trust property and the interests of all of the beneficiaries.

11. In view of the record in this case, this Court finds that Plaintiff will suffer irreparable harm if a temporary restraining order is not granted. Unless a temporary restraining order is immediately granted to enjoin, restrain, and prevent the sale, trade, negotiation, gift, transfer, alienation, secreting, conversion, or other disposition of the sales proceeds from the stock and the partnership interests referenced herein-above, the Wellin Family 2009 Irrevocable Trust will suffer irreparable harm because the proceeds and assets belonging to the trust will be squandered, dissipated, and wasted by Defendants. Although the law provides that Defendants will be liable for damages, it will be difficult calculating the amount of damages because Defendants' actions in selling the shares have deprived the trust the benefit of the profits, gain, or appreciation that would have resulted if the stock and assets were still held or owned by the trust. Moreover, it will also be difficult to trace the funds that Defendants improperly received after they have been spent. Because the assets are liquid, they are easily disposed of. A money judgment against Defendants will do Plaintiff little good if Defendants are allowed to waste, spend, or dispose of the liquid assets before the Court can adjudicate the claims and enter an Order granting relief.

12. This Court also finds that Plaintiff will likely succeed on the merits of this litigation. Plaintiff's verified Complaint raises a "reasonable question" about Defendants' liability as co-trustees of the trust and makes a prima facie showing entitling Plaintiff to injunctive relief. A prima facie showing has been made that Defendants, as co-trustees, participated in and committed serious breaches of trust and are not serving solely the best interests of all of the beneficiaries. A prima facie showing has been made that Defendants, as

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co-trustees, participated in or allowed self-serving transfers of trust assets to be made to the detriment of the other beneficiaries of the trust (including Keith S. Wellin's grandchildren and future generations of the Wellin family and other heirs). Those transfers involve in excess of \$150,000,000.00. The record shows that Defendants engaged in the sale, liquidation, and transfer of trust assets in disregard of the grantor's intent, the terms of the trust, and their fiduciary obligations without any consideration for the interests of the other trust beneficiaries. It is unlikely that the complete liquidation and sale of all of the Berkshire Hathaway stock and the liquidation of Friendship Partners, LLC was necessary for the "health, support, maintenance or education (including a college education and professional or post-graduate study)" of Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King or that these transactions were for "any other reasonable purpose," which are the standards for the payment of trust income and the invasion of principal established by the terms of the Trust.

13. Instead, the transactions made by Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King suggest improper self-dealing. See S.D. Codified Laws § 55-2-1 ("In all matters connected with his trust a trustee is bound to act in the highest good faith toward his beneficiary and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind."); Bonney v. Granger, 292 S.C. 308, 356 S.E.2d 138 (1987) ("A trustee must exclude all selfish interest in his dealings on behalf of the beneficiaries of the trust."). Accordingly, this Court finds that a prima facie showing has been made that Defendants, as co-trustees, improperly sold, liquidated, and transferred the trust's assets, which depleted the assets of the trust and defeats or frustrates the grantor's intent, because all of the trust assets have been transferred to Defendants to the detriment of Keith S. Wellin's grandchildren and other intended beneficiaries.

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14. This Court further finds that a prima facie showing has been made that Defendants, as co-trustees, breached their duties of loyalty, impartiality, and good faith as co-trustees by pursuing actions that benefited themselves to the detriment of other beneficiaries. Such conduct warrants the issuance of a temporary restraining order restraining further such breaches of trust and protecting the trust property and the interests of the other beneficiaries.

15. Finally, this Court finds that Plaintiff has no adequate remedy at law for the harm or damage done or threatened to be done by Defendants. As in Grosshuesch v. Cramer, 367 S.C. 1, 623 S.E.2d 833 (2005), the purpose of Plaintiff's motion is to preserve the assets of the trust until the merits of this litigation have been adjudicated. In this case, a showing has been made that Defendants, as co-trustees, have participated in and allowed distributions of all of the trust assets to themselves in violation of the grantor's intent, the terms of the trust, and the governing law. Unless an injunction is issued, this conduct will continue to occur during the pendency of this action. The proceeds from the sale of trust assets will be depleted unless an injunction is granted. Even if Plaintiff obtains a money judgment against Defendants at the end of this case, it is doubtful that he would be able to fully recover it if Defendants are allowed to dispose of the proceeds from the sale of the stock and to use the money.

16. For the reasons set forth above, a temporary restraining order is warranted. According to S.C. R. Civ. Pro. 65(c), a restraining order generally shall not issue without the posting of a bond. In this case, Plaintiff is acting as the Trust Protector to protect the trust property, thus any bond should be paid by the trust. Based on its review of the record, this Court finds that a bond or security in the amount of \$10,000.00 is sufficient.

CONCLUSION

For all of the above reasons, it is hereby

ORDERED that Plaintiff's Motion for Temporary Restraining Order and Order to Show Cause for Preliminary Injunction is hereby GRANTED; and

FURTHER ORDERED that, until further Order of this Court, Defendants Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King, Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust; Friendship Management, LLC; and Cynthia W. Plum as Manager of Friendship Partners, LP are hereby immediately restrained, enjoined, and prevented from transferring, selling, trading, spending, reducing, negotiating, gifting, alienating, hiding, secreting, converting, pledging, encumbering, distributing, sharing, or otherwise disposing of or exercising any control over any of the cash, funds, or proceeds realized by the sale of the 896 Class A Berkshire Hathaway common shares transferred to Friendship Partners, LP by Keith S. Wellin in 2003 and from participating in, authorizing, or allowing any such transactions without the express, written, and notarized consent of the Plaintiff or further order of this Court; and

FURTHER ORDERED that, until further Order of this Court, Defendants Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King, Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust; Friendship Management, LLC; and Cynthia W. Plum as Manager of Friendship Partners, LP are hereby immediately restrained, enjoined, and prevented transferring, selling, trading, spending, reducing, negotiating, gifting, alienating, hiding, secreting, converting, pledging, encumbering, distributing, sharing, or otherwise disposing of the 98.90% limited partnership interest in Friendship Partners, LP, which Keith S. Wellin sold to the Wellin Family 2009 Irrevocable Trust in 2009, and from participating in,

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authorizing, or allowing any such transactions, without the express, written, and notarized consent of the Plaintiff or further order of this Court; and

FURTHER ORDERED that this temporary restraining order applies to and binds Defendants Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King, Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust; Friendship Management, LLC; and Cynthia W. Plum as Manager of Friendship Partners, LP as well as their agents, servants, employees, attorneys, members, officers, and those persons in active concert or participation with them who receive actual notice of the Order by personal service or otherwise; and

FURTHER ORDERED that a hearing shall be conducted by this Court on Monday, December 30, 2013, at 2 pm at which Defendants Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King, Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust; Friendship Management, LLC; and Cynthia W. Plum as Manager of Friendship Partners, LP or their legal counsel shall be given the opportunity to appear and respond to Plaintiff's motion for temporary restraining order and preliminary injunction and to show cause why a preliminary injunction should not be entered against said Defendants to restrain, enjoin, and prevent Defendants from transferring, selling, trading, spending, reducing, negotiating, gifting, alienating, hiding, secreting, converting, pledging, encumbering, distributing, sharing, or otherwise disposing of the cash, funds, or proceeds realized by the sale of the 896 Class A Berkshire Hathaway common shares and/or the 98.90% limited partnership interest in Friendship Partners, LP pending the resolution of the merits of this action, without the express, written, and notarized consent of the Plaintiff or further Order of this Court; and

FURTHER ORDERED that Plaintiff shall ^{post security in the amount} ~~post with this Court a bond or security in the~~
~~amount of \$10,000.00 within ten (10) business days after notice of entry of this Order, to be paid~~
~~using the funds or assets of the Wellin Family 2009 Irrevocable Trust, and~~
f \$1 million dollars by having the Trustees set
aside such funds as security (P)

FURTHER ORDERED that Plaintiff shall promptly provide Defendants with a copy of this Order as well as Plaintiff's Verified Complaint, motion, memorandum, and supporting affidavit; and

AND IT IS SO ORDERED!

Irvin G. Condon
Irvin G. Condon
Judge of Probate of and for the County
of Charleston, State of South Carolina

Charleston South Carolina.

This *20th* day of *December* 2013 *4pm.* *(P)*

Amelia J. [Signature]
DEPUTY CLERK OF THE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

*This Order does not preclude
the investing by the Trustees of
the restrained assets consistent
with their duties as prudent Trustees.
The trust funds need to be
traceable and accountable to the Trust
Protector and this Court. (P)*

STATE OF SOUTH CAROLINA

) IN THE PROBATE COURT

COUNTY OF CHARLESTON

) CASE 2013-GC-10-129

IN THE MATTER OF
KEITH S. WELLIN

PETER WELLIN, CYNTHIA WELLIN PLUM, and
MARJORIE WELLIN KING,

Petitioners.

vs.

KEITH S. WELLIN,

Respondent.

ORDER

HEARING DATE:

February 6, 2014

JUDGE:

Irvin G. Condon

PETITIONERS' ATTORNEY:

Robert H. Brunson, Esquire

RESPONDENT'S ATTORNEY:

James B. Hood, Esquire

SPECIAL CONSERVATOR'S ATTORNEY:

Tiffany N. Provence, Esquire

THIS MATTER was before the Court pursuant to a filing by the Special Conservator, Edward G. R. Bennett, of an Application on January 14, 2014, pursuant to S. C. Code §62-5-416(b). Edward G. R. Bennett was appointed by the Court as Special Conservator and Special Trustee on August 15, 2013, by consent of Petitioners. Section C of the Order Appointing Special Conservator requires Edward G. R. Bennett to "ensure that transfers of assets are not made without fair and adequate consideration." In the above stated Application, Bennett sought clarification from this Court as to his duty and obligation towards Keith S. Wellin, his protected person, with regards to a November 20, 2013 transaction, upon which Bennett alleges that Wellin has transferred an asset and has received no compensation. Upon instruction from the Court, the Petitioner was served with a copy of the Application and had proper notice of today's hearing.

Present before the Court were the Petitioners' counsel, Robert Brunson, Esquire, Bryson M. Geer, Esquire, and Merritt G. Abney, Esquire, all of Nelson Mullins. Respondent, Keith Wellin, was represented by his counsel, Robert H. Hood, Sr., Esquire, and James B. Hood, Esquire. Also in appearance were Edward Bennett as Special Conservator with his counsel,

Handwritten signature/initials

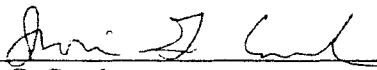
Tiffany N. Provence, Esquire. The Trust Protector, Lester Schwartz, and his counsel, Richard S. Rosen, Esquire, and H. Brewton Hagood, Esquire were also in attendance.

After reviewing the correspondence filed by Mr. Bennett and in consideration of the argument of counsel and the record,

IT IS ORDERED, ADJUDGED, AND DECREED THAT:

1. That the Order Appointing Special Conservator dated August 15, 2013 is hereby amended to include the power to pursue any third party, including Petitioners, holding assets belonging to the alleged incapacitated person, which were transferred by the alleged incapacitated person on or after August 15, 2013.
2. This amendment shall be a power, not an obligation, and shall be read to be consistent with S. C. Code section §62-5-424(B)(17), and includes any other such related powers necessary to protect the assets of Keith S. Wellin as Special Conservator.

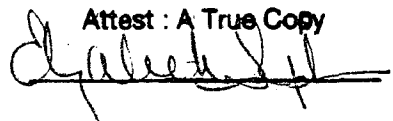
AND IT IS SO ORDERED!



Irvin G. Condon
Judge of Probate Court for Charleston County

Charleston, South Carolina

2/21/2014 (A)

Attest : A True Copy


Clerk Probate Court
Charleston County, South Carolina

) IN THE PROBATE COURT

) CASE 2013-GC-10-129

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ORDER

HEARING DATE:

February 6, 2014

JUDGE:

Irvin G. Condon

PETITIONERS' ATTORNEY:

Robert H. Brunson, Esquire

RESPONDENT'S ATTORNEY:

James B. Hood, Esquire

SPECIAL CONSERVATOR'S ATTORNEY:

Tiffany N. Provence, Esquire

PROCEDURAL HISTORY

THIS MATTER was before the Court pursuant to a filing by the Special Conservator, Edward G. R. Bennett, of an Application on January 14, 2014, pursuant to S.C. Code Ann. §62-5-416(b). Edward G. R. Bennett was appointed by the Court as Special Conservator and Special Trustee on August 15, 2013, by consent of Petitioners. Section C of the Order Appointing Special Conservator requires Edward G. R. Bennett to “ensure that transfers of assets are not made without fair and adequate consideration.” In the above stated Application, Bennett sought clarification from this Court as to his duty and obligation towards Keith S. Wellin, his protected person, with regards to a November 20, 2013 transaction, upon which Bennett alleges that Wellin has transferred an asset and has received no compensation. Upon instruction from the Court, the Petitioner was served with a copy of the Application and related attachments and had proper notice of today’s hearing.

Present before the Court were the Petitioner's counsel, Robert Brunson, Esquire, Bryson M. Geer, Esquire, and Merritt G. Abney, Esquire, all of Nelson Mullins. Respondent, Keith Wellin, was represented by his counsel, Robert H. Hood, Sr., Esquire, and James B. Hood, Esquire. Also in appearance were Edward Bennett as Special Conservator with his counsel, Tiffany N. Provence, Esquire. The Trust Protector, Lester Schwartz, and his counsel, Richard S. Rosen, Esquire, and H. Brewton Hagood, Esquire, were also in attendance.

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STATEMENT OF THE CASE

Petitioners brought this matter to the attention of the Court by a July 19, 2013 filing of a Petition for Appointment of Conservator, alleging their father, Keith S. Wellin, was in need of Conservator to protect his assets. Keith S. Wellin is an 87-year old businessman with significant wealth earned as an entrepreneur and Wall Street Investor. Petitioners further requested a Protective Order be issued, citing an immediate need to protect their father's assets due to his frail health and alleged undue influence asserted by his wife and caretaker, Wendy Wellin. Petitioners included a Promissory Note valued at \$49,802,115 as an asset belonging to Wellin on their Petition. As a result of their Petition, this Court issued a Protective Order on August 15, 2013, naming Edward G. R. Bennett as Special Conservator by consent of all parties. Section C of that Order specifically states "Edward G. R. Bennett, Esq. is to ensure that transfers of assets are not made without fair and adequate consideration to any person."

On November 20, 2013, Wellin substituted the Promissory Note, valued by Petitioners in their Petition at \$49,000,000 (plus interest) for a 58% interest in Friendship Partners. Prior to the substitution, Special Conservator Edward G. R. Bennett reviewed the transaction per this Court's Order to ensure adequate value was received for the transfer of assets. On the date of the substitution, the Promissory Note was valued at approximately \$50,211,447. Based on the longstanding valuation of Friendship Partners, this was the equivalent of 58.15548645% interest in Friendship Partners; therefore, Bennett approved the substitution.

Shortly after the substitution, the Wellin Children decided to liquidate the assets of Friendship Partners and then dissolve the entity. As a result of the liquidation, the 58.15548645% interest in Friendship Partners became worth approximately \$92,000,000. Petitioners have acknowledged the sale and dissolution of Friendship Partners. Further, they have acknowledged that despite their knowledge of their father's substitution they have disbursed all but roughly \$52,000,000, being the \$50,211,447 owed under the original Promissory Note and some additional funds, claiming Wellin's substitution was invalid. The remainder of the funds they have distributed to themselves. The other issues surrounding the Wellin Children's dispute over this substitution are not before the Court at this time.

To date, the Wellin Children have refused to pay the undisputed amount of \$50,211,447 (plus any accrued interest) to the Special Conservator who is responsible for protecting Wellin's assets per their request. Petitioners acknowledge in their Motion to Dismiss and in the hearing before this Court that "The Wellin Children also tendered, on behalf of the Irrevocable Trust, payment of the principal and interest on the Promissory Note held by the Revocable Trust by sending a check for \$50,228,000 to Bennett;" [such additional amount presumably being due to additional interest due through the date of tender] however, they fail to mention the reason this purported payment was rejected. Petitioners have asked that Wellin

(who they allege is incapacitated) accept said payment as payment in full of the Promissory Note, thereby removing his opportunity to assert his right to the additional \$42,000,000 difference between the Promissory Note and the value of the 58.15548645% interest in Friendship Partners.

On January 14, 2014, pursuant to S.C. Code Ann. §62-5-416(b), Edward G. R. Bennett, as Special Conservator, sought clarification from this Court as to his duty and obligation towards Keith S. Wellin, his protected person, with regards to this November 20, 2013 transaction. Petitioners and the Special Conservator all acknowledged before this Court that should Petitioners prevail in their interpretation of the above transaction, their father is entitled to \$50,211,447 (plus interest) and they are entitled to the remainder; however, should Wellin prevail in his interpretation of the above transaction, he is entitled to approximately \$92,000,000.

ISSUES OF LAW

Does this Court have jurisdiction to require Petitioners to pay the undisputed amount of \$50,211,447 (plus interest) to a Special Conservator appointed by this Court to protect Wellin's assets?

FINDINGS OF FACT

1. That this matter is properly before this Court.
2. That the Wellin Children, Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King are the Petitioners in this matter.
3. That Petitioners filed a Petition for Appointment of Conservator on July 19, 2013, seeking a finding of incapacity of their father, Keith S. Wellin.
4. That Petitioners included in their Petition a list of assets of Mr. Wellin, including a Promissory Note valued at approximately \$49,000,000.
5. That as a result of their request for an emergency hearing on the matter, a Special Conservator was appointed by a Protective Proceeding.
6. That the Wellin Children consented to the appointment of Wellin's private counsel, Edward G. R. Bennett, to serve as Special Conservator.
7. That the Protective Order dated August 15, 2013 outlines the duties of Edward G. R. Bennett.
8. That Section C of that Order specifically states "Edward G. R. Bennett, Esq. is to ensure that transfers of assets are not made without fair and adequate consideration to any person."
9. That on November 20, 2013, Wellin substituted the Promissory Note valued at approximately \$49,802,115 for a 58.15548645% interest in Friendship Partners.

10. That the Wellin Children are now challenging that substitution under various legal theories in an effort to disburse additional funds to themselves.
11. That the Wellin Children have acknowledged that at a minimum, Wellin is owed \$50,228,000, being the value of the note plus interest through the date of their offer.
12. That Wellin asserts he is due a significantly larger amount resulting from the Petitioners decision to liquidate Friendship Partners.
13. That the Petition to determine the full amount owed to Wellin is not before the Court at this time:
14. That the Petitioners in this action have refused to surrender the undisputed funds of \$50,228,000 to Wellin or his Special Conservator, Edward G. R. Bennett.
15. That the Petitioners refuse to surrender these funds absent the alleged incapacitated releasing his right to dispute the full amount owed.
16. That the Petitioners are holding these undisputed funds as the Trustees for the Wellin Family 2009 Irrevocable Trust.
17. That the Petitioners' counsel stated, "[m]y clients have no interest in that \$50 million. It belongs to Mr. Wellin, but only in full exchange for payment of the note." Hearing Tr. 58:19-21.
18. That the Special Conservator has requested that this Court require Petitioners to return to his care an asset that they acknowledge is his; namely \$50,228,000, plus interest through the date such funds are returned.
19. That this Court has jurisdiction over Wellin's assets, the Petitioners and the Special Conservator in this matter.
20. That all parties had adequate notice of and participated in the hearing held on this matter.

CONCLUSIONS OF LAW

Pursuant to S.C. Code Ann. §62-5-408(1), this Court has the power to preserve and apply the property of the person to be protected as may be required for his benefit. Further, S.C. Code Ann. §62-5-408(3)(a) gives this Court, for the benefit of the person and of his estate, all the powers over his estate and affairs which he could exercise if present and not under disability, except the power to make a will. For these reasons, this Court has jurisdiction over the assets belonging to Keith S. Wellin, including the Promissory Note or any asset for which it was substituted.

In addition to lack of jurisdiction over the asset, Petitioners make several other arguments in an effort to maintain control over these funds including lack of standing of the Special Conservator, lack of

personal jurisdiction over the Wellin Children as Trustees holding the funds, and lack of due process on behalf of the Wellin Children. This Court does not find these arguments persuasive in light of the Petitioner's actions that led to the original Protective Order.

The Wellin Children brought this action and sought the immediate appointment of a Conservator and a Protective Order. In doing so, Keith Wellin was not afforded an opportunity to defend his capacity nor avoid this Court's involvement in his financial affairs prior to an emergency appointment. As a result of the Wellin Children's Petition, this Court held an emergency hearing and issued a Protective Order dated August 15, 2013, thereby subjecting Wellin, his assets, and the Petitioners to the jurisdiction of this court. This Order, which was entered by the consent of the Wellin Children, appointed a Special Conservator to protect these assets and ensure Wellin received fair and adequate consideration for any transfers.

Upon the appointment of the Special Conservator, he had the duty to protect Keith S. Wellin from all third parties, including the Wellin Children. Furthermore, he had the right to seek instruction pursuant to S.C. Code Ann. §62-5-416(b) and to seek any appropriate order pursuant to S.C. Code Ann. §62-5-416(c). This sections and a clear reading of the statute offer the Special Conservator standing in this Court.

As to jurisdiction over the Wellin Children, Petitioners agree that they are here individually, but argue that this Court lacks jurisdiction over them as Trustees over the 2009 Wellin Family Irrevocable Trust, which currently holds the \$50,228,000 asset in question. The case law in South Carolina is not consistent with this position. *See Ex Parte Cannon*, 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009). Cannon argued that he was never made a party to any proceedings in his capacity as trustee, was never served with a rule, and was only before the circuit court in his capacity as personal representative, and therefore, the circuit court lacked personal jurisdiction over him. The Court disagreed.

Further, although it is not binding precedent in South Carolina, this Court also relies on the reasoning found in *In re Estate of Ahern*, 359 Ill. App. 3d 805, 835 N.E.2d 95 (2005). In *Ahern*, counsel for a guardianship estate brought enforcement proceedings after a ward's death against the trustee of the ward's trust for payment of attorney fees. Even though personal service was never made on the trustee, the circuit court concluded that it had personal jurisdiction over the ward's trust and its trustee in guardianship proceedings because the trustee waived objection to lack of service with general appearance on behalf of trust by entering pleadings on behalf of trust and otherwise participating in guardianship proceedings in a capacity that indicated control over the trust. 359 Ill. App. 3d at 813, 835 N.E.2d at 101.

In this matter, the Wellin Children participated in the hearing through counsel that represents them individually and in their fiduciary role to their father. Similar to *Cannon*, this Court will not allow

the Wellin Children to hide behind a different fiduciary title to avoid negative consequences. As in Cannon and in Ahern, the Wellin Children have voluntarily appeared as Trustees in other matters before this Court. For these reasons, this Court has jurisdiction over them in all capacities as it relates to the assets of the protected person.

Lastly, the Wellin Children argue a lack of due process. While this Court finds that the Wellin Children do have due process rights as to the amount of the funds in dispute (namely the \$42,000,000 difference in question), those rights do not extend to the undisputed funds belonging to their father and well within the jurisdiction of this court. They cannot possibly allege harm in the Court seeking to protect the very assets they requested the Court to protect. Further, their participation in the scheduling of this hearing and participation in the same allowed them an adequate opportunity to be heard on the matter.

The Probate Court is a court of equity and although it is unnecessary to address the equitable arguments made by the Special Conservator, the Court acknowledges that returning the undisputed funds to the Special Conservator for the use and benefit of the alleged incapacitated is both legal and equitable.

Based upon the foregoing findings of fact and conclusions of law,

IT IS ORDERED, ADJUDGED, AND DECREED THAT:

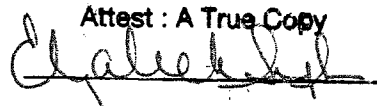
1. Petitioners shall pay the \$50,228,000 to Synovus Trust Company, N.A., the Special Conservator II appointed by this Court, within ten (10) days from the date of this Order.
2. Respondent and/or Special Conservator Bennett shall deliver the Promissory Note to Special Conservator II for safekeeping within ten (10) days from the date of this Order.
3. Special Conservator II shall hold the funds and the Promissory Note until the litigation or mediation concerning these assets is resolved. No withdrawals shall be made unless agreed to by the parties and/or ordered by this Court.
4. This Order in no way interferes with any right to dispute ownership over the disputed funds of approximately \$42,000,000.

AND IT IS SO ORDERED!


Irvin G. Condon
Judge of Probate Court for Charleston County

Charleston, South Carolina
7/21, 2014 

Page 6 of 6

Attest : A True Copy

Clerk Probate Court
Charleston County, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

In Matter of: Keith S. Wellin

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

Petitioners,

vs.

Keith S. Wellin,

Respondent.

IN THE PROBATE COURT

CASE NO.: 2013-GC-10-0129

**ORDER DENYING PETITIONERS'
MOTION TO ALTER OR
AMEND JUDGMENT**

THIS MATTER is before the Charleston County Probate Court upon Petitioners' Motion to Alter or Amend an Order dated February 21, 2014, pursuant to Rule 59(e), SCRPC. Petitioners are the adult children of the Respondent. For the reasons stated herein, Petitioners' Motion is denied.

A condensed summary of events is as follows: (1) The Court appointed Edward G. R. Bennett as Special Conservator on August 15, 2013 by mutual consent of the Petitioners and Respondent. (2) On January 14, 2014, Mr. Bennett filed an Application with the Court pursuant to S.C. Code Ann. § 62-5-416(b), seeking clarification of his duty and obligation toward Respondent Keith Wellin, his protected person, regarding his previous estate planning and a November 20, 2013 transaction involving the Wellin Family Trust and a Promissory Note, currently being litigated in Federal Court. Petitioners opposed the Application. (3) On February 6, 2014, the Court held a hearing wherein it heard arguments from all parties. On February 21, 2014, the Court issued an Order which, inter alia, ordered Petitioners to pay \$50,228,000 held by the Wellin Family 2009 Irrevocable Trust to Synovus Trust Company, N.A., and further appointed Synovus as Special Conservator II. The Court's Order further directed that these

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funds and the Promissory Note be held until litigation or mediation concerning these assets is resolved. (4) On March 3, 2014, Petitioners filed the present Motion asking the Court to reconsider its ruling and vacate the February 21, 2014 Order. Edward G.R. Bennett, the Special Conservator, opposed this Motion and filed a Memorandum in Opposition with the Court on March 11, 2014. The Court held a hearing on this Motion on April 1, 2014.

Having reviewed the Motion, the pleadings in this case, the arguments of both sides made at the February 6, 2014 and April 1, 2014 hearings, and in light of the Petitioners attempted dismissal of the conservatorship action (see separate Order dated July 3, 2014 denying dismissal and incorporating by reference that Order), the Court is convinced that the assets of Keith Wellin need protection.

This Court has jurisdiction over the parties and subject matter. S.C. Code Ann. §§ 62-5-102, 62-7-201. As a fiduciary appointed by the Court, Mr. Bennett filed an Application under S.C. Code Ann. § 62-5-416(b) requesting instruction. The Court issued an Order, pursuant to S.C. Code Ann. § 62-5-416(c), concerning the assets of Keith Wellin. Petitioners agreed to the jurisdiction of this Court by petitioning for the appointment of a conservator, and this Court has jurisdiction over the funds belonging to Keith Wellin in the 2009 Wellin Family Trust, pursuant to S.C. Code Ann. §§ 62-5-402 and 62-5-408(1), as an asset of Respondent's estate, and pursuant to S.C. Code Ann. § 62-7-201, to an out of state trust when the interests of justice otherwise would seriously be impaired. Petitioners are also Trustees of this Trust and offered to surrender the \$50,228,000 to the Court in satisfaction of the Note, but this Court does not hold funds and defers to the Federal Court litigation concerning the ultimate disposition of the \$50,228,000 and the Promissory Note. The Petitioners have appeared and raised issues in this Court through their counsel as set forth in the transcripts from the hearings and the record. All interested parties

were properly before the Court, and it was and is not necessary to name the Petitioners in their capacity as Trustees. See Ex Parte Cannon, 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009); In re Guardianship of Brown, 611 So. 2d 1342 (Fla. Dist. Ct. App. 1993); In re Conservatorship of Groves, 109 S.W.3d 317, 350 (Tenn. Ct. App. 2003).

Petitioners' reliance on In re Ashton, 266 S.W.3d 602, 604 (Tex. App. 2008), is misplaced. First, Ashton, which is merely persuasive authority, is contrary to the South Carolina Court of Appeals holding in Cannon, which is controlling on this Court. Second, Ashton does allow relief against a trustee if a trustee makes an appearance. Id. Third, the South Carolina Probate Code provisions at issue here deal with the protection of alleged incapacitated adults, not adversarial proceedings between parties of equal standing as found in divorce actions. See S.C. Code Ann. §§ 62-5-401, -402, -408.

Further, this Court finds more persuasive In re Conservatorship of Groves, 109 S.W.3d 317, 350 (Tenn. Ct. App. 2003) (holding that where parties appear and participate in an action, they waive any right to challenge failure to sue them as trustees) and In re Guardianship of Brown, 611 So. 2d 1342 (Fla. Dist. Ct. App. 1993) (holding that it is not necessary to serve an individual who petitioned for appointment as guardian in their capacity as trustee). These cases are in accord with this Court's application of In re Estate of Ahern, 359 Ill. App. 3d 805, 812, 835 N.E.2d 95, 101 (2005) ("However, we find that some of the arguments Robert made in objecting to the petition for guardianship and in contesting the award of fees to Dutton indicate that he did in fact appear on behalf of the Trust and thus subjected it to the trial court's personal jurisdiction.").

Dismissal pursuant to Rule 12(b)(8) is not appropriate. This Court again reiterates its exclusive jurisdiction to issue a protective order until these proceedings are terminated pursuant

to S.C. Code Ann. §§ 62-5-402, 62-5-408(1) and 62-5-430. This Court also notes that Federal Court has no conservatorship cases, that this Court has established and monitors many federal veterans' conservatorship cases, that the federal government in GAO reports has been critical of state courts for not protecting the assets of incapacitated adults, that the Petitioners as Trustees offered to pay the \$50,228,000 into the Court in satisfaction of the Promissory Note, and that counsel for the Trust Protector represented to this Court that they do not know where the \$50,228,000 is located.

This Court does not find persuasive Petitioners' argument that the Promissory Note, which this Court ordered to be also held by Synovus Trust Company, N.A., is not due until 2021, and that therefore no funds are due Respondent. Regardless of the validity or value of the substitution, this Court finds that, in any event, Petitioner is currently owed no less than that which would be due under the Note if it were still outstanding. Petitioners have also acknowledged in submissions to the Court and arguments of counsel that the funds at issue would satisfy the Note. Petitioners further acknowledge that these funds do not belong to them. Feb. 6, 2014 Transcript at 47 ln. 5-7, 69 ln.25, 70 ln. 1-2.

The Court finds there was no violation of due process because Petitioners had notice of and participated in the hearings on the Application. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. S.C. Dep't of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997). The Court notes that Petitioners were served with a copy of the Special Conservator's Application pursuant to the Court's instruction and have attended and presented arguments through counsel at all hearings, in addition to filing extensive memoranda. Further, prior to the February 6, 2014 hearing, Petitioners filed a Motion to Dismiss in this action raising many of the same grounds. Moreover,

the Court notes that Petitioners brought this action seeking the immediate appointment of a conservator and a protective order and consented to the appointment of the Special Conservator. The Petitioners offered to pay the \$50,228,000 into the Court in satisfaction of the Promissory Note, but the Court does not hold funds. These facts support the Court's holding that Petitioners' procedural due process rights have not been violated.

The Court notes that S.C. Code Ann. § 62-5-402(3), which references S.C. Code Ann. § 62-5-433, deals primarily with tort claims. South Carolina Code Ann. §§ 62-5-402(2) and 62-5-408(1) provide this Court with exclusive jurisdiction to determine how the estate or assets of the protected person must be managed. Accordingly, the Court holds that the \$50,228,000 and the Promissory Note shall be held by Synovus Trust Company, N.A., until the conclusion of the Federal Court litigation and/or further Order of this Court.

Finally, the principles of law and equity supplement the provisions of the South Carolina Probate Code. S.C. Code Ann. § 62-1-103. As a Court of equity, this Court should not allow the Petitioners, who brought this very action under the guise of protecting their father, to now manipulate the legal process to prevent this Court from providing the protection they sought.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. Petitioners' Motion to Alter or Amend Judgment is DENIED and the \$50,228,000 and the Promissory Note shall be held for safekeeping by Synovus Trust Company, N.A., until the conclusion of the Federal Court litigation and/or further Order of this Court.
2. Petitioners are directed to fully comply with this Court's February 21, 2014 Order.

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AND IT IS SO ORDERED!


IRVIN G. CONDON
Judge of Probate
County of Charleston

This 3rd day of July, 2014
Charleston, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

In Matter of: Keith S. Wellin

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

Petitioners,

vs.

Keith S. Wellin,

Respondent.

IN THE PROBATE COURT

CASE NO.: 2013-GC-10-0129

**ORDER REGARDING
PETITIONERS' NOTICE OF
VOLUNTARY DISMISSAL**

THIS MATTER is before the Court on the filing of a Petition for Protective Order and Appointment of Conservator (hereinafter "Petition") on July 19, 2013, by Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King (hereinafter "Petitioners"), alleging that their father, Keith S. Wellin (hereinafter "Respondent"), lacks capacity to manage his property and affairs, and that a neutral third-party conservator capable of managing very large portfolios is needed to manage and protect their father's estate. At Petitioners' request, the Court held an emergency hearing on July 26, 2013, at which time Respondent and Petitioners agreed to the appointment of Edward G. R. Bennett as Special Conservator. On August 15, 2013, the Court entered a Protective Order reflecting this agreement and appointing Mr. Bennett.

The parties participated in a Court-ordered mediation on October 15, 2013, but were unsuccessful in reaching an agreement. This Court held a hearing on February 6, 2014, pursuant to S.C. Code Ann. § 62-5-416(b), whereby the Special Conservator filed an Application requesting this Court's guidance. As a result of that Application, this Court issued an Order on February 21, 2014, requiring Petitioners to return \$50,228,000 of Respondent's funds by

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surrendering the same to Synovus Trust Company, N.A., who would serve as Special Conservator II. Petitioner's filed a Motion to Alter or Amend the February Order to avoid the payment of the funds. A hearing was held on their motion on April 1, 2014. Prior to this Court's ruling on the Motion to Alter or Amend, Petitioners filed a Notice of Voluntary Dismissal, relying on Rule 41(a)(1)(A) of the South Carolina Rules of Civil Procedure. In addition to the hearings and orders mentioned above, there were multiple motions, petitions and responses filed and argued in this Court related to the capacity of Keith Wellin over the last eleven months, prior to the filing of the voluntary dismissal.

Having reviewed the Notice of Voluntary Dismissal, the stated purpose behind Rule 41(a)(1)(A), and the prior orders, multiple motions, pleadings, and prior arguments of both sides made during this case, the Court holds that a voluntary dismissal is not applicable. Rule 41(a)(1)(A) of the South Carolina Rules of Civil Procedure provides that

[s]ubject to the provisions of Rule 23(c), of Rule 66(a), and of any statute, an action may be dismissed by the plaintiff without order of [the] court (A) by filing and serving a notice of dismissal at any time before service by the adverse party of an answer or motion for summary judgment, whichever first occurs, or (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action (emphasis added).

The South Carolina Probate Code and its provisions render inapplicable Rule 41 of the South Carolina Rules of Civil Procedure. South Carolina Code Ann. § 62-5-402 states that the probate court in which a summons and petition seeking the appointment of a conservator are filed has exclusive continuing jurisdiction to determine the need for a conservator until the proceedings are terminated by a final order. South Carolina Code Ann. § 62-5-430 states that only a court may terminate a conservatorship, upon determining after notice and hearing, that the protected person's disability has ceased. To permit otherwise would leave alleged incapacitated adults without proper protection. To permit otherwise would leave the court with knowledge of an

alleged incapacitated adult and no case to determine whether the alleged incapacitated adult is a person needing protection.

Furthermore, Petitioners contend that because Respondent has neither filed an answer to their Petition for the appointment of a conservator nor moved for summary judgment, they are entitled to dismissal of this proceeding despite the Probate Code, the multiple appearances and orders stemming from their Petition, the appointment of a Special Conservator, and the significant costs and stress incurred by the Respondent as a result of their allegations. Most notably, Petitioners, even with a designated examiner report clearly in their favor, attempt to use this rule to shield themselves from the prior order of this Court requiring the return of \$50,228,000 of Respondent's funds for safekeeping.

Petitioners ignore that the South Carolina Rules of Civil Procedure only apply in the probate court "insofar as practicable . . . to the extent they are not inconsistent with the statutes and rules governing." Rule 81, S.C.R.C.P.; see In re Timmerman, 331 S.C. 455, 460 (Ct. App. 1998) ("The South Carolina Rules of Civil Procedure are applicable in the probate court to the extent they are not inconsistent with the Probate Code or probate court rules."). Additionally, "the statutory scheme articulated in the South Carolina Probate Code does not mandate responsive pleadings." In re Estate of Weeks, 495 S.E.2d 454, 458 (S.C.App. 1997).

The procedure for a probate court to appoint a conservator for an allegedly incapacitated person is set forth in S.C. Code Ann. § 62-5-407. The South Carolina Probate Code does not require an allegedly incapacitated person to file an answer nor provide an opportunity for summary judgment. Forcing an allegedly incapacitated person to file an answer would be contrary to the primary purpose of a conservatorship proceeding to protect the interest of such a person. Rather than requiring an answer, the statute directs the court to set a hearing after

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service of summons and petition. As the proceedings at hand are exclusively governed by the South Carolina Probate Code, the timing provision of Rule 41(a)(1)(A) of the South Carolina Rules of Civil Procedure that allows dismissal of a case without leave of court if a respondent has not yet filed an answer or motion for summary judgment, is inconsistent and inapplicable. To allow application of Rule 41(a)(1)(A) at this time would be inequitable to the alleged incapacitated person this Court is designed to protect.

This Court reiterates that Petitioners attempted to voluntarily dismiss this case after the Court appointed two designated examiners pursuant to S.C. Code Ann. § 62-5-407(b), and Linda S. Austin, M.D., submitted her Report of Designated Examiner, which is favorable to Petitioner's Petition. (Note that the other Court-appointed examiner, Gordon Teichner, Ph.D., ABPP, has not yet completed his report.) Dr. Austin's report determined that Keith Wellin's incapacity requires the appointment of a conservator to manage his property. Dr. Austin's report finds Keith Wellin does not have the ability to dispose of property, real and personal; execute instruments; make purchases; enter into contractual relationships; hold a driver's license; marry or divorce; or to ship, transport, possess or receive a firearm or ammunition.

In summary, Petitioners have subjected their father to significant legal and emotional expense and exposed him to psychological examination against his will under the guise of concern for his need for protection. Petitioners are abandoning their request for a conservator for their father after one Court-appointed examiner has determined their father needs a conservator. This Court found that Petitioners should return assets for safekeeping until the conclusion of the litigation pending in Federal Court. Petitioners are attempting to abuse the protective process of this Court.

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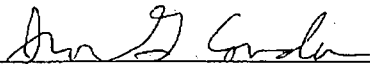
Lastly, Respondent filed, on May 15, 2014, a Petition to Continue Proceeding in Accordance with S.C. Code Ann. § 62-5-407. Respondent wishes to proceed with the conservatorship proceeding and seeks an order compelling the Petitioners to comply with this Court's previous orders. As discussed above, the Court finds that Rule 41(a)(1)(A) of the South Carolina Rules of Civil Procedure is inapplicable to this proceeding and the Court retains jurisdiction to act in Respondent's best interest and determine the need for the appointment of a conservator. The Court will hold a merits hearing to ensure that Keith Wellin is adequately protected and that his best interests are served. The Petitioners are not required to participate, but will be given notice of all proceedings. As these proceedings progress, the Court must continue to provide protection and to act in the best interests of Keith Wellin.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. Petitioners' Notice of Voluntary Dismissal pursuant to Rule 41(a)(1)(A) of the South Carolina Rules of Civil Procedure is not applicable.
2. Pursuant to S.C. Code Ann. § 62-5-402, this Court accepts continuing jurisdiction over the best interests and welfare of Keith Wellin until this matter is terminated by final Order of the Court. As such, this Court's prior orders are hereby affirmed.
3. The Court further affirms its prior ruling of February 21, 2014, and denies the Petitioners Motion to Alter or Amend the same. (See separate Order dated July 3, 2014 addressing this issue.) The February 21, 2014 Order holds that Petitioners shall surrender for safekeeping the \$50,228,000 to Synovus Trust Company, N.A., the Special Conservator II, within ten (10) days from the date of the Order.
4. Edward G. R. Bennett shall continue to serve as Special Conservator until further order of this Court.

5. Gordon Teichner, Ph.D., ABPP, the Court-appointed Designated Examiner by Order dated January 17, 2014, shall submit his Designated Examiner Report to this Court by July 18, 2014.
6. This Court's appointment of Glenn P. Churchill as Guardian *ad Litem* for Keith Wellin remains in effect. Mr. Churchill is ordered to meet with Keith Wellin and his regularly attending physicians and caregivers and report to the Court regarding his status. The Guardian *ad Litem* shall file an initial report no later than July 25, 2014.

AND IT IS SO ORDERED!



IRVIN G. CONDON
Judge of Probate
County of Charleston

This 3rd day of July, 2014
Charleston, South Carolina.

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STATE OF SOUTH CAROLINA

COUNTY OF: CHARLESTON

IN THE MATTER OF:

KEITH S. WELLIN

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IN THE PROBATE COURT

FIDUCIARY LETTERS

CASE NUMBER: 2014ES10-01478

____ Personal Representative

____ Guardian

____ Conservator

____ Trustee

X Special Administrator

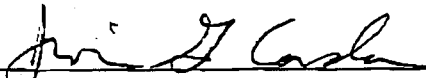
On the 17TH day of September, 2014 WENDY C. H. WELLIN was/were appointed and qualified as Fiduciary (ies) of the above matter by this Court, with all the authority granted to a fiduciary by law.

NOW, THEREFORE, LETTERS are issued as evidence of such appointment qualification, and authority of the above fiduciary (ies) to do and to perform all acts which may be authorized by law.

RESTRICTIONS:

The Special Administrator, Wendy C. H. Wellin, is authorized to protect the Estate of Decedent prior to the appointment of a general Personal Representative.

Executed this 17TH Day of September, 2014.



Irvin G. Condon, Judge of Probate
Tamara C. Curry, Associate Judge
Lenna S. Kirchner, Associate Judge

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Wendy C. H. Wellin,) Civil Action No. 2014-CP-10-07038
)

Petitioner,)
)

vs.)
)

Peter J. Wellin, Cynthia W. Plum,)
Marjorie W. King,)

Respondents and)
Counter-Petitioners,)

vs.)
)

Wendy C.H. Wellin, Hamilton College,)
Keith S. Wellin Florida Revocable)
Living Trust, Campbell Hart and)
Heather Lane,)

Counter-Respondents.)
)

IN THE MATTER OF:)
)

Keith S. Wellin)
)

**ORDER GRANTING
MOTION TO STAY**

FILED
2015 JUL -6 PM 3:51
JULIE J. ARMSTRONG
CLERK OF COURT

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This matter comes before the Court on a motion to stay filed by Respondents and Counter-Petitioners Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King ("Respondents"). Through their motion, Respondents ask the Court to stay this action pending resolution of a related action currently pending between Respondents and Petitioner Wendy C.H. Wellin in the United States District Court for the District of South Carolina, Civil Action Number 2:14-cv-4067-DCN (the "Federal Action").

On May 5, 2015, Respondents filed a memorandum in support of their motion to stay. On May 7, 2015, Petitioner filed a memorandum in opposition to Respondents'

motion to stay. Also on May 7, the Court held a hearing on the motion to stay where the Court heard oral arguments from the parties. After considering the memoranda and oral arguments of the parties and the applicable law, the Court grants Respondents' motion to stay.

“The granting of a motion for a stay of proceedings rests entirely within the discretion of the trial Judge.” *City of Spartanburg v. Belk's Dept. Store of Clinton*, 199 S.C. 458, 20 S.E.2d 157, 167 (1942); *see also Stone v. I.N.S.*, 514 U.S. 386, 411 (1995) (Breyer, J., dissenting) (noting that the United States Supreme Court has “long recognized that courts have inherent power to stay proceedings and ‘to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants’”). “Courts generally employ a ‘stay’ of proceedings when there is another issue pending between the same parties in another action and the resolution of that issue will affect the action sought to be stayed.” *Talley v. John-Mansville Sales Corp.*, 285 S.C. 117, 120, 328 S.E.2d 621, 623 (1985) (Littlejohn, J., dissenting). As recently held by the South Carolina Supreme Court, “[a]voiding concurrent litigation in both the courts of this state and the Federal District Court will foster wise judicial administration and conserve judicial resources.” *State ex rel. Wilson v. Condon*, 410 S.C. 331, 333, 764 S.E.2d 247, 248 (2014).

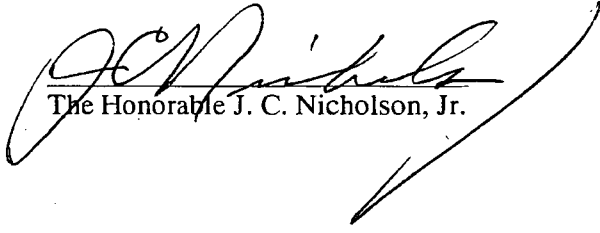
Here, the Court finds that this action and the Federal Action involve overlapping issues and that resolution of the Federal Action is likely to reduce or eliminate the issues that must be litigated in this action. In the absence of a stay, the parties would be forced to litigate the overlapping issues in this action and in the Federal Action, which would create the risk of inconsistent judgments and waste the resources of this Court and the

parties. Staying this action pending resolution of the Federal Action, on the other hand, will serve to conserve the resources of this Court and the parties and will eliminate the risk of inconsistent judgments. Moreover, the Court agrees with Respondents that staying this action pending resolution of the Federal Action is unlikely to cause prejudice to any of the parties, and the Court finds that any prejudice that might be caused to any party by the stay is outweighed by the benefits of the stay.

For the foregoing reasons, the Court hereby grants Respondents' motion to stay. This action is hereby stayed and shall remain stayed until the Federal Action, including any appeals in that action, is finally resolved, or until further order of this Court.

AND IT IS SO ORDERED.

Charleston, South Carolina
7/2, 2015


The Honorable J. C. Nicholson, Jr.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Appellants,

Versus

Keith S. Wellin,

Respondent.

) IN THE COURT OF COMMON PLEAS

)
) Appeal from the Probate Court for
) Charleston County

) C/A No. 2014-CP-10-04336

ORDER AFFIRMING PROBATE
COURT

FILED
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CLERK OF COURT
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This matter comes before the Court on appeal from orders of the Charleston County Probate Court in a conservatorship proceeding, to wit: (1) the protective Order entered on February 21, 2014 requiring Petitioners/Appellants to transfer an estate asset of \$50,228,000.00 to a Special Conservator; (2) the Order Denying Petitioners' Motion to Alter or Amend Judgment entered on July 3, 2014; and (3) and the Order Regarding Petitioners' Notice of Voluntary Dismissal.

This appeal proceeded under the provisions of S.C. Code Ann. § 62-1-308, pursuant to which the parties submitted extensive briefs with legal arguments and a Record on Appeal containing all the matters designated by the parties as pertinent and necessary to the consideration of the issues raised. Oral Argument was heard on July 28, 2015.

Having considered all the issues raised, all the arguments made and the documents presented in the Record on Appeal, I find and conclude as to each issue as raised by the Appellants that:

1. The Probate Court did not err in holding that it had subject matter jurisdiction to

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issue the protective order;

2. The Probate Court did not err in finding that it had statutory authority to issue the protective order on application of the Special Conservator pursuant to S.C. Code Ann. §62-5-416;

3. The Probate Court did not err in holding that it had personal jurisdiction over the Petitioners/Appellants in their individual and fiduciary capacities as Trustees;

4. The Probate Court did not err in finding that the Special Conservator had standing to seek instruction and direction from the Probate Court regarding the \$50,228,000 estate asset;

5. The Probate Court did not err in finding that Rule 12(b)(8), SCRCF, did not require dismissal of the Special Conservator's application;

6. The Probate Court did not err in finding that the Appellants' due process right were not violated by the issuance of the protective order;

7. The Probate Court did not improperly invoke its equitable powers in issuing the protective order;

8. The Probate Court did not err in making findings of fact; and

9. The Probate Court did not err in vacating/nullifying, as ineffective under Rule 41(a)(1)(A), SCRCF, the Notice of Voluntary Dismissal filed by the Petitioners after the Probate Court had issued the protective order and while the Petitioners' own Motion to Alter or Amend was pending.

I further find that the death of Keith S. Wellin¹ during the pendency of this appeal does not require the dismissal of the appeal on the grounds of mootness because the Probate

¹ Mr. Wellin died on September 14, 2014, two days after the Petitioners/Appellants filed their initial brief in this appeal.

Court's orders may affect future events or have collateral consequences for the parties. Accordingly, the orders of the Probate Court are hereby AFFIRMED.

PROCEDURAL HISTORY AND FACTUAL BACKGROUND

This matter was commenced in the Probate Court on July 19, 2013, by the Petitioners/Appellants, Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King [the Wellin Children], with the filing of a Petition for Protective Order and Appointment of Conservator for their father, Keith S. Wellin, in which they alleged that their father lacked capacity to manage his property and affairs. The Wellin Children alleged the need for a Conservator to protect Mr. Wellin's assets, including a "promissory note with a face value of approximately \$49 million."

Shortly after the filing of the Petition, all interested parties agreed to the appointment of Edward G. R. Bennett as Special Conservator and Special Trustee, pending resolution of the merits with regard to questions of Mr. Wellin's capacity, and an order of appointment was entered on August 15, 2013. Over the course of the next several months, the parties attempted -- unsuccessfully -- to mediate a resolution; however, certain transactions prompted the Special Conservator to seek guidance and instruction from the Probate Court, on application submitted January 14, 2014, pursuant to S.C. Code §62-5-416(b), and a hearing was held on February 6, 2014.

The Special Conservator's concern involves the aforementioned Promissory Note which was payable to Mr. Wellin by an Irrevocable Trust (the Wellin Family 2009 Irrevocable Trust), of which the three Wellin Children serve as Trustees. Pursuant to the provisions of the Trust, Mr. Wellin, as settlor, chose to substitute a 58% interest in

Friendship Partners, LP² of the same value, which on the date of the substitution, was valued at approximately \$50,211,447. The Order appointing Mr. Bennett as Special Conservator specifically required him to "ensure that transfers of assets are not made without fair and adequate consideration;" accordingly, he reviewed and approved the transaction, finding the exchange to be made for adequate consideration.

Shortly after the substitution of the note for the Friendship Partners interest, the Wellin Children unilaterally decided to liquidate the assets of Friendship Partners and dissolve the entity. As a result of the liquidation, the assets Mr. Wellin was due to receive from his interest in Friendship Partners were approximately \$92,000,000. However, the Wellin Children, individually and as Trustees, take the position that their father's substitution was ineffective or incomplete and that they only owe on the outstanding Promissory Note (valued at \$50,228,000). They claim personal entitlement to the additional \$42 million under the Trust, which would prevent it from passing to his Revocable Trust. The Wellin Children attempted to tender payment of the \$50,228,000 in exchange for a full release of Mr. Wellin's rights to the remaining \$42 million. The Special Conservator refused to accept tender of the check as he felt it was not in Mr. Wellin's best interest (nor compliant with the Probate Court's order) to accept payment under those terms thereby causing him a potential loss of \$42 million; and sought by his application, clarification from the Probate Court as to his duty and obligation with regard to this November 20, 2013 substitution. By order also dated February 28, 2014, the Probate Court amended its order appointing Bennett in order to "include the power to

² Friendship Partners is a partnership consisting of the three Wellin Children, as general partners, with Keith S. Wellin, as a limited partner.

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pursue any third party, including Petitioners, holding asserts belonging to the alleged incapacitated person....”

By the time of the February 6, 2014 hearing, the Wellin Children had already disbursed to themselves all of the \$92 million except for approximately \$52 million which amount included the \$50,228,000 they conceded is owed to Mr. Wellin under the original Note. The Special Conservator requested that the Probate Court take immediate protective measures to secure the undisputed \$50,228,000 and further provide him with the power to pursue the additional funds to which he felt Mr. Wellin was entitled. On February 21, 2014, the Probate Court issued an Order pursuant to Code Ann. §62-5-416(c), which ordered the Petitioners/Appellants to pay the \$50,228,000 held by the Irrevocable Trust to Synovus for safekeeping and further appointed Synovus as Special Conservator II, and further granted the Special Conservator the power to pursue the remaining \$42 million. The Wellin Children filed a Motion to Alter or Amend the protective order, which was denied; and they appeal from both orders. As discussed above a separate order was issued, from which no appeal has been taken, granting Bennett expanded powers to pursue additional claims.

DISCUSSION

Standard of Review

An appeal from the probate court is governed by the provisions of the Probate Code, which provides that a final order or decree of the probate court may be appealed to the circuit court. S.C. Code Ann. § 62-1-308(a). The circuit court “shall hear and determine the appeal according to the rules of law, and the hearing must be strictly on appeal and no new evidence may be presented.” S.C. Code Ann. § 62-1-308(i).

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"[A]ccording to the rules of law" means according to the rules governing appeals. *Matter of Howard*, 315 S.C. 356, 360, 434 S.E.2d 254, 256-57 (1993); *In re Estate of Pallister*, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005). While issues of law are subject to de novo review, factual findings should be upheld if supported by any evidence.

Threshold Issue of Mootness

As noted above, Mr. Wellin died on September 14, 2014, two days after the Petitioners/Appellants filed their initial brief in this appeal. The Petitioners/Appellants declined the opportunity to amend their brief to address this point; however, in their Reply brief, they interjected the issue arguing that the conservatorship and the protective order are now moot. "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). An exception to mootness doctrine can be applied when "a decision by the trial court may affect future events or have collateral consequences for the parties." *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591, 596 (2001). I decline to apply the mootness doctrine based on this exception because Mr. Wellin's death does not moot the underlying dispute over the estate asset. Even if there technically is no longer a need for the conservatorship proceeding, there was no dispute that the \$50 million was owed to Mr. Wellin, and now his estate, and the Conservator should have been holding the funds at issue as ordered by the Charleston County Probate Court at the time of Mr. Wellin's death. The Estate should not be required to expend more time and costs to bring an identical action in the exact same court. This issue is properly before the Court and should be decided.

Addressing below each of the Petitioners/Appellants issues in turn, I find that the Probate Court had jurisdiction over the subject matter of an asset of Mr. Wellin's estate and personal jurisdiction over the Petitioners in both their individual and fiduciary capacities, and I adopt and affirm the Probate Court's orders in full as if fully set forth below.

1. Subject Matter Jurisdiction -- The Probate Court had subject matter jurisdiction to issue the protective order.

The Probate Code, S.C. Code Ann. § 62-5-402, grants exclusive jurisdiction to the probate court "to determine the need for a conservator or other protective order until the proceedings are terminated;" and "to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person or any of his dependents." Once attached, the jurisdiction of the probate court is not only exclusive but continuous, commencing "[a]fter the service of the summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding." S.C. Code Ann. § 62-5-402. Therefore, "if a probate court has original jurisdiction over the protective proceedings, it also has exclusive and continuous jurisdiction to determine the need for a conservator or the manner in which an estate is to be managed." 21 S.C. Jur. *Guardian and Conservator* § 9 (2015). Pursuant to this grant of statutory jurisdiction, "the probate court has the responsibility to determine whether the conservatorship estate of the [protected person] is effectively 'managed, expended, or distributed to or for the use of the protected person or any of his dependents.'" Plyler v. Burns, 373 S.C. 637, 647, 647 S.E.2d 188, 194 (2007) (finding that such determinations require the probate court to consider "whether the conservator is acting within the confines of the law with respect to the management of the conservatorship").

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As found by the Probate Court, the Petitioners/Appellants commenced this action and invoked the exclusive jurisdiction of the Probate Court to determine the need for a conservator for their father and to determine how his estate should be managed. The Petitioners/Appellants argue that the Probate Court did not have jurisdiction over the \$50,228,000 proceeds of their liquidation of the Friendship Partnership because it was not an asset belonging to Mr. Wellin. However, that argument fails in view of the facts that the Petitioners expressly identified the Promissory Note as an estate asset of which they sought protection, and that irrespective of the ongoing dispute and litigation over the over \$42 million, the Petitioners acknowledged in open court that they have offered and continue to offer the \$50,228,000 to Mr. Wellin (and now his estate) in exchange for the cancellation of the Promissory Note. The very fact that the Petitioners offered to post that amount with the Probate Court belies their argument that the Probate Court does not have jurisdiction to order the same funds held for a Special Conservator.

I affirm and adopt the holding of the Probate Court that: "Petitioners agreed to the jurisdiction of this Court by petitioning for the appointment of a conservator, and this Court has jurisdiction over the funds belonging to Keith Wellin in the 2009 Wellin Family Trust, pursuant to S.C. Code Ann. § 62-5-402 and 62-5-408(1), and pursuant to S.C. Code Ann. § 62-7-201, "when the interests of justice otherwise would seriously be impaired."

2. **Statutory Authority -- The Probate Court had statutory authority to issue the protective order on application of the Special Conservator pursuant to S.C. Code Ann. §62-5-416.**

As recited above and shown in the Record, the Protective Order was issued in connection with the Special Conservator's application under Section 62-5-416(b), which



provides that: "Upon application to the appointing court, a conservator may request instructions concerning his fiduciary responsibility." The Petitioners argue that the Probate Court did not have authority to award substantive relief in response to the Special Conservator's informal request for instruction made pursuant to §62-5-416(b) without service of a summons and complaint. However, §62-5-416(c) states, "After notice and hearing as the court may direct, the court may give appropriate instructions or make any appropriate order." The Petitioners were served with the application and participated in the hearing, and the Probate Court made an appropriate order to protect the estate asset as the Petitioners themselves had asked the Court to do.

3. Personal Jurisdiction -- The Probate Court has personal jurisdiction over the Petitioners/Appellants in their individual and fiduciary capacities as Trustees.

While Petitioners cannot contest that the Probate Court has personal jurisdiction over them by virtue of the fact that they commenced the conservatorship action, they argue that the Probate Court lacks jurisdiction over them to direct them to turn over the \$50,228,000 which they hold in their fiduciary capacity as Trustees of the Irrevocable Trust that technically holds the funds. However, the record shows that the Petitioners have not maintained their separate identities throughout the Probate Court proceedings. They are represented, in both their personal and fiduciary capacities, by the same counsel and they have made arguments in their capacity as both individuals and Trustees. In fact, as noted above, they offered to surrender the funds to the Probate Court in satisfaction of the Note³.

Based on the precedent in *Ex Parte Cannon*, 385 S.C. 643, 685 S.E.2d 814 (Ct.

³ The Probate Court could not accept the offer of surrender because it does not hold funds.



App. 2009), and the persuasive guidance of *In re Estate of Ahern*, 359 Ill. App. 805, 835 N.E.2d 95 (2005), *In re Conservatorship of Groves*, 109 S.W.3d 317, 350 (Tenn. Ct. App. 2003), and *In re Guardianship of Brown*, 611 So. 2d 1342 (Fla. Dist. Ct. App. 1993), I agree with the Probate Court's conclusion that the Petitioners have waived any objection by voluntarily submitting to the personal jurisdiction of the Probate Court in both their individual and fiduciary capacities. I further agree with the Probate Court that the Petitioners' reliance on *In re Ashton*, 266 S.W.3d 602, 604 (Tex. App. 2008), is misplaced because it is inconsistent with our Court of Appeals' decision in *Cannon* based on the facts that the Petitioners initiated this protective proceeding in Probate Court and they took affirmative positions and made proffers in their fiduciary capacities. I affirm and adopt the holding of the Probate Court that "the Wellin Children have voluntarily appeared as Trustees ...[and]... this Court has jurisdiction over them in all capacities as it relates to the assets of the protected person."

4. Standing -- The Special Conservator had standing to seek instruction and direction from the Probate Court regarding the \$50 million estate asset.

The Petitioners/Appellants argue that the protective order should be reversed because the Special Conservator had no standing to pursue the purported claim on Keith Wellin's behalf at the time he filed his application. However, upon his appointment the Special Conservator had the duty to protect Mr. Wellin's assets and the right to seek instruction from the Probate Court, pursuant to S.C. Code Ann. §62-4-41(b), regarding the Petitioners' tender of the \$50 million for the Note and to seek any appropriate order pursuant to S.C. Code Ann. §62-5-416(c). I adopt and affirm the conclusion of the Probate Court that these statutes offer the Special Conservator standing in the Probate Court to seek protection of the \$50 million estate asset.

5. Rule 12(b)(8), SCRCF, did not require dismissal of the Special Conservator's Application.

The Petitioners sought dismissal of the Special Conservator's application for instruction and an order of protection as to the \$50 million pursuant to Rule 12(b)(8), SCRCF, which provides for dismissal of a complaint when "another action is pending between the same parties for the same claim." The Probate Court did not err in denying the Motion to Dismiss because while there was litigation pending in other courts involving Mr. Wellin and his Children, as the Petitioners acknowledged at the February 2014 hearing, at the time the Special Conservator made his application to the Probate Court, the action pending in federal court did not contain a claim relating to the substitution of assets. I adopt and affirm the conclusion of the Probate Court that dismissal pursuant to Rule 12(b)(8) was not appropriate.

6. The Petitioners/Appellants' due process right were not violated by the issuance of the protective order.

The core of due process is the right to notice and a meaningful opportunity to be heard at a meaningful time and in a meaningful manner. *Cleveland Bd. of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985); *LaChance v. Erickson*, 522 U.S. 262, 266 (1998); *S.C Dep't Soc. Servs. v. Beeks*, 325 S.C. 243, 481 S.E.2d 703(1997). The Petitioners argue that their due process rights were violated by the issuance of the protective order in the absence of a summons and complaint, discovery, and trial by a jury. However, the Petitioners were afforded an opportunity to be heard at a meaningful time and in a meaningful manner. As the Probate Court correctly found that there was no due process violation under the circumstances which include the facts that: the Petitioners commenced the conservatorship action asking the Probate Court to protect Mr. Wellin's

assets; the Petitioners have affirmatively disavowed any rights in the \$50,228,000 which they acknowledge is due to Mr. Wellin's estate and which they offered to pay into the Probate Court; they received notice of the Special Conservator's application; they participated in the scheduling of the hearing; they appeared and were heard at all the hearings; and in addition they submitted extensive memoranda.

7. The Probate Court did not improperly invoke its equitable powers in issuing the protective order.

In the Order of February 21, 2014, the Probate Court stated that "returning the undisputed funds to the Special Conservator for the use and benefit of the alleged incapacitated is both legal and equitable," and in the Order Denying the Motion to Alter or Amend, the Probate Court also stated that: "As a Court of equity, this Court should not allow the Petitioners, who brought this very action under the guise of protecting their father, to now manipulate the legal process to prevent this Court from providing the protection they sought." Petitioners argue that the Probate Court incorrectly relied on its "equitable powers" as a basis for its authority to require them to pay the \$50 million to the Special Conservator II. However, while the Probate Court orders do contain references to equity, the Probate Court's order of protection is well founded on the statutory authority of Sections 62-5-402 and 62-5-416 of the South Carolina Probate Code.

8. The pertinent findings of fact are supported by the evidence.

In its "Statement of the Case," the Probate Court stated:

On November 20, 2013, Wellin substituted the Promissory Note valued by Petitioners in their Petition at \$49,000,000 (plus interest) for a 58% interest in Friendship Partners. Prior to the substitution, Special Conservator Edward G. R. Bennett reviewed the transaction per this Court's Order to ensure adequate value was received for the transfer of



assets. On the date of the substitution, the Promissory Note was valued at approximately \$50,211,447. Based on the longstanding valuation of Friendship Partners, this was the equivalent of 58.15548645% interest in Friendship Partners; therefore, Bennett approved the substitution.

The Probate Court made a finding of fact [¶11] that "the Wellin Children have acknowledged that at a minimum, Wellin is owed \$50,228,000, being the value of the note plus interest through the date of their offer."

The Petitioners challenge the Probate Court's statement as an unsupported finding of fact, arguing that they dispute the validity and effectiveness of the Swap Transaction and they dispute Bennett's valuation of the Promissory Note and the partnership units because no evidence or testimony was presented. The Petitioners argue that the finding and references to the \$50 million as "undisputed funds" is not supported by any evidence because they have unambiguously stated their position that Keith Wellin's Revocable Trust is entitled to approximately \$50 million, but only in satisfaction of the Promissory Note.

The Petitioners' arguments do not support reversal of the Probate Court's orders. The Petitioners themselves valued the amount due under the Note at \$50,228,000 through their filings and submissions in the Probate Court, and through their Counsel, who represented to the Probate Court that: "My clients have no interest in that \$50 million. It belongs to Mr. Wellin, but only in full exchange for payment of the note." The Probate Court's protective order firmly rests on the undisputed concession that the Wellin Children have no legal interest in, at a minimum, the \$50 million, and the Probate Court wisely concluded that those funds should be held by a Special Conservator. It is worth noting that, if Mr. Wellin had not substituted the note for assets of the Trust, then, the Petitioners' argument that Mr. Wellin was not yet entitled to the

funds because the Promissory Note was not due until 2021 would ultimately fail because the Note became payable upon Mr. Wellin's passing.

To the extent that the Petitioners/Appellants also challenge the Probate Court's finding of jurisdiction over Mr. Wellin's assets as a "finding of fact", that finding is separately addressed above and affirmed as fully supported by the Record and the applicable law.

9. The Notice of Voluntary Dismissal was ineffective to divest the Probate Court of jurisdiction in the conservatorship to protect the estate assets.

The Petitioners claim that the protective order was rendered ineffective when they filed a Notice of Voluntary Dismissal pursuant to Rule 41(a)(1)(A) on May 5, 2014. By that time, the parties had engaged in months of proceedings regarding the capacity of Mr. Wellin, and the Probate Court had already issued its Orders appointing the Special Conservator and ordering transfer of the \$50 million to the Special Conservator II. The Petitioners had filed a motion to alter or amend the order of protection, and a hearing had been heard on their motion. The Probate Court correctly held that the Notice of Voluntary Dismissal was ineffective because Rule 41(a)(1)(A) is inapplicable to a conservatorship proceeding where there is no requirement for answers or responsive pleadings and because the Probate Court obtains exclusive jurisdiction under § 62-5-402 when a petition for a conservatorship is filed and the matter cannot be terminated except by final order of the court. I adopt the reasoning of the Probate Court and affirm the holding of the Probate Court that the Notice of Dismissal was not effective to allow the Petitioners to nullify the Probate Court's order for protection of Mr. Wellin's estate asset.

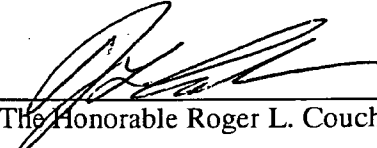
CONCLUSION

I have carefully considered each of the issues raised by the Petitioners/Appellants

in this appeal and all the arguments made in the briefs and at the hearing, and I find no basis to reverse the Probate Court's orders. WHEREFORE, based on the Record before me, for the reasons discussed above, the Probate Court orders are AFFIRMED.

AND IT IS SO ORDERED.

1/7, 2016
Charleston, South Carolina


The Honorable Roger L. Couch

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas
Ninth Judicial Circuit
County of Charleston

APPEAL FROM CHARLESTON COUNTY PROBATE COURT

Irvin G. Condon, Probate Court Judge

Probate Case No.: 2013-GC-10-1029

Circuit Court Case No.: 2014-CP-10-4336

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

Appellants.

v.

Keith S. Wellin

Respondent.

ORDER DENYING APPELLANTS' MOTION TO ALTER OR AMEND

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FILED
2016 MAY 16 PM 1:39
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court pursuant to Rule 59(e), SCRPC, on Appellants' Motion to Alter or Amend this Court's Order of January 13, 2016 affirming the Probate Court's Orders. A hearing on this motion was held April 8, 2016. Having considered all of the issues raised, the arguments made and the memoranda submitted by the parties, this Court declines to modify its Order of January 13, 2016.

STANDARD OF REVIEW

In a probate appeal, the circuit court, court of appeals, or Supreme Court hears and determines the appeal according to the rules of law. S.C. Code Ann. § 62-1-308(i) (2014). According to the rules of law means that, in the absence of a statute or rule of court providing a different standard of review, the circuit court must apply the same standard of review the Supreme Court would apply on appeal. *Matter of Howard*, 315 S.C. 356, 360, 434 S.E.2d 254, 256-57 (1993); *In re Estate of Pallister*, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005). An issue regarding statutory interpretation is a question of law. *Wimberly v. Barr*, 359 S.C. 414, 597 S.E.2d 853 (Ct. App. 2004). Thus, "the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." *In re Howard*, 315 S.C. at 361, 434 S.E.2d at 257; see also *In re Estate of Pallister*, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005) ("If the proceeding in the probate court is in the nature of an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them."). An appellate court may affirm the lower court's judgment for any reason appearing in the record on appeal. *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 420-21, 526 S.E.2d 716, 723 (2000).

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DISCUSSION

1. The Probate Court had subject matter jurisdiction to enter the protective orders.

The Probate Code vests exclusive jurisdiction in the probate court to “determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person or any of his dependents.” S.C. Code Ann. § 62-5-402 (2014). This exclusive jurisdiction is continuous, beginning with “the service of the summons and petition in a proceeding seeking the appointment of a conservator or other protective order” and continuing “until termination of the proceeding.” *Id.* This vests in the probate court the “responsibility to determine whether the conservatorship estate... is effectively ‘managed, expended, or distributed to or for the use of the protected person or any of his dependents.’” *Plyler v. Burns*, 373 S.C. 637, 647, 647 S.E.2d 188, 194 (2007). The Reporter’s Comment to Section 62-5-402 notes “This section vests in the probate court, upon filing of the petition, exclusive jurisdiction over determination of the need for a conservator and the management of the protected person’s estate.” S.C. Code Ann. § 62-5-402 (2014).

The Probate Code also grants the power to the probate court “while a petition for appointment of a conservator is pending and after preliminary hearing upon such notice by the court as is reasonable under the circumstances, ... to preserve and apply the property of the person to be protected as may be required for his benefit...” S.C. Code Ann. § 62-5-408(1) (2014). The Reporter’s Comment to this section provides that “This section gives specific powers to the court to take action with respect to the estate and affairs of a person if necessary even if that person has not yet been judged incompetent.”

Appellants argue that the proceeds of the liquidation of the Friendship Partnership are not an asset of Mr. Wellin’s estate. However, Appellants identified the Promissory Note as an estate

asset in need of protection in their Petition and acknowledged multiple times in open court, both in the Probate Court and before this Court, that they have offered and continued to offer \$50,228,000 in exchange for the cancellation of the Promissory Note. Further, Appellants acknowledged, "they agreed to pay the note that was in the hands ... of the [special] conservator." April 8, 2016 Transcript p. 17, ln. 3-6. Moreover, Appellants offered to pay the funds into Court, a practice in which the Probate Courts of this State do not participate. This offer belies their argument that the Court lacks jurisdiction to order the same funds held for a Special Conservator pursuant to the Court's directive. During the pendency of this action, the Probate Court has had jurisdiction over the Note, the interest in Friendship Partners L.P. for which the note was swapped, and/or the proceeds of the liquidation of Friendship Partners, L.P. which relate to the interest for which the note was swapped, as well as the other assets belonging to Mr. Wellin under the broad grants of authority in S.C. Code Ann. §§ 62-5-402 and -408(1).

2. The Probate Court had personal jurisdiction over the Wellin Children individually and as trustees.

It is axiomatic that a party seeking relief from a court submits to its jurisdiction upon the filing of a summons and complaint. Here, the Wellin Children commenced the conservatorship action and do not dispute the Probate Court's finding that Wellin Children submitted to personal jurisdiction of the Court individually by virtue of their application for appointment of a conservator. However, they dispute the holding that Wellin Children submitted to jurisdiction in their trustee capacity by making arguments on behalf of the Trust.

"Although a court commonly obtains personal jurisdiction by the service of the summons and complaint, it may also obtain personal jurisdiction if the defendant makes a voluntary appearance." *Ex Parte Cannon*, 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009) (citing *Stearns*

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Bank Nat'l Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 337, 644 S.E.2d 793, 796 (S.C. Ct. App. 2007)); *In re Conservatorship of Groves*, 109 S.W.3d 317, 350 (Tenn. Ct. App. 2003) (holding that where parties appear and participate in an action, they waive any right to challenge failure to sue them as trustees); *In re Guardianship of Brown*, 611 So. 2d 1342 (Fla. Dist. Ct. App. 1993) (holding that it is not necessary to serve an individual who petitioned for appointment as guardian in their capacity as trustee)." [ROA 0028; 7/3/14 Order #1.] The Probate Court further found that "these cases are in accord with this Court's application of *In re Estate of Ahem*, 359 Ill. App. 3d 805, 812, 835 N.E.2d 95, 101 (2005) ("However, we find that some of the arguments Robert made in objecting to the petition for guardianship and in contesting the award of fees to Dutton indicate that he did in fact appear on behalf of the Trust and thus subjected it to the trial court's personal jurisdiction.")." (*Id.*) This Court finds these cases persuasive and adopts their reasoning.

The Wellin Children initiated these proceedings as Petitioners and have voluntarily appeared as Trustees in other matters before this Court. They clearly had notice of all proceedings because their counsel, who represents them in all of their capacities, appeared and argued on their behalf. Because of their actions, the Appellants have waived any defects, to the extent any could exist, that might have occurred. See *Stickland v. Consol. Energy Prods. Co.*, 274 S.C. 554, 555, 265 S.E.2d 682, 683 (S.C. 1980) ("A general appearance constitutes a voluntary submission to the jurisdiction of the court and waives any defects and irregularities in the service of process."); *H.S. Chisholm, Inc. v. Klinger*, 229 S.C. 8, 16, 91 S.E.2d 538, 542 (S.C. 1956).

The Wellin Children seek to have this Court rely on *In re Ashton* for its holding that "[F]or relief to be ordered against a trust, its trustee must be properly before the trial court as a

result of service, acceptance, or waiver or process, or an appearance.” *In re Ashton*, 266 S.W.3d 602, 604 (Tex. App. 2008). While no South Carolina court has directly addressed the issue presented here, it would be an error to rely on this case as it can be easily distinguished. *In re Ashton* was a divorce proceeding wherein the Plaintiff (Wife) sought relief against the Defendant’s (Husband) Trust. This case is inapplicable in the Wellin matter for several reasons. First, the Wellin Children were the Petitioners in this matter, alleging that their father’s assets were in need of protection and including the promissory note which they listed on their Petition for the Appointment of a Conservator for their father. By petitioning the probate court, they submitted to its personal jurisdiction. They were not the Defendants in a marital dispute, nor has substantive relief been ordered against a Trust holding their personal assets, as they have acknowledged these funds belong to their father. Secondly, the Probate Code affords the Probate Court great latitude in protecting the assets of an alleged incapacitated party; therefore, application of a family court case is not appropriate.

3. Appellants have only tendered the \$50 million at issue in exchange for cancellation of the promissory note, an asset of Wellin’s estate.

On November 20, 2013, after Bennett’s appointment by consent of the parties, pursuant to the right reserved to him in Article IX(A) of the Wellin Family 2009 Irrevocable Trust (the “Irrevocable Trust”), Wellin substituted the above-mentioned Promissory Note, valued by Appellants on their Petition for Appointment of Conservator at “approximately \$49,000,000,” for an interest in Friendship Partners, L. P. of the same value, as allowed by the Irrevocable Trust. [ROA 0763; 1/14/14 Application.] Prior to the substitution, Special Conservator Bennett reviewed the transaction per the Probate Court’s Order to ensure adequate value was received for the transfer of assets. (*Id.*) On the date of the substitution, the Promissory Note was valued at

approximately \$50,211,447. Based on the longstanding valuation methodology for interest in Friendship Partners, LP, which both Appellants and Wellin have used every year since 2009, this was the equivalent of approximately a 58% interest in Friendship Partners. (*Id.*) Bennett felt the substitution was for adequate consideration under the Court Order and supported the transaction.

Shortly after the substitution, the Wellin Children decided to liquidate the assets of Friendship Partners and dissolve the entity with no notice to Wellin or his Special Conservator. Cynthia Plum, as Manager of Friendship Management, LLC, executed a resolution as General Partner of Friendship Partners, LP to dissolve and liquidate the entity. As a result of the liquidation, the 58% interest in Friendship Partners held by Wellin entitled him to a distribution of approximately \$92,000,000.¹ (*Id.*)

The Wellin Children then attempted to tender payment of the \$50,228,000, representing the amount owed under the original Promissory Note and funds representing additional interest through the date of tender, to their father by mailing a check to Bennett on December 6, 2013, with a letter which effectively conditioned the payment of the funds upon his release of the rights to the remaining \$42 million. [ROA 0758; 12/6/13 Hagerty Letter to Bennett.] Bennett returned the check as he felt it was not in Wellin's best interest to accept payment under those terms thereby causing him a potential loss of \$42 million. [ROA 0760; 12/6/13 Bennett Letter to Hagerty.] Since their father's refusal to drop his claim for the additional \$42 million, the Wellin Children have refused to pay the Special Conservator the minimum amount due to their father of \$50,228,000. [ROA 0576; Special Conservator Hr'g Tr. 63:22-24.]

¹ The difference in value between the \$92,000,000 distribution and the Promissory Note was the result of the fact that Mr. Wellin, as a limited partner, had no control over the partnership and the interest in Friendship Partners, LP was discounted for that lack of control. The decision of the Appellants to liquidate the partnership removed the lack of control, resulting in the increased value.

4. The Probate Court had the authority to issue its orders pursuant to S.C. Code Ann. §§ 62-5-402, -408, and -416.

When construing a statute, the cardinal rule is to ascertain the intent of the legislature. *Georgia-Carolina Bail Bonds, Inc. v. County of Aiken*, 354 S.C. 18, 22, 579 S.E.2d 334, 336 (Ct. App. 2003). "A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." *Id.* at 22-23, 579 S.E.2d at 336. "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Id.* at 23, 579 S.E.2d at 336.

"The legislature's intent should be ascertained primarily from the plain language of the statute." *Id.* If, however, the language of the statute gives rise to doubt or uncertainty as to legislative intent, the construing court looks to the statute's language as a whole in light of its manifest purpose. *Id.* at 25, 579 S.E.2d at 337-38. The construing court may additionally look to the legislative history when determining the legislative intent. *State v. Byrd*, 267 S.C. 87, 92, 226 S.E.2d 244, 247 (1976).

S.C. Code Ann. § 62-5-402 states that "after the service of summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition are filed has: (2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended or distributed to or for the use of the protected person or any of his dependents." Under this provision, after service of the Children's Summons and Petition and until a final determination of capacity was made (which never occurred), the



Probate Court had jurisdiction to issue orders relating to Wellin's property. This jurisdiction would include the ability to preserve property, including the promissory note and, subsequent to the swap, the interest in Friendship Partners, LP, and after its liquidation, the proceeds of such liquidation which related to the interest received on the swap.

Similarly, S.C. Code Ann. § 62-5-408 grants the Probate Court the "power to preserve and apply the property of the person to be protected as may be required for his benefit or the benefit of his dependents." S.C. Code Ann. §62-5-416(b) states, "Upon application to the appointing court, a conservator may request instructions concerning his fiduciary responsibility. A denial of the application by the court is not adjudication and does not preclude a formal proceeding." S.C. Code Ann. §62-5-416(c) states, "After notice and hearing as the court may direct, the court may give appropriate instructions or make *any* appropriate order." (Emphasis added.)

Here, the Special Conservator filed an application under S.C. Code Ann. §62-5-416(b). In the application, he requested that the court exercise its powers under §62-5-416(c) and allow the interested parties to brief the issues and present their arguments at a hearing. The Probate Court chose to exercise this power and received briefing and arguments from Wellin, the Special Conservator, and the Wellin Children. As a result of a hearing on the matter, in which all parties had notice and participated, the Court issued an appropriate Order protecting the assets of Wellin under S.C. Code Ann. § 62-5-416(c). As discussed above, Section 62-5-408 grants broad latitude to the Probate Court in issuing orders regarding the property of a protected person and allows it to exercise any and all powers over the estate of that person which he could exercise if present and not under disability. The plain language of these sections provide ample authority for the Probate Court to enter its orders.

5. The Special Conservator had standing to seek instruction from the Probate Court regarding the subject \$50 million.

Appellants argue in their motion to alter or amend that the Special Conservator lacked the authority to pursue claims on behalf of Mr. Wellin at the time his application to the court was made. Petitioners cite Section 62-5-409(c) as the authority that a special conservator has only the authority expressly conferred by the court in the order of appointment. However, Probate Code section 62-5-417 notes that a conservator is a fiduciary and must observe a fiduciary standard of care. S.C. Code Ann. § 62-5-417. S.C. Code Ann. § 62-5-416(b) expressly provides a mechanism for a conservator, special or general, to seek guidance from the Probate Court regarding their fiduciary duties in a particular matter. Subsection (c) of this statute also allows for the probate court to give instructions or make any appropriate order "after notice and hearing as the court may direct." S.C. Code Ann. § 62-5-416(c). As a fiduciary for Mr. Wellin, the Special Conservator had the right and obligation to seek guidance from the Court regarding the asset at issue. Appellants characterize the Probate Court's order to pay the \$50,228,000 to a second Special Conservator as "a request for substantive relief." However, review of the record reflects that this order was made in response to Appellants' offer to pay the funds into court. February 6, 2014 Transcript, p. 58, ln. 12-24. Appellants were served with the application and participated actively in the hearing. After hearing from the parties, the Probate Court made an appropriate order to protect assets belonging to Wellin specifically as the Appellants had requested in their Petition.

6. Dismissal was not required pursuant to Rule 12(b)(8), SCRCP.

Appellants argue that the Special Conservator's application for instruction should have been dismissed pursuant to Rule 12(b)(8), SCRCP on the basis that the issue of ownership of the \$50 million is the subject of the pending federal court litigation. Dismissal under Rule 12(b)(8) *may* be proper where there is (1) another action pending, (2) between the same parties, (3) for the same claim. *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 105-106, 674 S.E.2d 524, 531 (Ct. App. 2009) (emphasis added). The Probate Court did not err in declining to dismiss the application because, despite Appellants' allegations to the contrary, at the time the claim was filed, there was no other action pending related to the Wellin Children's refusal to surrender these funds to the Special Conservator.

During the hearing before the Court in February 2014, Appellants acknowledged that there was no such action before the Federal Court or any other court. "That action does not currently contain a claim relating to this substitution of assets . . ." [ROA 0566; Special Conservator Hr'g Tr. 25:2-4.] In addition, no one contested the fact that Bennett as Special Conservator was not a party to any of the current litigation in Federal Court when these Orders were issued. [ROA 0567; Special Conservator Hr'g Tr. 28:13-20.] The fact that Bennett later attempted to fulfill his duties by seeking the additional \$42 million for Wellin is not before this Court now because it was not before the Probate Court when these decisions were rendered. For these reasons, the Probate Court correctly held that "dismissal pursuant to Rule 12(b)(8) is not appropriate" by reiterating its "exclusive jurisdiction to issue a protective order until these proceedings are terminated pursuant to S.C. Code Ann. § 62-5-402, 62-5-408(1) and 62-5-430." [ROA 0028; 7/3/14 Order #1.] The Probate Court was the only court responsible for instructing Bennett as to protecting the assets of Wellin. For this reason, the Probate Court's denial of the Motion to Dismiss pursuant to Rule 12(b)(8), SCRCP was not error.

7. There was no violation of Appellants' due process rights by issuance of the protective order.

The core of due process is the right to notice and a meaningful opportunity to be heard at a meaningful time and in a meaningful manner. *Cleveland Bd. Of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985); *LaChance v. Erickson*, 522 U.S. 262, 266 (1998); *S.C. Dep't of Soc. Servs. v. Beeks*, 325 S.C. 243, 481 S.E.2d 703 (1997). Appellants argue their due process rights were violated by the court's issuance of the orders in the absence of a summons and complaint, discovery process and an eventual trial by jury. However, Appellants petitioned the Probate Court and requested an emergency protective hearing to restrain their father from transferring his wealth outside of their control. Appellants made themselves subject to the Probate Court's jurisdiction when they decided to challenge his mental capacity to make his own decisions. [ROA 0040; Conservatorship Petition.]

The Special Conservator, Bennett, made his concerns regarding the substitution transaction discussed above known to the parties by his January 14, 2014 letter, which the Court treated as an application under S.C. Code § 62-5-416(a) and directed that he serve it upon all interested parties. [ROA 0763; 1/14/14 Application.] After said service, the Appellants actively participated in the scheduling of a hearing on the application. Prior to the hearing, the Petitioners filed a Motion to Dismiss, wherein they raised the same issues they now assert they did not have knowledge of. [ROA 0181; 2/3/14 Motion to Dismiss.]

Appellants further claim that they lacked knowledge of the issues to be addressed or that an oral amendment had been made that increased the scope of the hearing. This assertion is factually unfounded. The only oral amendment at the hearing was a reduction in the scope of the

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proceeding based on an agreement that a separate Summons and Petition may be required to address the additional \$42 million in dispute. [ROA 0393; 3/3/14 Motion to Alter or Amend, Footnote 1.]

Lastly, Appellants continue to ignore that the Court made the decision to protect Wellin's funds by relying on the fact that the Appellants (as Trustees) offered to pay the \$50,228,000 into the Court during the hearing and that counsel for the Trust Protector represented to the Court that he did not know where the \$50,228,000 was located. [ROA 0001; 7/3/14 Order #1.] The Appellants affirmatively disavowed any rights to the \$50,228,000 which they acknowledged was due to Mr. Wellin. February 6, 2014 Hearing Transcript p. 55 ln23- p. 58 ln. 4. Fundamental fairness is not violated when a party has proper notice, participates in the proceedings, and then makes an offer to the Court upon which that it relies. For this reason, the Probate Court did not violate Appellants' due process rights in issuance of the protective order.

8. The Probate Court did not improperly invoke its equitable powers in issuing the order at issue.

Appellants argue that the Probate Court incorrectly relied on its equitable powers as basis for the authority in issuing the order to pay the \$50 million to the Special Conservator II. Appellants' position is that this order is, in essence, an injunctive order granting equitable relief "to do what is necessary to protect the person." April 8, 2016 hearing p. 45, ln. 3-12. While "[e]quity will always seek to provide a remedy where a right has been violated," in this case resort to equity is unnecessary. *State ex rel. Daniel v. Strong*, 185 S.C. 27, 192 S.E. 671, 681 (S.C. 1937). Courts also "have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." *Ex Parte Dibble*, 279 S.C. 592, 310 S.E.2d 440, 442 (S.C. Ct. App. 1983). This provides additional support for the Court's order, but

as discussed at length above, the statutory basis for the Court's order is founded in S.C. Code Ann. §§ 62-5-402, -416 (2014).

9. The Probate Court's findings of fact are supported by the evidence.

On appeal, the Circuit Court may not disturb the Probate Court's findings of fact unless the record reveals there is no evidence to support them. Appellants allege that certain of the Probate Court's factual findings are unsupported by the record because no evidence was admitted by the probate court and no evidentiary hearing was permitted. However, Appellants submitted significant factual material, both in connection with their Motion to Dismiss, their Petition for Appointment of Conservator, and their concessions at the hearing through Counsel. These findings, and their basis in the record, are discussed in detail in this Court's Order of January 13, 2016.

10. The Notice of Dismissal did not divest the Probate Court's jurisdiction to protect the estate assets.

Appellants contend that their Notice of Voluntary Dismissal pursuant to Rule 41(a)(1)(A), SCRCP, is unconditional and the dismissal became effective upon filing. They argue that Rule 41(a)(1)(A), SCRCP, is applicable to conservatorship proceedings and that Rule 81, SCRCP, does not apply. The provisions of Rule 41(a)(1)(A) do not apply to a conservatorship determination, and a Notice of Voluntary Dismissal is not an effective means to terminate the proceedings as to all parties and divest the Court of jurisdiction to appoint a conservator. Rule 81 of South Carolina Rules of Civil Procedure states that the Rules only apply in the Probate Court "insofar as practicable to the extent they are not inconsistent with the statutes and rules governing" proceedings in the Probate Court. Rule 81, S.C.R.C.P.; see *In re Timmerman*, 331 S.C. 455, 460 (Ct. App. 1998) ("The South Carolina Rules of Civil Procedure are applicable in

the probate court to the extent they are not inconsistent with the Probate Code or probate court rules.").

A prerequisite to the use of Rule 41(a)(1)(A) to dismiss a case is the requirement within the proceeding that an adverse party file an answer or have the ability to move for summary judgment. See *ISC Holding AG v. Nobel Biocare Fin. AG*, 688 F.3d 98, 116 (2d Cir. 2012) (finding that a petitioner could not use a Notice of Voluntary Dismissal to dismiss a petition to compel arbitration where respondent could not have filed an answer and summary judgment was unavailable). Within a conservatorship proceeding, there is simply no requirement for a respondent to file an answer and no ability to file a motion for summary judgment. The exclusive procedure for the Probate Court to appoint a conservator for an allegedly incapacitated person is set forth in S.C. Code Ann. § 62-5-407, which states:

Upon the filing of a summons and petition for appointment of a conservator or other protective order for reasons other than minority, and after service of the summons and the petition, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the protected person already has representation by an attorney that attorney shall act as his guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court shall direct that the person to be protected be examined by one or more physicians designated by the court, preferably physicians who are not connected with any institution which the person is a patient or is detained.

Nowhere within the above section does it state that an allegedly incapacitated person is required to file an answer to the petition. Forcing an allegedly incapacitated person to file an answer would be contrary to the primary purpose of a conservatorship proceeding, that is to protect the interests of such a person. Rather than requiring an answer, the statute directs the Court to set a hearing after service of the summons and petition. S.C. Code Ann. § 62-5-407(b). Further, under § 62-5-402, the Probate court obtains and retains exclusive jurisdiction upon the

filing of a petition that does not terminate except by final order of the court. The clear language of the statute indicates that a person seeking the court's protection over an alleged incapacitated individual cannot subsequently rescind that request for protection by unilateral action. For this reason, the Probate Court did not err in finding that the Notice of Voluntary Dismissal was ineffective.

11. Application of the mootness doctrine would result in duplicative litigation over the same issues in the same court.

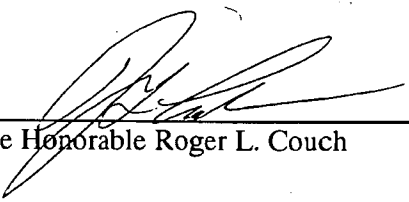
"A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). An exception to the mootness doctrine exists when "a decision by the trial court may affect future events or have collateral consequences for the parties." *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591, 596 (2001). Appellants allege this appeal is moot because Mr. Wellin died on September 14, 2014, two days after Appellants filed their initial brief in this matter. Appellants were given the opportunity to amend their brief to address this issue, but declined to do so. An issue may not be raised for the first time in a reply brief. *McClurg v. Deaton*, 395 S.C. 85, 87 n.2, 716 S.E.2d 887, 888 n.2 (2011). Thus, the mootness issue is arguably not properly before this Court.

Regardless, this Court declines to apply the mootness doctrine based on the collateral consequences exception because Mr. Wellin's death does not make moot the underlying dispute over the asset at issue. The parties have acknowledged there was no dispute that the \$50 million was owed to Mr. Wellin, and now, to his estate. Applying the mootness doctrine in this instance would require the Estate to expend more time and costs to bring the identical action in the same court. Such litigation would not be in the interests of judicial economy.

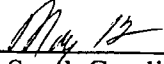
CONCLUSION

Wherefore, for the reasons stated above, this Court's Order of January 13, 2016, is
AFFIRMED.

AND IT IS SO ORDERED.



The Honorable Roger L. Couch

, 2016

Charleston, South Carolina

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

KEITH WELLIN,	)	
	)	
Plaintiff,	)	No. 2:13-cv-1831-DCN
	)	
vs.	)	
	)	ORDER
PETER J. WELLIN, <i>et. al.</i> ,	)	
	)	
	)	
Defendants.	)	
	)	

This matter is before the court on plaintiff Keith Wellin's motion for preliminary injunction, ECF No. 5. For the reasons stated below, the motion is denied.

I. BACKGROUND

A. Factual Background

Plaintiff Keith Wellin ("Keith") is an eighty-seven year-old man who, over his life, has amassed a fortune worth hundreds of millions of dollars.¹ Keith is married to his fourth wife, Wendy Wellin ("Wendy"), and has three adult children from his first marriage. Keith's children, all of whom are defendants in this case, are Peter J. Wellin ("Peter"), Cynthia W. Plum ("Ceth"), and Marjorie W. King ("Mari"). The lion's share of Keith's fortune is 896 Berkshire Hathaway Class A common shares ("the Berkshire Hathaway Shares" or "the Shares") worth more than \$150 million.

¹ According to Keith's counsel, he "is a former president of E.F. Hutton and Reynolds Securities, he was the vice president of Dean Witter Reynolds, chairman of Moorco International, Inc., trustee of Hamilton College, director of Morgan Joseph Company, Inc. He was a governor and member of the executive committee of the Association for Stock Exchange Firms, a member of the governing counsel of the Securities Industries Association. He acquired his bachelor [degree] from Hamilton College, his MBA from [Harvard Business] School." Hr'g Tr. 5, Nov. 18, 2013.

Defendant Friendship Management, LLC is a Delaware limited liability company formed on December 8, 2003. Compl. ¶ 27. The members of Friendship Management are The 2003 KSW Family Trust² (40%), Peter (20%), Mari (20%), and Ceth (20%). Id. ¶28. Ceth is the sole manager of Friendship Management.

Defendant Friendship Partners, LP is a Delaware limited partnership formed on December 12, 2003. Compl. ¶ 30. At the time it was formed, Keith was the limited partner of Friendship Partners and owned 98.9% of the partnership. Friendship Management was the general partner of Friendship Partners and owned 1.1% of the partnership. As general partner, Friendship Management controlled Friendship Partners, even though Keith owned most of the partnership interest in Friendship Partners. Upon the partnership's formation, Keith transferred the Berkshire Hathaway Shares to Friendship Partners. Compl. ¶ 31.

In 2006, Keith's "health began to deteriorate." Compl. ¶ 34. As a result, Keith named Peter as his attorney-in-fact and granted Peter durable power of attorney in the five different states in which Keith lived and/or conducted business: Florida, Georgia, South Carolina, New York, and Maine. Compl. ¶ 35-36. At the same time, Keith named Ceth as his successor attorney-in-fact. Id.

In 2008, Keith underwent treatment for tongue cancer. Compl. ¶ 37. "In and throughout 2009," Keith "experienced numerous other adverse health problems which required him to take various medications and, at times, rendered him mentally and physically incapacitated." Pl.'s Mot. for Preliminary Injunction 4; see also Compl. ¶ 40.

² Keith is the Settlor of the 2003 KSW Family Trust; co-trustees were originally Keith's long-time estate attorney Thomas Farace, and family friend Richard Ketler. Wellin Defs.' Mot. for J. on Pleadings, Ex. G at 1. Keith's children and grandchildren are the beneficiaries of the 2003 KSW Family Trust. Id.

On November 30, 2009, Keith sold his 98.9% interest in Friendship Partners to the Wellin Family 2009 Irrevocable Trust (“the November 2009 Transaction”). Compl. ¶¶ 50-59. Peter, Ceth, Mari, and South Dakota Trust Company (“SD Trust”) are co-trustees of the Wellin Family 2009 Irrevocable Trust (“the Wellin Family Trust”). Id. ¶ 56. At the time of the November 2009 transaction, Keith’s shares were valued at roughly \$90 million. Id. ¶ 59. In exchange for his interest in Friendship Partners, Keith received a note in the amount of \$49,802,115.00 from the Wellin Family Trust (“the Note”). Id. ¶ 60. The Note does not come due until 2021 and cannot be called before it comes due. Id. ¶ 62.

In January 2013, Keith made \$10 million gifts to each of his children (“the 2013 Gifts”). Compl. ¶ 73. At the same time, Keith gifted \$10 million to his wife, Wendy. Id. ¶ 75.

B. Procedural History

On July 3, 2013, Keith filed the instant complaint against Peter, Ceth, Mari, SD Trust, Friendship Management, and Friendship Partners. Keith’s complaint seeks to unwind both the November 2009 Transaction and the 2013 Gifts.³ The complaint asserts the following fifteen causes of action:

- (i) Breach of fiduciary duty (as to Peter);
- (ii) Breach of fiduciary duty (as to Ceth);
- (iii) Aiding and abetting breach of fiduciary duty (as to Mari);
- (iv) Fraud (as to Peter);
- (v) Negligent misrepresentation (as to Peter);
- (vi) Breach of contract (as to Peter);

³ Keith does not wish to rescind his \$10 million gift to Wendy.

- (vii) Breach of contract accompanied by fraudulent act (as to Peter);
- (viii) Violation of the South Carolina Uniform Securities Act, S.C. Code § 35-1-101, et. seq. (as to Peter, individually and as co-trustee of the Wellin Family 2009 Irrevocable Trust);
- (ix) Constructive fraud (as to Peter);
- (x) Rescission of 2013 gifts based on mistake of fact (as to Peter, Ceth, and Mari);
- (xi) Unjust enrichment (as to all defendants);
- (xii) Constructive trust (as to all defendants);
- (xiii) Appointment of receiver (as to Peter, Ceth, Mari, and SD Trust, as co-trustees of the Wellin Family 2009 Irrevocable Trust);
- (xiv) Appointment of receiver (as to Friendship Management, LLC and Friendship Partners, LP); and
- (xv) Reformation of the promissory note (as to Peter, Ceth, Mari, and SD Trust, as co-trustees of the Wellin Family Trust).

When he filed his complaint, Keith also filed a motion for a temporary restraining order (“TRO”) that would prevent any of the defendants from selling, trading, negotiating, gifting, or otherwise disposing of any of the Berkshire Hathaway Shares. By the same motion, Keith also asked the court to issue a preliminary injunction barring disposal of the Berkshire shares. The court granted the TRO on the same day that it and the complaint were filed.

After receiving several deadline extensions, SD Trust opposed Keith’s motion for preliminary injunction on August 27, 2013. Friendship Management, Friendship Partners, Peter, Cynthia, and Marjorie (collectively, “the Wellin Defendants”) opposed Keith’s motion on the same day. Keith replied to SD Trust’s response on September 6, 2013. On November 18, 2013, the court heard witness testimony and oral argument on the motion. This matter has been fully briefed and is now ripe for the court’s review.

II. STANDARDS

Federal Rule of Civil Procedure 65(a) grants discretion to the reviewing court in deciding whether to issue a preliminary injunction. It provides that a court “may issue” a preliminary injunction only upon notice to the adverse party. Fed. R. Civ. P. 65(a). A preliminary injunction is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 22 (2008); see Munaf v. Geren, 553 U.S. 674, 689-90 (2008) (internal citation and quotation marks omitted) (“A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right.”); In re Microsoft Corp. Antitrust Litig., 333 F.3d 517, 526 (4th Cir. 2003) (“[P]reliminary injunctions are extraordinary interlocutory remedies that are granted in limited circumstances and then only sparingly.”), abrogated on other grounds by eBay, Inc. v. MercExchange, LLC, 547 U.S. 388 (2006). A party seeking a preliminary injunction must demonstrate that (1) it is likely to succeed on the merits, (2) it is likely to suffer irreparable harm, (3) the balance of hardships tips in its favor, and (4) the injunction is in the public interest. Metro. Reg’l Info. Sys. v. Am. Home Realty Network, Inc., 722 F.3d 591, 595 (4th Cir. 2013) (citing Winter, 555 U.S. at 20). “To obtain a preliminary injunction under the Winter test, a movant must make a ‘clear showing’ of [the] four requirements.” Alkebulanyahh v. Nettles, No. 10-2976, 2011 WL 2728453, at *3 (D.S.C. July 13, 2011); see also Dewhurst v. Century Aluminum Co., 649 F.3d 287, 290 (4th Cir. 2011) (“Winter thus requires that a party seeking a preliminary injunction . . . must clearly show that it is likely to succeed on the merits.” (internal quotation omitted)).

III. DISCUSSION

Keith asks the court to issue a preliminary injunction that imposes the same restrictions established by the present TRO. Specifically, Keith seeks to prevent defendants

from being able to sell, trade, negotiate, gift, or otherwise dispose of the [Berkshire Hathaway Shares] and/or the [98.90%] limited partnership interest [in Friendship Partners, LP] without the express, written, and notarized consent of the Plaintiff or the current holder of his durable power of attorney, until the final adjudication of this action.

Keith's Mot. for Preliminary Injunction 8.

A court considering whether to impose a preliminary injunction must separately consider each of the four Winter factors. Pashby, 709 F.3d at 321. Prohibitory preliminary injunctions "aim to maintain the status quo and prevent irreparable harm while a lawsuit remains pending." Pashby, 709 F.3d at 319 (internal citations omitted). Mandatory preliminary injunctions, which compel rather than prohibit action, "do not preserve the status quo." Wetzel v. Edwards, 635 F.2d 283, 286 (4th Cir. 1980). Therefore, courts apply the exacting preliminary injunction standard in an "even more searching" manner than for the more common prohibitory preliminary injunctions. Pashby, 709 F.3d at 319 (internal quotations omitted). Indeed, "a mandatory preliminary injunction must be necessary both to protect against irreparable harm in a deteriorating circumstance created by the defendant and to preserve the court's ability to enter ultimate relief on the merits of the same kind." In re Microsoft Antitrust Litig., 333 F.3d at 526. A request for a mandatory preliminary injunction should only be granted "when the exigencies of the situation demand such relief." Wetzel, 635 F.2d at 286.

The preliminary injunction that Keith seeks is mandatory, rather than prohibitory, in nature. The relief Keith requests would require defendants to seek his approval for any transaction involving either the Shares or the 98.9% limited partnership interest in Friendship Partners. However, Keith has not controlled the Shares since he transferred them to Friendship Partners' control in 2003. See Hr'g Tr. 118-19, Nov. 18, 2013. Likewise, the partnership agreement that governs Friendship Partners dictates that a "Transferee of a Limited Partner's Interest in the Partnership may be admitted to the Partnership as a Substituted Limited Partner only upon the receipt of the prior written consent of all General Partners, which consent may be given or withheld in each Partner's sole discretion." Wellin Defs.' Mot. for J. on Pleadings, Ex. I at 18. Granting the preliminary injunction that Keith seeks would profoundly alter the status quo by allowing Keith to exercise a veto that he has never before had.

Because the requested injunction is mandatory in nature, the court must now apply the Winter preliminary injunction standards in the "even more searching" manner noted by the Pashby court.

A. Likelihood of success on the merits

Keith contends – and the defendants do not appear to dispute – that, because he only seeks to enjoin the sale or transfer of the Berkshire Hathaway Shares and/or the 98.9% limited partnership interest in Friendship Partners, the court need only analyze the likelihood of his success on the merits for the causes of action that seek that form of relief. Those causes of action are Counts 1, 2, and 3, for breach of fiduciary duty and aiding and abetting breach of fiduciary duty, and Count 8, for violation of the South Carolina Uniform Securities Act.

“Although [the likelihood-of-success] inquiry requires plaintiffs . . . to make a clear showing that they are likely to succeed at trial, plaintiffs need not show a certainty of success.” Pashby, 709 F.3d. at 321 (internal citations omitted). However, it is not enough if a plaintiff only provides sufficient factual allegations to survive a Rule 12(b)(6) motion to dismiss: Torres Adv. Enterp. Solutions LLC v. Mid-Atl. Professionals, Inc., No. 12-cv-03679, 2013 WL 531215, at *3 (D. Md. Feb. 8, 2013) (citing Allstate Ins. Co. v. Warns, No. 11-cv-01846, 2012 WL 681792, at *14 (D. Md. Feb. 29, 2012)).

Importantly, a number of courts have declined to issue a preliminary injunction when there are significant factual disputes. See, e.g., Chatterly Int’l, Inc. v. JoLida, Inc., No. 10-cv-02236, 2011 WL 1230822, at *9 (D. Md. Mar. 28, 2011); Allegra Network LLC v. Reeder, No. 09-cv-00912, 2009 WL 3734288 (E.D. Va. Nov. 4, 2009).

The success or failure of Keith’s breach of fiduciary duty and Uniform Securities Act claims depends upon a number of facts that the parties hotly dispute. Keith argues that his children, particularly Peter, coerced him into making the November 2009 Transaction and the 2013 Gifts. Defendants disagree, asserting that the November 2009 Transaction was part of an estate strategy planned by Keith and his attorney and that the 2013 Gifts were conceived entirely by Keith. Keith similarly contends that the November 2009 Transaction and the 2013 Gifts were not in his best interests, while defendants assert that they were fair transactions that accomplished Keith’s goals of transferring his wealth to his children and grandchildren. The resolution of these factual disputes will be critical to the resolution of this case.

With these significant factual disputes impossible to resolve at this time, the court finds that Keith has not clearly shown that he is likely to succeed on the merits of his case.

B. Irreparable harm

Keith next argues that he has shown that he will be irreparably harmed if the court does not grant injunctive relief. Specifically, Keith contends that he “has lost control and use of” the Berkshire Hathaway Shares, which “is causing [him] immediate financial harm as he is not able to use these assets.” Keith’s Mot. 16. Keith also argues that his “injury is irreparable because he believes that his children will in fact sell the [Berkshire Hathaway Shares] and/or the 98.90% limited partnership interest in Friendship Partners.” Id. Keith argues that sale of either of these assets would trigger a \$40 million tax liability that would bankrupt him. At the hearing, a phalanx of physicians testified that such a bankruptcy would negatively impact Keith’s health.

The Supreme Court has instructed that

The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Sampson v. Murray, 415 U.S. 61, 90 (1974) (emphasis in original). The Fourth Circuit has also explained that “a preliminary injunction is not normally available where the harm at issue can be remedied by money damages.” Bethesda Softworks, LLC v. Interplay Entm’t Corp., 452 F. App’x 351, 353 (4th Cir. 2011) (citing Hughes Network Sys., Inc. v. InterDigital Commc’ns Corp., 17 F.3d 691, 693-94 (4th Cir. 1994)).

However, there are exceptions to this rule under extraordinary circumstances. Id. For

example, irreparable harm may exist where the moving party's business cannot survive absent a preliminary injunction, or where damages may ultimately become unobtainable because the defendant may become insolvent before a final judgment can be entered.

Hughes, 17 F.3d at 694.

As noted above, Keith has lacked control of the Berkshire Hathaway Shares since he transferred them to Friendship Partners in 2003. Keith's children, through Friendship Management, have controlled the Shares since that time. Any harm that Keith suffers from his inability to control the Shares is not, therefore, "immediate." Moreover, Keith does not challenge the validity of the 2003 transaction in which he ceded control of the Shares to Peter, Ceth, and Mari. Even if the court were to unwind the November 2009 Transaction, Keith would still not be able to "use those assets" because Friendship Management would still control Friendship Partners. For these reasons, Keith's inability to control the Shares does not constitute an irreparable harm for which preliminary injunctive relief is appropriate.

In a letter to the court dated November 19, 2013, counsel for Keith argued – for the first time – that Peter, Ceth, and Mari "do not have sufficient resources to cover" the amount of money that they may owe if Keith ultimately prevails in this case. Counsel has marshaled no facts in support of this statement, and the court has no information on defendants' finances. Keith's bare allegations are not sufficient to show that defendants are likely to become insolvent absent the entry of a preliminary injunction.⁴

⁴ Counsel explained that

If we start with \$150 million, and give \$43 million to the government [in taxes triggered by sale of the Shares], the total assets in the system (Keith and his children) are then only \$107 million. If the Plaintiff prevails and the 2009

Additionally, the likelihood that Keith would be physically and emotionally stressed does not rise to the level of “extraordinary” circumstances contemplated by the Fourth Circuit. While the court does not take lightly the opinions of Keith’s physicians, the court cannot grant injunctive relief on the basis that Keith may otherwise suffer severe stress. If the court were to make such a ruling, any elderly or infirm person – and perhaps any person at all – would be able to demonstrate irreparable harm by showing that he or she would suffer stress if a preliminary injunction is not entered in his or her favor.

Keith’s lawyers also argued that there was a threat that he would be financially unable to afford the quality of health care that he now enjoys. The specter of this loss is tempered by the fact that Keith portrays Wendy as a loving and caring spouse who is intimately involved in her husband’s medical care. There is undisputed evidence that Keith has given Wendy millions and millions of dollars, the last gift of \$10 million having been given in January of this year. Thus Wendy certainly has the resources to pay Keith’s \$200,000 annual health care costs.

Finally, the chance that Keith himself could face bankruptcy is not an extraordinary circumstance that warrants a finding of irreparable harm because such damages are remediable through a monetary award. If defendants sell either the Shares or the limited partnership interest in Friendship Partners, and if the court later determines that those assets properly belonged to Keith, then the court can remedy the damages by

transaction is void then Keith Wellin should get back the full \$150 million, but the trust does not have it and the children do not have it.

Letter from R. Hood at 2, ECF No. 70. This calculation assumes that Peter, Ceth, and Mari have no assets other than their interest in the Shares. This assumption is flawed, as Keith has presented evidence that he has, over the years, given his children and grandchildren over \$158 million. Hr’g Tr. 62.

awarding Keith an amount of money that would cover the value of the Shares, the value of the 98.9% partnership interest in Friendship Partners, and/or the value of the taxes Keith paid. For all these reasons, Keith has not made the requisite showing of irreparable harm.

C. Balance of the equities

Keith next argues that the balance of the equities tips in his favor because he has done no wrong, because the requested injunction will simply maintain the status quo, and because defendants have themselves acted wrongfully.

In considering the balance of the equities between the parties, the court “must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the relief requested.” Winter, 555 U.S. at 24 (quoting Amoco Prod. Co. v. Village of Gambell, 480 U.S. 531, 542 (1987)).

Keith’s assertion that the requested injunction maintains the status quo is without merit. As discussed more fully above, granting the requested injunction would profoundly alter the status quo. Additionally, defendants fiercely dispute Keith’s claims the he has been swindled out of his wealth by his children. Without more evidence of his children’s unclean hands, Keith has failed to demonstrate that the balance of the equities tips in his favor.

More to the point, the potential harms that each party identifies are remediable through a monetary award. Keith argues that he will be harmed if an injunction is not entered because the sale of the Shares would trigger a \$40 million tax liability that would ultimately bankrupt him. Hr’g Tr. 125. Defendants respond that they would be harmed by entry of the preliminary injunction because if the Shares are not sold before Keith’s

death, defendants would lose \$100 million in value of the partnership and “the estate would be in a gridlock at that point because nobody would have both ownership and control of [Friendship Partners and its assets].” Hr’g Tr. 137.

As a result, the court finds that the balance of the equities tips in neither party’s favor.

D. Public interest

Finally, Keith argues briefly that “the requested injunctive relief will pose absolutely no harm to the public interest.” Keith’s Mot. for Preliminary Injunction 19.

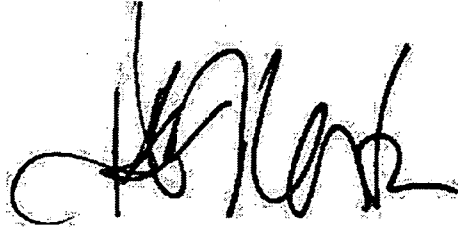
The Supreme Court has admonished that “courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of an injunction.” Winter, 555 U.S. at 24. When other considerations do not weigh meaningfully on this factor, the court can find that the likelihood of success on the merits satisfies the public interest prong of the preliminary injunction test. Pashby, 709 F.3d at 330.

The court agrees with the parties that there appear to be few, if any, public consequences to the success or failure of Keith’s preliminary injunction motion. See Hr’g Tr. 135 (“Your Honor, I don’t believe that this is a public interest case. We have not pled it as such.”). Posing no harm to the public interest is not the same thing as weighing in favor of it. Because the public interest does not weigh heavily in this case, and because Keith has not demonstrated a likelihood of success on the merits, the court finds that Keith has not demonstrated that the proposed injunction would be in the public interest.

IV. CONCLUSION

For the reasons set forth above, the court **DENIES** plaintiff Keith Wellin's motion for preliminary injunction, ECF No. 5, and **DISSOLVES** the temporary restraining order that was issued on July 3, 2013, ECF No. 6.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Norton', is written over a horizontal line.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

November 22, 2013
Charleston, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

LESTER S. SCHWARTZ, *as Trust*
Protector of the Wellin Family 2009
Irrevocable Trust,

Plaintiff,

vs.

PETER J. WELLIN, *et. al.,*

Defendants.

No. 2:13-cv-3595-DCN

ORDER

This matter is before the court on plaintiff Lester Schwartz's motion to extend the state court-ordered temporary restraining order ("TRO") and for a preliminary injunction. For the reasons stated below, the motion is denied.

I. BACKGROUND

As the parties are very familiar with the facts of this case, the court dispenses with a lengthy recitation of them. Friendship Management, LLC is the 1.1% owner and sole general partner of Friendship Partners, LP. The Wellin Family 2009 Irrevocable Trust ("the Trust") holds the remaining 98.9% interest in Friendship Partners. On December 1, 2013, Cynthia Wellin Plum, as manager of Friendship Management, directed the liquidation of Friendship Partners. According to its liquidation plan, Friendship Partners intended to distribute the proceeds of its liquidated assets to its partnership on a pro rata basis. The Trust would therefore receive 98.9% of Friendship Partners' assets.

Keith Wellin's three adult children, as the Trust's individual trustees, make up the Trust's distribution committee. On December 1, 2013, with notice of Friendship

Partners' liquidation plan, the Wellin children executed written consents to the distribution of Trust assets. Specifically, they directed the Trust to retain enough money to satisfy the note held by their father. At the same time, the Wellin children authorized the equal distribution of the balance of the Trust's principal to themselves as the Trust's named beneficiaries.

On December 5, 2013, Brown Brothers Harriman, the newly-installed corporate trustee for the Trust, resigned its position as corporate trustee.

On December 6, 2013, Friendship Partners sold all its assets, including the 896 Class A Berkshire Hathaway common shares that Keith Wellin had contributed to the partnership. Friendship Partners then distributed all its assets to the members of its partnership, Friendship Management and the Trust. Upon receiving the bulk of Friendship Partners' assets, the Trust set aside about \$52 million to pay off the note held by Keith Wellin. The remaining money, about \$95 million, was distributed equally among the Wellin children.

On December 17, 2013, attorney Lester S. Schwartz, in his capacity as trust protector of the Trust, filed a complaint in Charleston County Probate Court against Keith Wellin, his three adult children, Friendship Management, and Friendship Partners.¹ In his complaint, plaintiff asserts that the Wellin children have "frustrated the intent and purposes of the Trust," which was to provide for Keith's grandchildren as well as his children, by liquidating Friendship Partners' assets and putting most of the proceeds into their own bank accounts. Plaintiff's complaint asserts the following six causes of action:

¹ On January 3, 2013, plaintiff voluntarily dismissed Friendship Partners and Keith Wellin from the case without prejudice. As a result, there is complete diversity among the parties.

- (i) Breach of fiduciary duty (as to the three Wellin children);
- (ii) Conversion (as to the three Wellin children);
- (iii) Removal of trustees (as to the three Wellin children);
- (iv) Restitution (as to all defendants);
- (v) Recovery of attorneys' fees (as to the three Wellin children);
- (vi) Temporary restraining order, and temporary and permanent injunction (as to all defendants).

On December 20, 2013, Charleston County Probate Judge Irvin Condon issued an ex parte TRO that enjoined the Wellin children from "disposing of or exercising any control over any of the cash, funds, or proceeds realized by the sale of the 896 Class A Berkshire Hathaway common shares" without plaintiff's express written consent or upon court order. The state court's TRO also stated that it "does not preclude the investing by the Trustees of the restrained assets consistent with their duties as prudent Trustees. The trust funds need to be traceable and accountable to the Trust Protector and this Court."

On December 27, 2013, the Wellin children, Friendship Management, and Friendship Partners removed the case to this court. On December 30, 2013, plaintiff filed an emergency motion to extend the state court's TRO and for a preliminary injunction. The matter has been fully briefed and the parties presented oral argument at a hearing held on December 31, 2013.

II. STANDARDS

The court evaluates a request for a temporary restraining order under the same rubric as a request for a preliminary injunction. See Virginia v. Kelly, 29 F.3d 145, 147 (4th Cir. 1004) (applying preliminary injunction standard to a request for a temporary restraining order); Smith v. S. Carolina Election Comm'n, 874 F. Supp. 2d 483, 497

(D.S.C. 2012) (same). A preliminary injunction is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 22 (2008); see Munaf v. Geren, 553 U.S. 674, 689-90 (2008) (“A preliminary injunction is an extraordinary and drastic remedy; it is never awarded as of right.” (internal citation and quotation marks omitted)); In re Microsoft Corp. Antitrust Litig., 333 F.3d 517, 526 (4th Cir. 2003) (“[P]reliminary injunctions are extraordinary interlocutory remedies that are granted in limited circumstances and then only sparingly.”), abrogated on other grounds by eBay, Inc. v. MercExchange, LLC, 547 U.S. 388 (2006).

III. DISCUSSION

Plaintiff asks the court to impose a further TRO and a preliminary injunction that feature the same restrictions imposed by the state court TRO. This proposed injunction seeks to prevent the Wellin defendants from:

being able to sell, trade, negotiate, gift, alienate, hide, convert or otherwise dispose of the proceeds of the sale of the 896 Class A Berkshire Hathaway common shares transferred to Friendship Partners, LP by Keith S. Wellin in 2003 or from participating in, authorizing, or allowing such transactions without the express, written, and notarized consent of the Plaintiff or further order of this court.²

Pl.’s Mot. for Prelim. Inj. Ex. 1 at 2.

² The injunction sought resembles the injunction unsuccessfully sought in a related case, Wellin v. Wellin, No. 13-cv-01831. In that case, Keith Wellin sought to keep his three children

from being able to sell, trade, negotiate, gift, or otherwise dispose of any of the 896 Class A Berkshire Hathaway common shares transferred to Friendship Partners, LP [and/or] the 98.90% limited partnership interest in Friendship Partners, LP . . . without the express, written, and notarized consent of the Plaintiff or the current holder of his durable power of attorney.

Pl.’s Mot. for TRO, Wellin v. Wellin, No. 13-cv-01831, ECF No. 5 at 1.

A party seeking a preliminary injunction must demonstrate that: (1) he is likely to succeed on the merits; (2) that he is likely to suffer irreparable harm in the absence of injunctive relief; (3) that the balance of equities tips in his favor; and (4) that an injunction is in the public interest. Winter, 555 F.3d at 320. A court considering whether to impose a preliminary injunction must separately consider each of the four Winter factors. Pashby v. Delia, 709 F.3d 307, 321 (4th Cir. 2013).

As an initial matter, plaintiff contends that he need not meet the four-pronged preliminary injunction standard described by the Supreme Court and the Fourth Circuit. Specifically, he argues that “[W]here an injunction explicitly authorized by state law is sought in a diversity case, the Supreme Court’s decision in Erie R.R. v. Tompkins, 304 U.S. 64 (1938), mandates that state standards governing the issuance of preliminary injunctions be followed.” Pl.’s Reply to Mot. for Prelim. Inj. 3 (emphasis added). To support his argument, plaintiff relies on Environmental Defense Fund v. Lamphier, 714 F.2d 331 (4th Cir. 1983). In Lamphier, the defendants appealed the entry of a permanent injunction entered after the district court found them liable for violations of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901, et seq. The Fourth Circuit affirmed, explaining that RCRA’s enforcement provision “explicitly calls for the judicial issuance of injunctions to coerce compliance with the Act’s requirements. Where a statute authorizes injunctive relief for its enforcement, plaintiffs need not plead and prove irreparable injury.” Lamphier, 714 F.2d at 338. Plaintiff argues that since South Dakota law states that “the court may order such appropriate relief as may be necessary to protect the trust property or the interests of the beneficiaries,” S.D. Codified Laws § 55-3-20.1 (2013), under Lamphier, this statutory language exempts him from having to

prove irreparable injury because it amounts to the explicit authorization of injunctive relief.

Plaintiff's reasoning fails. The Lamphier court dealt exclusively with the post-trial imposition of a permanent injunction, and did not address whether its holding governed the evaluation of preliminary injunctions or TROs. Indeed, one of the cases cited in plaintiff's reply distinguishes between permanent and preliminary injunctions. Capital Tool & Mfg. Co. v. Maschinenfabrik Herkules, 837 F.2d 171, 172 (4th Cir. 1988) (explaining that Lamphier's ruling applies to the imposition of permanent injunctions and invoking the Fourth Circuit's preliminary injunction test while evaluating the trial court's denial of a preliminary injunction).³ Indeed, the Fourth Circuit has very recently explained that "courts considering whether to impose preliminary injunctions must separately consider each Winter factor." Pashby, 709 F.3d at 321. To agree with plaintiff on this issue would be to ignore the clear, current teachings of this circuit.

Even if Lamphier did apply to the case at hand, plaintiff's argument would still fail because the South Dakota trust law that plaintiff has invoked does not expressly authorize court-ordered injunctive relief. Rather, the statute simply states that a court "may order appropriate relief" to protect trust assets "pending a final decision on a request to remove a trustee." S.D. Codified Laws § 55-3-20.1. This language simply codifies a court's inherent power by reiterating that the court may award appropriate relief to parties before it. Moreover, the South Dakota statute's language is fundamentally different from the statutory language at issue in the cases cited by plaintiff.

³ The other cases cited in plaintiff's reply, Redner's Markets, Inc. v. Joppatowne G.P. Limited Partnership, No. 11-cv-1864, 2013 WL 2903285 (D: Md. June 13, 2013), and E.I. DuPont de Nemours & Co. v. Kolon Industries, Inc., 894 F. Supp. 2d 691 (E.D. Va. 2012) explicitly addressed the entry of permanent, not preliminary, injunctions.

See 42 U.S.C. § 6928 (“[The EPA] Administrator may commence a civil action . . . for appropriate relief, including a temporary or permanent injunction.”); Va. Code Ann. § 59.1-337 (West) (“Actual or threatened misappropriation may be enjoined.”). The statutes at issue in Lamphier and Kolon Industries expressly authorized injunctive relief. Section 55-3-20.1 does not.

Thus, the court must consider whether plaintiff has demonstrated each of the four Winter factors.⁴

A. Likelihood of Success on the Merits

Plaintiff first contends that he has demonstrated that he is likely to succeed on the merits of this case because he “has made a sufficient showing that Defendants, as co-trustees, participated in and committed serious breaches of trust and are not serving solely the best interests of all beneficiaries.” Pl.’s Reply in Supp. of Mot. for Prelim. Inj. 12.

“Although [the likelihood-of-success] inquiry requires plaintiffs . . . to make a clear showing that they are likely to succeed at trial, plaintiffs need not show a certainty of success.” Pashby, 709 F.3d. at 321 (internal citations omitted) (emphasis added). It is not enough if a plaintiff only provides sufficient factual allegations to survive a Rule 12(b)(6) motion to dismiss. Torres Adv. Enterp. Solutions LLC v. Mid-Atl. Prof’ls, Inc., No. 12-cv-03679, 2013 WL 531215, at *3 (D. Md. Feb. 8, 2013) (internal citations omitted).

⁴ The court’s analysis would be much the same if it were to employ South Dakota law when evaluating plaintiff’s request for a preliminary injunction. When determining whether a preliminary injunction should issue, South Dakota courts consider “(1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest.” Dacy v. Gors, 471 N.W.2d 576, 579 (S.D. 1991) (quotations omitted).

The parties agree, at least in part, on the facts that underlie this lawsuit. Defendants do not dispute that they liquidated Friendship Partners' assets and, after transferring those assets to the Trust, deposited about \$95 million of Trust assets into their own bank accounts. However, the complaint draws further legal conclusions that the court need not credit at this juncture. Specifically, the complaint alleges that defendants' actions breached duties that defendants owed to Friendship Partners and to the Trust's grantor and other beneficiaries. See Compl. ¶¶ 34-36. Plaintiff's assertions do not amount to a clear showing that he is likely to succeed on the merits of his claims. Thus, plaintiff has failed to make the first showing required under Winter.

B. Irreparable Harm

At the hearing, plaintiff argued that he has shown that he is likely to suffer irreparable harm if the state court's TRO is dissolved.

The Supreme Court has instructed that

The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Sampson v. Murray, 415 U.S. 61, 90 (1974) (emphasis in original). Moreover, the Fourth Circuit has explained that "a preliminary injunction is not normally available where the harm at issue can be remedied by money damages." Bethesda Softworks, LLC v. Interplay Entm't Corp., 452 F. App'x 351, 353 (4th Cir. 2011) (citing Hughes Network Sys., Inc. v. InterDigital Commc'ns Corp., 17 F.3d 691, 693-94 (4th Cir. 1994)).

At the hearing, plaintiff admitted that the damages he seeks – the return of \$95 million to the trust plus attorneys' fees – are all monetary. Plaintiff's counsel also

admitted that the Trust retains the roughly \$52 million set aside to pay the amount of the note held by Keith Wellin. Plaintiff has not even alleged that the Wellin defendants are likely to become insolvent before issues in this case are resolved. See Hughes, 17 F.3d at 694 (explaining that irreparable harm may be found where the moving party's business will fail absent a preliminary injunction, or where the defendant may become insolvent before damages are awarded). As a result, plaintiff has not met the second Winter factor.

C. Balance of the Equities

Plaintiff next argues that the balance of the equities tips in his favor because defendants have unclean hands and because the injunction would preserve the status quo.

In considering the balance of the equities between the parties, the court "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the relief requested." Winter, 555 U.S. at 24 (quoting Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531, 542 (1987)).

The injunction plaintiff seeks would not preserve the status quo. Rather, it would give plaintiff veto power over the decisions made by defendants in their roles as trustees. Even if plaintiff is the proper trust protector of the Trust – a proposition that defendants dispute – he seeks a power that the trust protector has never before held. In addition, defendants fiercely dispute that their actions are anything other than legal and in keeping with the governing provisions of both Friendship Partners and the Trust itself. Without more, plaintiff has failed to show that defendants have unclean hands. For these reasons, plaintiff has not made the third showing required under Winter.

D. Public Interest

Finally, plaintiff argues that the grant of an injunction would serve the public interest by “maintaining the integrity of trusts and insuring the availability of relief upon final judgment.” Pl.’s Reply at 15.

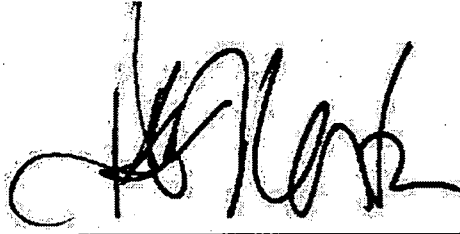
The Supreme Court has admonished that “courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of an injunction.” Winter, 555 U.S. at 24. When other considerations do not weigh meaningfully on this factor, the court can find that the likelihood of success on the merits satisfies the public interest prong of the preliminary injunction test. Pashby, 709 F.3d at 330.

The public interest does not play a meaningful role in the requested injunction. Because plaintiff has not clearly shown that he is likely to succeed on the merits of this case, the court finds that he has also not met the fourth requisite Winter factor.

III. CONCLUSION

For these reasons, the court **DENIES** plaintiff Lester S. Schwartz’s motion to extend the temporary restraining order issued by the state court and for a preliminary injunction, ECF No. 4. The court also hereby **DISSOLVES** the temporary restraining order that was issued by the state court on December 20, 2013.

AND IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'D. Norton', written over a horizontal line.

DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

January 7, 2014
Charleston, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

KEITH WELLIN,

Plaintiff,

vs.

PETER J. WELLIN, *et. al.*,

Defendants.

No. 2:13-cv-1831-DCN

LESTER S. SCHWARTZ, *as Trust Protector
of the Wellin Family 2009 Irrevocable Trust,*

Plaintiff,

vs.

PETER J. WELLIN, *et. al.*,

Defendants.

No. 2:13-cv-3595-DCN

KEITH WELLIN,

Plaintiff,

vs.

PETER J. WELLIN, *et. al.*,

Defendants.

No. 2:14-cv-0579-DCN

EDWARD G. R. BENNETT, *as Special
Conservator*, and KEITH WELLIN,

Plaintiffs,

vs.

PETER J. WELLIN, *et. al.*,

Defendants.

No. 2:14-cv-0652-DCN

ORDER

These matters are before the court on ten motions: six discovery motions filed in Wellin v. Wellin ("Wellin I"), Docket No. 13-cv-1831, and Schwartz v. Wellin ("Schwartz"), Docket No. 13-cv-3595; one discovery motion filed only in Wellin I; a motion in limine filed in Wellin I and Schwartz; a motion to dismiss filed in Wellin v. Wellin ("Wellin II"), Docket No. 14-cv-0579; and a motion to dismiss filed in Wellin v. Wellin ("Wellin III"), Docket No. 14-cv-0652. For the reasons stated below, the court:

- Grants in part and denies in part three motions to compel, Wellin I ECF Nos. 115, 116, and 126 and Schwartz ECF Nos. 45, 51, and 59;
- Denies one motion to compel, Wellin I ECF No. 117 and Schwartz ECF No. 49;
- Denies the two motions to quash subpoenas, Wellin I ECF Nos. 124 and 125 and Schwartz ECF Nos. 57 and 58;
- Grants the motion in limine, Wellin I ECF No. 127 and Schwartz ECF No. 60;
- Grants in part and denies in part the motion for protective order, Wellin I ECF No. 128 and Schwartz ECF No. 63; and
- Grants both motions to dismiss, Wellin II ECF No. 6 and Wellin III ECF No. 9.

I. BACKGROUND

Because the parties are well-acquainted with the extensive history that undergirds these cases, the court recites only the facts and procedure relevant to the disposition of the motions at hand.¹ Where appropriate, the court construes the facts in the light most favorable to the non-moving party.

¹ As of the date of this order, a gracious plenty of new motions have been filed in Wellin I and Schwartz. These motions are not yet ripe and are not addressed herein.

A. Factual History

The facts of this case are largely undisputed, though the parties' interpretations thereof diverge. Keith Wellin ("Keith") is an eighty-seven year-old man who, over his life, has amassed a fortune worth hundreds of millions of dollars. Keith is married to his fourth wife, Wendy Wellin ("Wendy"), and has three adult children from his first marriage. Keith's children are Peter J. Wellin ("Peter"), Cynthia Wellin Plum ("Ceth"), and Marjorie W. King ("Mari").²

Friendship Management, LLC is a Delaware limited liability company formed on December 8, 2003. The members of Friendship Management are The 2003 KSW Family Trust (40%), Peter (20%), Ceth (20%), and Mari (20%). Ceth is the sole manager of Friendship Management.

Friendship Partners, LP was a Delaware limited partnership formed on December 12, 2003. Upon the partnership's formation, Keith transferred 896 Class A Berkshire Hathaway common shares to Friendship Partners. At the time it was formed, Keith was the limited partner of Friendship Partners and owned 98.9% of the partnership. Friendship Management was the general partner of Friendship Partners and owned 1.1% of the partnership. As general partner, Friendship Management controlled Friendship Partners, even though Keith owned most of the partnership.

On November 30, 2009, Keith sold his 98.9% interest in Friendship Partners to the Wellin Family 2009 Irrevocable Trust ("the November 2009 Transaction"). Peter, Ceth, and Mari are co-trustees for the Wellin Family 2009 Irrevocable Trust ("the Trust"), and South Dakota Trust Company was the Trust's original corporate trustee.

² The court refers to Peter, Ceth, and Mari collectively as "the Wellin children."

Thomas Farace ("Farace"), Keith's long-time estate attorney, was the Trust's trust protector. In exchange for Keith's interest in Friendship Partners, the Trust issued to Keith a note with a face value of \$49,802,115 ("the Note"). The Note accrues interest.

In January 2013, Keith made \$10 million gifts to each of his children ("the 2013 Gifts"). At the same time, Keith also gave \$10 million to Wendy.

On November 20, 2013, Keith substituted the Note for a 58% interest in Friendship Partners ("the 2013 Swap"). Also on November 20, 2013, Keith removed Farace as the Trust's trust protector and installed attorney Lester A. Schwartz ("Schwartz") in that role. On the same day, Schwartz notified all of the trustees that he was unilaterally making a number of changes to the Trust's governing document pursuant to his power as trust protector. Schwartz also removed South Dakota Trust Company as the Trust's corporate trustee and appointed Brown Brothers Harriman Trust Company of Delaware, N.A. ("Brown Brothers") as corporate trustee.

On December 1, 2013, Ceth, as the sole manager of Friendship Management, directed the liquidation of Friendship Partners, based upon the written consent of all three Wellin children.

On December 5, 2013, Brown Brothers resigned its position as the Trust's newly-installed corporate trustee. Schwartz has not accepted Brown Brothers' resignation.³

On December 6, 2013, Friendship Partners sold all its assets, including the Berkshire Hathaway shares that Keith Wellin had contributed to Friendship Partners. About \$95 million was distributed equally to Peter, Ceth, and Mari. The remaining \$50

³ The parties dispute the validity of the 2013 Swap, Schwartz's appointment as trust protector, the actions that Schwartz has taken since his appointment, and Brown Brothers' appointment and resignation.

million was sent, in form of a check, to Keith's counsel in payment of the Note. Keith's attorneys returned the check on the same day.

B. Procedural History

There are four separate cases currently pending before the court that relate to Keith's disputes with his children.

1. Wellin I

On July 3, 2013, Keith filed a complaint against Peter, Ceth, Mari, Friendship Management, Friendship Partners, and South Dakota Trust Company. After the court granted in part and denied in part two motions for judgment on the pleadings, Keith filed an amended complaint on February 28, 2014 against Peter, Ceth, Mari, and Friendship Management. The gist of the Wellin I amended complaint is that defendants⁴ cheated Keith by orchestrating the November 2009 Transaction, by duping him into making the 2013 Gifts, and by failing to pay him 58% of the value of Friendship Partners after the partnership was liquidated. The Wellin I amended complaint asserts the following seventeen causes of action:

- (i) A declaratory judgment that: (a) Farace was properly removed as trust protector of the Trust and Schwartz was properly named as his replacement on November 20, 2013; and (b) the amendments Schwartz made to the Trust on November 20, 2013 are all valid and now control the Trust;
- (ii) Breach of fiduciary duty (as to Peter and Ceth);
- (iii) Aiding and abetting breach of fiduciary duty (as to Ceth and Mari);
- (iv) Fraud (as to Peter);
- (v) Constructive fraud (as to Peter);

⁴ The court uses "defendants" when referring to Peter, Ceth, Mari, and Friendship Management, the defendants in Wellin I and Schwartz.

- (vi) Fraudulent concealment (as to Peter);
- (vii) Negligent misrepresentation (as to Peter);
- (viii) Breach of contract (as to Peter);
- (ix) Breach of contract accompanied by fraudulent act (as to Peter);
- (x) Violation of the South Carolina Uniform Securities Act (as to Peter, individually and as co-trustee of the Wellin Family 2009 Irrevocable Trust);
- (xi) Unjust enrichment (as to all defendants);
- (xii) Constructive trust (as to all defendants);
- (xiii) Breach of fiduciary duty (as to all defendants);
- (xiv) Aiding and abetting breach of fiduciary duty (as to Peter and Mari);
- (xv) Breach of the Friendship Partners, LP agreement (as to Peter, Ceth, and Mari);⁵
- (xvi) Civil conspiracy (as to Peter, Ceth, and Mari); and
- (xvii) Breach of covenant of good faith and fair dealing (as to all defendants).

Notably, the eleventh cause of action alleges that defendants unjustly enriched themselves by “obtain[ing] and wrongfully with[holding] proceeds owed to Plaintiff arising out of the liquidation of Friendship Partners, LP.” Wellin I Am. Compl. ¶ 220.

2. Schwartz

On December 17, 2013, Schwartz, in his capacity as trust protector, filed a complaint in Charleston County Probate Court against Keith, Peter, Ceth, Mari, Friendship Management, and Friendship Partners. Peter, Ceth, Mari, Friendship Management, and Friendship Partners removed the case to this court on December 27,

⁵ The subheading of the fifteenth cause of action states that this claim has been brought against Peter, Ceth, Mari, and Friendship Partners. The court assumes that this subheading is incorrect because Friendship Partners is not named as a defendant in the Wellin I amended complaint.

2013. Schwartz dismissed his claims against Keith and Friendship Partners on January 3, 2014. On January 17, 2014, defendants answered the complaint and asserted two counterclaims against Keith and Schwartz. Through these counterclaims, defendants seek declarations that: (i) Schwartz's appointment as trust protector was invalid; and (ii) any amendments to the Trust that Schwartz has made are therefore also invalid. On April 21, 2014, Keith filed a counterclaim seeking the removal of Peter, Ceth, and Mari as trustees of the Trust.

On April 17, 2014, the court issued an order finding that Schwartz must be dismissed from this case because he is not a real party in interest. On May 2, 2014, Schwartz and proposed additional plaintiff Larry S. McDevitt ("McDevitt") submitted a proposed amended complaint that asserts substantially the same claims as those asserted in the original complaint. The proposed amended Schwartz complaint asserts that the Wellin children have frustrated the intent and purposes of the Trust, which was to provide for Keith's lineal descendants, by liquidating Friendship Partners' assets and putting \$95 million of the proceeds into their own bank accounts, leaving about \$50 million to pay the Note. The proposed amended Schwartz complaint asserts six causes of action against defendants. Wellin I and Schwartz have been consolidated for purposes of pretrial discovery.

On March 21, 2014, defendants moved to compel Wendy to respond fully and completely to their February 2014 subpoena for documents and to produce a privilege log for any documents withheld on the basis of privilege. Wendy opposed the motion to compel on April 7, 2014.

On March 26, 2014, Keith filed a motion to compel his children's responses to his first requests for production. Defendants opposed the motion on April 14, 2014.

Also on March 26, defendants filed a motion to compel third-party Heather Lane ("Heather") to comply with their February 2014 subpoena. Heather opposed the motion on April 7, 2014.

On April 7, 2014, Wendy filed two motions to quash subpoenas issued to UBS Financial Services, Inc. and to UBS employee Brian McLoughlin insofar as those subpoenas relate to information about Wendy. Defendants opposed the motions on April 24, 2014.

On April 10, 2014, defendants filed a motion in limine to exclude portions of Keith's video deposition from trial. Keith opposed the motion on April 21, 2014.

On April 11, 2014, defendants moved for an order protecting Drs. Larry Tune and Laurie Culp from being deposed by Keith prior to defendants' expert disclosure deadline. Keith opposed the motion on April 21, 2014. Defendants replied on April 25, 2014.

3. Wellin II

On February 28, 2014, Keith filed a second complaint in this court against his three children. This complaint names Peter, Ceth, and Mari in their individual capacities as well as in their capacities as trustees for the Trust. Keith alleges that his children have refused to surrender \$50,211,447.00 owed to him as a result of the 2013 Swap and the subsequent liquidation of Friendship Partners. Wellin II Compl. ¶¶ 14-16. In Wellin II, Keith asserts a single claim for conversion against Peter, Ceth, and Mari.

On March 24, 2014, the Wellin children moved to dismiss this case on the basis that it violates the rule against claim splitting. On April 10, 2014, Keith opposed the motion. Peter, Ceth, and Mari replied to Keith's opposition on April 21, 2014.

4. Wellin III

On February 24, 2014, Keith and attorney Edward Bennett ("Bennett"), as Keith's special conservator, brought suit in Charleston County probate court against Peter, Ceth, and Mari. The Wellin III complaint alleges that Keith's children have failed to pay Keith about \$91 million, which Keith alleges is the value of the 58% interest in Friendship Partners for which Keith swapped the Note. Wellin III Compl. ¶¶ 6-12. This complaint asks the court to: (i) find that Keith swapped the Note for a 58% interest in Friendship Partners on November 20, 2013; (ii) determine the value of the 58% interest in Friendship Partners; and (iii) order Peter, Ceth, and Mari to pay Keith or Bennett the amounts owed to Keith as a result of Friendship Partner's liquidation, plus interest. Id. ¶¶ A-C.

On March 3, 2014, the Wellin children removed Wellin III to this court. On March 24, 2014, they moved to dismiss this case on the basis that it violates the rule against claim splitting. Bennett and Keith opposed the motion on April 10, 2014. Peter, Ceth, and Mari filed a reply on April 21, 2014.

The ten motions described above have been fully briefed and are ripe for the court's review. In addition, the court has had the benefit of oral arguments presented by the parties at a hearing held on May 13, 2014.

II. STANDARDS

A. Motions to Compel Discovery

The Federal Rules of Civil Procedure provide that a party may “obtain discovery regarding any non-privileged matter that is relevant to any party’s claim or defense, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons who know of any discoverable matters.” Fed. R. Civ. P. 26(b)(1). “Relevant information need not be admissible at trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” Id. Rather, information is relevant and discoverable if it relates to “any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.” Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978).

If a party declines to answer an interrogatory or request for production, the serving party “may move for an order compelling an answer, designation, production, or inspection.” Fed. R. Civ. P. 37(a)(3)(B). An evasive or incomplete disclosure, answer, or response, “must be treated as a failure to disclose, answer, or respond.” Fed. R. Civ. P. 37(a)(4). “The scope and conduct of discovery are within the sound discretion of the district court.” Columbus-Am. Discovery Grp. v. Atl. Mut. Ins. Co., 56 F.3d 556, 568 n.16 (4th Cir. 1995) (citing Erdmann v. Preferred Research, Inc. of Ga., 852 F.2d 788, 792 (4th Cir. 1988)).

B. Motions to Compel Compliance with or to Quash Subpoena

Under Rule 45 of the Federal Rules of Civil Procedure, a “command in a subpoena to produce documents . . . requires the responding person to permit inspection,

copying, testing, or sampling of the materials.” Fed. R. Civ. P. 45(a)(1)(D). If the person commanded to produce documents makes a timely written objection, “the serving party may move the court for the district where compliance is required for an order compelling production or inspection.” Fed. R. Civ. P. 45(d)(2)(B)(i). If the court orders compliance with the subpoena, production “may be required only as directed in the order, and the order must protect a person who is neither a party nor a party’s officer from significant expense resulting from compliance.” Fed. R. Civ. P. 45(d)(2)(B)(ii). Moreover,

A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must: (i) expressly make the claim; and (ii) describe the nature of the withheld documents . . . in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

Fed. R. Civ. P. 45(e)(2)(A). A court may, on timely motion, quash or modify a subpoena that subjects a person to undue burden or requires disclosure of privileged or other protected matter. Fed. R. Civ. P. 45(d)(3)(A). “[T]he scope of discovery allowed under a subpoena is the same as the scope of discovery allowed under Rule 26.” HDSherer LLC v. Natural Molecular Testing Corp., 292 F.R.D. 305, 308 (D.S.C. 2013).

C. Motion for Protective Order

The court has authority upon motion of a party and for good cause shown to limit discovery when “the discovery sought is unreasonably cumulative or duplicative” or “the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P. 26(b)(2)(C)(i), (iii); Nicholas v. Wyndham Int’l, Inc., 373 F.3d 537, 543 (4th Cir. 2004).

D. Motions to Dismiss

“As part of its general power to administer its docket, a district court may stay or dismiss a suit that is duplicative of another federal court suit.” Curtis v. Citibank, N.A., 226 F.3d 133, 138 (2d Cir. 2000) (citing Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976) (“As between federal district courts, . . . though no precise rule has evolved, the general principle is to avoid duplicative litigation.”)). There is a long history of American courts precluding duplicative litigation under certain circumstances. More than 120 years ago, the Supreme Court explained that:

When the pendency of such a suit is set up to defeat another, the case must be the same. There must be the same parties, or, at least, such as represent the same interests; there must be the same rights asserted and the same relief prayed for; the relief must be founded upon the same facts, and the title, or essential basis, of the relief sought must be the same.

The Haytian Republic, 154 U.S. 118, 124 (1894).

III. DISCUSSION

The court addresses the motions pending in Wellin I and Schwartz before turning to the motions to dismiss Wellin II and Wellin III.

A. Defendants’ Motion to Compel Wendy to Comply with Subpoena, Wellin I ECF No. 115 and Schwartz ECF No. 45

Defendants first seek an order compelling Wendy to comply with a subpoena issued on February 10, 2014. Among other things, defendants ask Wendy to provide all records relating to her and Keith’s finances since 2003, including records relating to their living expenses, charitable donations, gifts, real estate purchases, or other asset transfers they have made or contemplated; all documents relating to legal and estate planning advice that they have requested or received, including correspondence with Keith’s attorneys and accountants; and all correspondence with any third party – including

Keith's lawyers, UBS, and the Trust's corporate trustees – regarding the pending litigation and the issues raised therein, including the estate planning steps that Keith has taken since the litigation began. Defendants also ask Wendy to provide her cell phone for inspection. Wendy objects that the subpoena's production requests are overly broad, unduly burdensome, and unrelated to this litigation and that many responsive documents are subject to spousal or attorney-client privilege.

The claims asserted in Wellin I and Schwartz place Keith's present and past financial status and competence squarely at issue. Any asset transfers that Keith may have made to Wendy, and Keith and Wendy's joint financial status, are clearly relevant. The state of Wendy's finances also may tend to prove or disprove some elements of the claims and defenses asserted. In addition, the amount of control that Wendy may or may not exert over Keith's health care, finances, and estate planning may be relevant to the determination of Keith's capacity, which is at issue in this case.

Nevertheless, defendants' subpoena paints with too broad a brush. As a result, the court grants in part and denies in part defendants' motion to compel. Wendy is directed to respond fully to Requests 3, 7, 12, and 13. Wendy is further directed to respond to Requests 15 and 26 to the extent those requests seek documents and correspondence related to her own finances or her and Keith's joint finances. Wendy need not produce documents or correspondence that relate solely to Keith's finances. Wendy is also directed to respond to Requests 6, 8, 10, 19, 22, and 23 – questions for which she has asserted marital and/or attorney-client privilege – by producing all non-privileged documents as well as a privilege log. Because the court finds that Requests 1, 2, 4, 9, 11, 16, 17, and 28 are not reasonably calculated to lead to the discovery of admissible

evidence, Wendy need not respond to these questions. Wendy has produced documents responsive to Request 14 and defendants have not objected to the completeness of that production. Wendy need not respond further to Request 14. Finally, Wendy stated that she has no documents responsive to Requests 5, 18, 20, 21, 24, 25, and 27. She need not respond further to these requests.

B. Keith's Motion to Compel Responses to Requests for Production, Wellin I ECF No. 116 and Schwartz ECF No. 51

Keith asks the court to require Peter, Ceth, and Mari to respond to several requests for production issued on February 4, 2014. Among other things, these requests for production seek employment records, tax returns, and all financial and real estate records for the Wellin children. At issue are Requests 3, 6, 9, 10, 18, 19, 28, and 29. Keith contends that the requested documents must be disclosed because: (i) they will be relevant in ascertaining the amount of damages; (ii) they may reflect on any financial motives that Peter, Ceth, and Mari may have had to take the actions alleged in Wellin I's amended complaint; (iii) they may demonstrate "whether the 2009 transaction and the 2013 gifts were something out of the ordinary;" and (iv) Keith has, under the guarantee agreement associated with the November 2009 Transaction, the right to "request from each of his children information related to their net worth." Pl.'s Mot. 4-5. The Wellin children respond that these requests are not reasonably calculated to lead to the discovery of admissible evidence.

As with Wendy's financial status, the Wellin children's financial status may bear on some of the claims and defenses set forth in these cases. For all of the reasons that defendants may obtain information regarding Wendy's finances, it is appropriate to allow Keith to take similar discovery from his children.

In light of the foregoing, the court grants in part and denies in part Keith's motion to compel. Peter, Ceth, and Mari are directed to respond fully to Requests 3, 6, and 28. They are also directed to respond to Requests 10 and 18 by providing all responsive documents created within the past eight years. Because the court finds that Requests 9, 19, and 29 are not reasonably calculated to lead to the discovery of admissible evidence, the Wellin children need not respond to those document requests.

C. Defendants' Motion to Compel Heather to Comply with Subpoena, Wellin I ECF No. 117 and Schwartz ECF No. 49

Defendants also ask the court to compel Heather's compliance with a subpoena issued on February 10, 2014. Heather, Wendy's daughter, lives with Wendy and Keith. Heather answered the subpoena by stating that she had no responsive documents for fifteen of the seventeen document requests. She objected to Request 17, which asked her to produce her mobile phone for inspection. She responded to Request 6, regarding assets transferred to her by Keith and Wendy, by stating that Keith and Wendy gave her \$26,000.00 per year for several years prior to 2013 and that she received \$14,000.00 from each of them in 2013. Defendants now ask the court to order Heather to produce her mobile phone for inspection and to produce all documents related to the transactions she described in her response to Request 6.

Defendants have failed to articulate how Heather's response to Request 6 is insufficient. In light of the fact that Heather has already stated that she has no text messages or emails responsive to defendants' other document requests, inspection of Heather's cell phone appears to be nothing more than an impermissible fishing expedition. For these reasons, the court denies the motion to compel.

D. Wendy's Motions to Quash Subpoenas, Wellin I ECF Nos. 124-125 and Schwartz ECF Nos. 57-58

On March 10, 2014, defendants issued identical subpoenas to UBS Financial Services, Inc. and to UBS employee Brian McLoughlin. These subpoenas sought all emails, correspondence, and documents relating to Keith and Wendy's finances. In two identical motions, Wendy asks the court to quash the portions of these subpoenas insofar as they seek the "production of any document related to Wendy Wellin." Mots. Quash at 2. Wendy argues that all of the subpoenaed materials are irrelevant to this case because she is not a party to this action. Defendants respond that the assets that Keith has transferred to Wendy are highly relevant to this litigation because Keith has alleged that the November 2009 Transaction and 2013 Gifts have driven him to a financial precipice.

The test of discoverability is not whether a person is a party to a case. As described in section III.A, Wendy's financial status bears importantly on this case. The court denies these two motions to quash.

E. Defendants' Motion to Compel Keith to Produce Discovery, Wellin I ECF No. 126 and Schwartz ECF No. 59

Next, defendants ask the court to compel Keith, pursuant to defendants' first set of requests for production, to "produce all documents, including letters and emails, evidencing or otherwise relating to correspondence between [Keith] and Tom Farace or anyone else at Nixon Peabody since January of 2003 regarding [Keith's] estate planning . . ." Defs.' Mot. Compel Ex. A at 14, Wellin I ECF No. 126.

Until sometime in 2013, Farace handled all of Keith's estate planning. After that relationship ended, Nixon Peabody sent Keith their legal file for his estate plans. It is this file, as well as all communications that Keith had with Farace, (collectively, "the Farace

file”) that defendants seek. Keith asserts that the Farace file is subject to attorney-client privilege, but has not produced a privilege log. Defendants respond that Keith has waived privilege over the entire Farace file because he has placed the advice contained therein at issue in these cases.

Without delving into the parties’ substantive arguments, it is clear that the all-or-nothing approach espoused by each party is not the appropriate path forward. Defendants have requested documents over which Keith has asserted claims of privilege. Under Federal Rule of Civil Procedure 26(b)(1) and (5), Keith must now produce all non-privileged material contained in the Farace file as well as a log detailing all material over which he expressly asserts privilege.⁶ After Keith has produced all non-privileged material and a privilege log, defendants may challenge Keith’s assertions of privilege on a particularized basis.

In short, the court grants in part and denies in part defendants’ motion to compel Keith to produce the Farace file. Keith is directed to produce all non-privileged material contained in the Farace file as well as a privilege log.

F. Defendants’ Motion in Limine, Wellin I ECF No. 127 and Schwartz ECF No. 60

Defendants next ask the court to exclude certain portions of Keith’s testimony from trial. On February 4, 2014, the court granted Keith’s motion for an expedited video deposition in order to preserve Keith’s testimony for trial. Keith was deposed on February 7, 2014. Defendants contend that Keith’s counsel asked him a number of

⁶ As discussed during the hearing, at least some of the material contained in the Farace file may not be privileged – or any privilege may have been waived – on the basis that Keith shared that material with third parties.

impermissibly leading questions and argue that those portions of Keith's deposition should be excluded from trial.

Rule 611 of the Federal Rules of Evidence states that "Leading questions should not be used on direct examination except as necessary to develop the witness's testimony." Fed. R. Evid. 611(c). "The essential test of a leading question is whether it so suggests to the witness the specific tenor of the reply desired by counsel that such a reply is likely to be given irrespective of an actual memory." United States v. Durham, 319 F.2d 590, 592 (4th Cir. 1963).

Even taking into account Keith's language difficulties, it is clear that Keith's attorney asked a number of leading questions that were inappropriate on direct examination. These questions and Keith's responses thereto would be inadmissible at trial. For this reason, the court grants the motion in limine and will exclude portions of Keith's video deposition from trial. Those portions are highlighted in a copy of the deposition transcript attached to this order as Exhibit A.

Because portions of Keith's deposition are inadmissible, the court will allow counsel to re-depose Keith under the same conditions that governed his first video deposition. Keith's second video deposition, if his counsel chooses to take it, shall take place at Keith's home on a date and time mutually agreed upon by the parties. Plaintiff's counsel will have thirty minutes to depose Keith, after which Keith will be allowed to rest for some period of time. After Keith has rested, but also on the same day, defendants' counsel will have thirty minutes to cross-examine Keith. Because she is not a party in this case, Wendy will not be present in the home during Keith's deposition, rest period, and cross-examination. Because they are defendants in this case, Peter, Ceth, and Mari

may choose to attend Keith's deposition in person or via telephone. The video cameras installed in the home will be turned off for the duration of Keith's deposition, including the rest period and the cross-examination. This order and the deposition it authorizes do not preclude defendants from deposing Keith at another time in the future.

G. Defendants' Motion for Protective Order, Wellin I ECF No. 128 and Schwartz ECF No. 63

Defendants also move for a protective order that will prevent Drs. Larry Tune and Laurie Culp from appearing at depositions before they have been identified by defendants as testifying expert witnesses. Defendants argue that Drs. Tune and Culp are consulting expert witnesses and, as such, may not be deposed until they are identified as likely to testify at trial. Keith responds that deposing Drs. Tune and Culp is proper now because they have already conducted court-ordered mental examinations on Keith pursuant to Rule 35 of the Federal Rules of Civil Procedure.

For the reasons stated in open court on May 13, 2014, the court grants in part and denies in part defendants' motion for a protective order. The court grants the motion insofar as it relates to Dr. Culp. Dr. Culp may not be deposed by Keith unless and until defendants designate her as a testifying witness. The court denies the motion insofar as it relates to Dr. Tune. If he so chooses, Keith may depose Dr. Tune before defendants' July 2014 expert disclosure deadline. The court notes, however, that Keith will only be permitted to depose Dr. Tune once, barring compelling reasons to the contrary. The court also directs defendants to provide Keith with copies of Dr. Culp's and Dr. Tune's Rule 35 examination reports by June 13, 2014 at 5:00 p.m.

H. Defendants' Motions to Dismiss, Wellin II ECF No. 6 and Wellin III ECF No. 9

Peter, Ceth, and Mari have moved to dismiss Wellin II and Wellin III on the basis that those cases violate the rule against claim splitting. Specifically, the Wellin children argue that Wellin II and Wellin III must be dismissed because they arise out of the same core of operative facts and concern the same parties as Wellin I.

“The rule against claim splitting is one of the principles of res judicata,” also known as claim preclusion. Sensormatic Sec. Corp. v. Sensormatic Elecs. Corp., 273 F. App'x 256, 264 (4th Cir. 2008) (citing Nash Cnty. Bd. of Educ. v. Biltmore Co., 640 F.2d 484, 490 (4th Cir. 1981)). Specifically, the rule “prohibits a plaintiff from prosecuting its case piecemeal and requires that all claims arising out of a single wrong be presented in one action.” Id. at 265 (quotations omitted). Under this rule, a first lawsuit will bar a second lawsuit when there is: (i) “an identity of the cause of action in both the earlier and the later suit; and [(ii)] an identity of parties or their privies in the two suits.” Pueschel v. United States, 369 F.3d 345, 354-55 (4th Cir. 2004).

1. Identity of causes of action

Peter, Ceth, and Mari first assert that Wellin II and Wellin III must be dismissed because the claims asserted therein arise out of the same transactions and core of operative facts that are addressed in Wellin I.

The claims asserted in the lawsuits in question need not be identical for the rule against claim splitting to apply. Id. at 355. Rather, “an identity of the cause of action” means that both causes of action must “arise out of the same transaction or series of transactions or the same core of operative facts.” Id. (quoting In re Varat Enters., Inc., 81 F.3d 1310, 1316 (4th Cir. 1996)). “Among the factors to be considered in deciding

whether the facts of the current and prior claims are so woven together that they constitute a single claim are their relatedness in time, space, origin, or motivation, and whether, taken together, they form a convenient unit for trial purposes.” Pittston Co. v. United States, 199 F.3d 694, 704 (4th Cir. 1999).

All three complaints provide a factual narrative that includes the 2013 Swap and subsequent liquidation of Friendship Partners. Wellin I Am. Compl. ¶¶ 104-122; Wellin II Compl. ¶¶ 14-17; Wellin III Compl. ¶¶ 6-12. In all three complaints, Keith seeks relief on the basis that his children have improperly withheld money owed to him as a result of the 2013 Swap and subsequent liquidation of Friendship Partners. Wellin I Am. Compl. ¶ 220; Wellin II Compl. ¶ 19; Wellin III Compl. ¶¶ 18, B. These are precisely the sort of duplicative claims that the rule against claim splitting is designed to prevent.⁷ See Pueschel, 369 F.3d at 355 (holding that a plaintiff’s Federal Tort Claims Act suit against her government employer was barred because she had previously filed a Title VII lawsuit that sought relief for the same pattern of conduct). In short, there is identity between the causes of action asserted in Wellin II and Wellin III and the eleventh cause of action in Wellin I.

2. Identity of parties or their privies

Peter, Ceth, and Mari next assert that the parties in all three cases are sufficiently identical such that dismissal of Wellin II and Wellin III would be appropriate.

⁷ The fact that Wellin III would have been subject to the jurisdictional limitations of Charleston County probate court had it remained there does not affect the court’s decision. First, Wellin I, the first Wellin case filed in federal court, is not subject to the jurisdictional limitations of state probate court. As a result, Keith was able to seek, through Wellin I, the full panoply of relief that may be available to him under the law. Second, Wellin III has been removed to federal court and removal has not been challenged. As a result, this case is distinguishable from Wathan v. Pazin, No. 07-cv-0874-AWI, 2007 WL 4181716 (E.D. Cal. Nov. 21, 2007), in which a California district court remanded a case to state court, allowing duplicative claims to proceed in parallel state and federal proceedings.

In addition to identity of claims, the rule against claim splitting requires the “identity of parties or their privies.” Pueschel, 369 F.3d at 355. “To be in privity with a party to a former litigation, the non-party must be so identified in interest with a party to former litigation that he represents precisely the same legal right in respect to the subject matter involved.” Martin v. Am. Bancorporation Ret. Plan, 407 F.3d 643, 651 (4th Cir. 2005).

Keith does not argue – and he could not credibly do so – that the parties in Wellin I and Wellin II are anything other than identical. What remains to be considered is whether there is identity of the parties in Wellin I and Wellin III.

In Wellin I, Keith appears both in his individual capacity as well as in his capacity as a trustee of the Keith S. Wellin Florida Revocable Living Trust. Peter, Ceth, and Mari are named as defendants in their individual capacities as well as in their capacities as trustees and beneficiaries of the Trust. In Wellin III, Keith and Bennett have sued Peter, Ceth, and Mari. Bennett admits that “as Special Conservator for Mr. Wellin appointed by the Probate Court, [he] is in privity with Mr. Wellin,” but asserts that this admission does not end the inquiry. Wellin III Pls.’ Opp’n Mot. Dismiss 6.

Though Bennett protests to the contrary, his admission is conclusive. A privy is “[a] person having a legal interest of privity in any action, matter, or property; a person who is in privity with another.” Black’s Law Dictionary (9th ed. 2009). In the context of litigation, the term “privy” “includes someone who controls a lawsuit though not a party to it [as well as] someone whose interests are represented by a party to the lawsuit.” Id. Because Bennett admits that he is in privity with Keith, he is Keith’s privy. Put another way, Bennett’s only legal rights and interests in Wellin III are those that he asserts on

Keith's behalf.⁸ As a result, there is identity of parties in Wellin I, Wellin II, and Wellin III for purposes of the rule against claim-splitting.

Because there is identity of both claims and parties in Wellin I, Wellin II, and Wellin III, the court finds that Wellin II and Wellin III violate the rule against claim splitting. Keith can seek – and, indeed, already has sought – relief for his children's alleged wrongs through Wellin I. If Keith wishes to pursue additional claims against his children on the basis of the November 2009 Transaction, the 2013 Gifts, the 2013 Swap, or the alleged conversion of \$50,211,447.00, he should seek to further amend the Wellin I complaint. To allow Wellin II and Wellin III to proceed would waste the parties' time and money as well as precious judicial resources.

III. CONCLUSION

In light of the foregoing, the court:

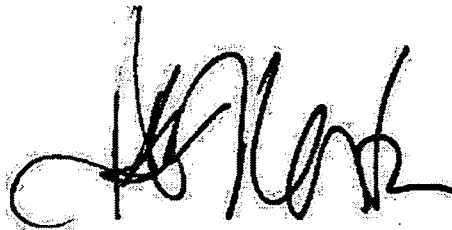
1. **GRANTS IN PART AND DENIES IN PART** defendants' motion to compel Wendy to comply with their subpoena, Wellin I ECF No. 115 and Schwartz ECF No. 45;
2. **GRANTS IN PART AND DENIES IN PART** Keith's motion to compel, Wellin I ECF No. 116 and Schwartz ECF No. 51;
3. **DENIES** defendants' motion to compel Heather to comply with their subpoena, Wellin I ECF No. 117 and Schwartz ECF No. 49;
4. **DENIES** Wendy's motion to quash the subpoena issued to UBS Financial Services, Inc., Wellin I ECF No. 124 and Schwartz ECF No. 57;

⁸ At the hearing held on May 13, 2014, Bennett's counsel noted that the position of "special conservator" is not one recognized by South Carolina law. She explained that the state probate judge created the position for Bennett as a means of brokering a compromise between the parties, who dispute whether Keith is capable of managing his affairs. Counsel's admission underscores the finding that the parties in these cases are identical. Because Bennett appears on Keith's behalf in a role not recognized by the law, it is unlikely that Bennett would be able to demonstrate that he has standing to assert his claim.

5. **DENIES** Wendy's motion to quash the subpoena issued to Brian McLoughlin, Wellin I ECF No. 125 and Schwartz ECF No. 58;
6. **GRANTS IN PART AND DENIES IN PART** defendants' motion to compel Keith to produce the Farace file, Wellin I ECF No. 126 and Schwartz ECF No. 59;
7. **GRANTS** defendants' motion in limine, Wellin I ECF No. 127 and Schwartz ECF No. 60;
8. **GRANTS IN PART AND DENIES IN PART** defendants' motion for protective order, Wellin I ECF No. 128 and Schwartz ECF No. 63;
9. **GRANTS** the Wellin children's motion to dismiss, Wellin II ECF No. 6; and
10. **GRANTS** the Wellin children's motion to dismiss, Wellin III ECF No. 9.

The court **DISMISSES** without prejudice Wellin v. Wellin, Docket No. 14-cv-00579, and Wellin v. Wellin, Docket No. 14-cv-00652. The court **WILL EXCLUDE** from trial the portions of Keith's February 7, 2014 video deposition that are highlighted in the deposition transcript copy attached hereto as Exhibit A. Defendants are **DIRECTED** to provide Keith with Dr. Tune's and Dr. Culp's Rule 35 medical reports by Friday, June 13, 2014 at 5:00 p.m.

AND IT IS SO ORDERED.



DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

May 28, 2014
Charleston, South Carolina

Exhibit A

1

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

KEITH WELLIN, et al.,

Plaintiff,

vs.

CASE NO. 2:13-cv-01831-DCN

PETER J. WELLIN, et al.,

Defendants.

LESTER S. SCHWARTZ,

Plaintiff,

vs.

CASE NO. 2:13-cv-03595-DCN

PETER J. WELLIN, et al.,

Defendants.

VIDEOTAPED

DEPOSITION OF: KEITH S. WELLIN

DATE: February 7, 2014

TIME: 10:00 AM

LOCATION: 126 Tradd Street
Charleston, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: MARIE H. BRUEGGER, RPR, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Keith Wellin, et al vs
Peter J. Wellin, et al

Keith Wellin
February 7, 2014

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1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF

3 KEITH WELLIN:

4 HOOD LAW FIRM

5 BY: ROBERT H. HOOD

6 JAMES B. HOOD

7 172 Meeting Street

8 Charleston, SC 29401

9 (843)577-1214

10 bobby.hood@hoodlaw.com

11 james.hood@hoodlaw.com

12

13 ATTORNEYS FOR THE PLAINTIFF

14 LESTER S. SCHWARTZ:

15 ROSEN, ROSEN & HAGOOD

16 BY: H. BREWTON HAGOOD

17 151 Meeting Street, Suite 400

18 Charleston, SC 29401

19 (843)577-6726

20 bhagood@rrhlawfirm.com

21

22 ATTORNEYS FOR THE DEFENDANTS

23 PETER J. WELLIN, CYNTHIA W. PLUM, and

24 MARJORIE KING:

25 NELSON MULLINS

BY: ROBERT H. BRUNSON

BRYSON M. GEER

Liberty Center, Sixth Floor

151 Meeting Street

Charleston, SC 29401

(843)534-4221

robert.brunson@nelsonmullins.com

bryson.geer@nelsonmullins.com

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1 STIPULATION

2 It is stipulated by and among Counsel

3 that this deposition is being taken in accordance

4 with the Federal Rules of Civil Procedure; that

5 all objections as to Notice of this deposition are

6 hereby waived; that all objections except as to

7 form are reserved until the time of trial; and

8 that the deponent reserves reading and signing of

9 this deposition.

10 * * * * *

11 (PLF. EXH. 7, Answers to Defendants'

12 First Interrogatories to Keith S. Wellin, were

13 marked for identification.)

14 MR. ROBERT HOOD: This is the

15 deposition of the plaintiff, Keith Wellin, in a

16 case pending in the federal district court for

17 preservation purposes ordered by Judge David

18 Norton. Present are the parties, a speech

19 therapist, and the plaintiff.

20 I would ask the court reporter to

21 please swear in Mr. Wellin and the therapist.

22 BRITTNI CARNES

23 was placed under oath and interpreted the

24 proceeding:

25

Page 3

1 APPEARANCES CONTINUED:

2 ALSO PRESENT:

3 Steven Barksdale, Legal Videographer

4 Brittni Carnes, Speech Therapist

5 Lester S. Schwartz

6 Peter J. Wellin

7 Cynthia W. Plum

8

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12 (INDEX AT REAR OF TRANSCRIPT)

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Page 5

1 KEITH S. WELLIN

2 being first duly sworn, testified as follows:

3 EXAMINATION

4 BY MR. ROBERT HOOD:

5 Q. Good morning, Keith. How are you

6 today?

7 A. I'm fine.

8 Q. Good. It's February the 7th. Where

9 are we today? What town are we in?

10 A. Charleston.

11 Q. And where are we physically in

12 Charleston?

13 A. On Tradd Street.

14 Q. At your house on Tradd Street?

15 A. 126.

16 Q. What did he say?

17 A. 126 --

18 THE THERAPIST: 126.

19 THE WITNESS: -- Tradd Street.

20 BY MR. ROBERT HOOD:

21 Q. 126 Tradd Street.

22 And today are you on any medicine --

23 MR. BRUNSON: Does she need a

24 microphone?

25 BY MR. ROBERT HOOD:

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Peter J. Wellin, et al

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February 7, 2014

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1 Q. Are you on any medication of any kind
2 that would impair your ability to intelligently
3 understand and answer my questions?
4 A. No.
5 Q. Do you realize that you're under oath,
6 that we're videotaping this deposition and your
7 answers to my questions?
8 A. Yeah.
9 Q. First, as to your estate planning, in
10 creating your estate plan, did you allow your
11 attorney to work with and communicate with your
12 children?
13 A. Yeah.
14 Q. And why did you do that?
15 A. I had faith in them.
16 Q. You had faith in your children?
17 A. I trusted them.
18 Q. You trusted them.
19 And did Tom Farace communicate mainly
20 with your children?
21 A. Yes.
22 Q. And because Tom Farace was your lawyer
23 and your children were acting in a fiduciary
24 capacity, did you believe the communications were
25 privileged?

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1 MR. BRUNSON: Object to the form.
2 BY MR. ROBERT HOOD:
3 Q. Did you believe -- it's okay. Did you
4 believe the communications were privileged?
5 MR. BRUNSON: Same objection.
6 THE WITNESS: Uh-huh.
7 BY MR. ROBERT HOOD:
8 Q. Your answer is yes?
9 A. Yes.
10 Q. And do you maintain that they are
11 privileged up to today?
12 MR. BRUNSON: Same objection.
13 THE WITNESS: I do.
14 BY MR. ROBERT HOOD:
15 Q. You do was your answer?
16 A. (Witness nods head affirmatively.)
17 (PLF. EXH. 1, Wellin Family 2009
18 Irrevocable Trust, was marked for identification.)
19 BY MR. ROBERT HOOD:
20 Q. Now, on November the 20th, 2013, there
21 was a substitution of assets and a sale of stock.
22 Did you have a chance to review, prior to today's
23 deposition, Exhibit 1, which is the Wellin Family
24 2009 Irrevocable Trust?
25 A. No.

Page 8

1 Q. Did you review the trust, the trust
2 documents?
3 A. (Witness shakes head negatively.)
4 Q. Have you reviewed it at some point in
5 the past?
6 A. (Witness shakes head negatively.)
7 Q. Let me show you what I'm talking
8 about, Exhibit 1. This is the Wellin Family
9 Irrevocable Trust. At some point in the past,
10 have you read that document?
11 A. I haven't read it.
12 MR. BRUNSON: I'm sorry. I didn't
13 understand that answer.
14 THE THERAPIST: I haven't read it.
15 MR. BRUNSON: I have not read it,
16 okay.
17 BY MR. ROBERT HOOD:
18 Q. Did you say you have not read it?
19 A. I haven't read it.
20 THE THERAPIST: Try one more time,
21 Keith. Deep breath. Really loud.
22 BY MR. ROBERT HOOD:
23 Q. Have you read the document at some
24 point in the past, the irrevocable trust document?
25 A. No.

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1 Q. Okay. And do you remember that in
2 2013, November the 20th, was it your intent to
3 substitute the promissory note issued in this
4 trust for an equally-valued interest in the
5 Friendship Partners?
6 MR. BRUNSON: Objection, leading.
7 (PLF. EXH. 2, Exercise of Right of
8 Substitution, was marked for identification.)
9 BY MR. ROBERT HOOD:
10 Q. And was that done in Exhibit 2 with
11 your signature?
12 MR. BRUNSON: Same objection.
13 MR. ROBERT HOOD: Could you hand that
14 to him?
15 THE WITNESS: Uh-huh.
16 BY MR. ROBERT HOOD:
17 Q. Is that your signature?
18 A. Yes.
19 Q. Sir?
20 A. Yes.
21 Q. Yes, okay.
22 MR. BRUNSON: I'm not clear as to
23 whether he's answering is that his signature or if
24 he was answering the prior question.
25 MR. ROBERT HOOD: Thank you.

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Keith Wellin
February 7, 2014

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1 **MR. BRUNSON:** I was going to give you
2 an opportunity to clarify that if you'd like.
3 **BY MR. ROBERT HOOD:**
4 **Q. Is this your signature, Mr. Wellin?**
5 A. It is my signature.
6 **MR. BRUNSON:** Thank you.
7 **BY MR. ROBERT HOOD:**
8 **Q. And did you sign the instrument making**
9 **this substitution of assets freely and**
10 **voluntarily?**
11 A. Yes.
12 **Q. And were you unduly influenced in**
13 **making this decision in any way?**
14 A. In no way.
15 **MR. BRUNSON:** Object to the form,
16 leading.
17 (PLF. EXH. 3, Release of Right of
18 Substitution, was marked for identification.)
19 **BY MR. ROBERT HOOD:**
20 **Q. And Exhibit 3 is the release of the**
21 **right of substitution. Is that your signature?**
22 A. Yes.
23 **Q. And was it your intent to release your**
24 **substitution power under the trust after making**
25 **this substitution?**

Page 11

1 **MR. BRUNSON:** Objection, leading.
2 **BY MR. ROBERT HOOD:**
3 **Q. Did you sign that instrument making**
4 **this release freely and voluntarily?**
5 A. I did.
6 **MR. BRUNSON:** Objection, leading.
7 **BY MR. ROBERT HOOD:**
8 **Q. And were you unduly influenced in**
9 **making the decision to release this power in any**
10 **way?**
11 A. Absolutely not.
12 **MR. BRUNSON:** Objection, leading,
13 calls for a legal conclusion.
14 **BY MR. ROBERT HOOD:**
15 **Q. Did you approve your children**
16 **liquidating the Friendship Partners and selling**
17 **the Berkshire stock, ultimately taking**
18 **\$31 million, each of them, from you?**
19 **MR. BRUNSON:** Objection, leading.
20 **THE WITNESS:** Absolutely not.
21 **BY MR. ROBERT HOOD:**
22 **Q. How would you describe what your**
23 **children have done to you?**
24 A. They stole that stock and to steal
25 money from me.

Page 12

1 **Q. They stole money from you?**
2 A. Uh-huh.
3 **Q. Money you made in your lifetime?**
4 **MR. BRUNSON:** Objection, leading.
5 **THE WITNESS:** Correct.
6 **BY MR. ROBERT HOOD:**
7 **Q. And was that money you made in your**
8 **lifetime?**
9 A. Yes.
10 (PLF. EXH. 4, Trust Protector Removal
11 and Successor Trust Protector Appointment, was
12 marked for identification.)
13 **BY MR. ROBERT HOOD:**
14 **Q. And Exhibit 4 is the removal of the**
15 **trust protector, Tom Farace, and the appointment**
16 **of Lester Schwartz. Is that your signature?**
17 A. Uh-huh.
18 **Q. Your answer's yes?**
19 A. Yes.
20 **Q. Was it your intent to remove**
21 **Mr. Farace and appoint Lester Schwartz as trust**
22 **protector on November the 20th, 2013?**
23 **MR. BRUNSON:** Objection.
24 **THE WITNESS:** Absolutely.
25 **MR. BRUNSON:** Objection, leading.

Page 13

1 **BY MR. ROBERT HOOD:**
2 **Q. Prior to doing so, did you have an**
3 **opportunity to meet Mr. Schwartz?**
4 A. I did.
5 **Q. And did you understand that**
6 **Mr. Schwartz would make decisions to exercise or**
7 **not exercise his powers as trust protector in his**
8 **sole and absolute discretion?**
9 **THE WITNESS:** Uh-huh.
10 **MR. BRUNSON:** Objection, leading.
11 **BY MR. ROBERT HOOD:**
12 **Q. And did you sign Exhibit 4 removing**
13 **Farace --**
14 **MR. BRUNSON:** I'm sorry. I'm sorry,
15 Mr. Hood. I didn't hear the answer to that last
16 question.
17 **MR. ROBERT HOOD:** He said yes.
18 **BY MR. ROBERT HOOD:**
19 **Q. Did you sign Exhibit 4, removing**
20 **Mr. Farace and appointing Mr. Schwartz as trust**
21 **protector, freely and voluntarily?**
22 **MR. BRUNSON:** Objection, leading.
23 **THE WITNESS:** I did.
24 **BY MR. ROBERT HOOD:**
25 **Q. Were you unduly influenced in making**

Keith Wellin, et al vs
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1 this decision?
2 **MR. BRUNSON:** I'm sorry. Did he say
3 yes or no to that?
4 **THE THERAPIST:** He said: I did. He
5 said yes.
6 **MR. BRUNSON:** Thank you.
7 **MR. ROBERT HOOD:** If you would allow
8 me, please, to continue.
9 **BY MR. ROBERT HOOD:**
10 **Q.** Did you make that decision without any
11 undue influence?
12 **MR. BRUNSON:** Objection, leading.
13 **THE WITNESS:** Absolutely.
14 **BY MR. ROBERT HOOD:**
15 **Q.** Now, there were some gifts made in
16 2013. Between 2009 and January 2013, was Peter
17 your power and Ceth your successor power of
18 attorney?
19 **A.** They were.
20 **Q.** And did you place special trust and
21 confidence in your son and daughter to manage or
22 assist in managing your affairs during
23 November 2009 and January 2013?
24 **A.** At that time I did.
25 **MR. BRUNSON:** Objection, leading.

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1 **BY MR. ROBERT HOOD:**
2 **Q.** Did you at the time consider Peter to
3 be a knowledgeable person, acting in your best
4 interests, from a financial, accounting, and
5 estate planning perspective?
6 **A.** I did. At that time I did.
7 **MR. BRUNSON:** Objection, leading.
8 If you could please instruct the
9 witness to just wait a second before he answers so
10 that I have an opportunity to object.
11 **BY MR. ROBERT HOOD:**
12 **Q.** Did you make gifts of \$10 million in
13 cash to each of your children in January of 2013?
14 **A.** Yes.
15 **Q.** Did you believe that you had enough
16 liquid assets to cover these gifts to allow you to
17 maintain your lifestyle and to provide for your
18 wife, Wendy, and others as your then estate
19 planning documents provided?
20 **A.** I did.
21 **Q.** And were you aware that these gifts
22 were in cash?
23 **A.** No.
24 **Q.** And did you understand that because
25 stocks were sold to make the gifts, it would

Page 16

1 actually cost you \$57 million to make \$30 million
2 in gifts?
3 **A.** Never.
4 **Q.** And did Peter and Ceth ever make you
5 aware of the tax consequences and financial
6 implications associated with making these gifts?
7 **A.** They did not.
8 **MR. BRUNSON:** Objection, leading.
9 **BY MR. ROBERT HOOD:**
10 **Q.** Did Peter or Ceth ever tell you that
11 you did not have sufficient liquid assets to cover
12 these gifts?
13 **MR. BRUNSON:** Objection, leading.
14 **THE WITNESS:** No.
15 **BY MR. ROBERT HOOD:**
16 **Q.** Did Peter or Ceth ever suggest to you
17 that you obtain other advice from other attorneys,
18 an accountant, before making these gifts?
19 **MR. BRUNSON:** Objection, leading.
20 **THE WITNESS:** Never.
21 **BY MR. ROBERT HOOD:**
22 **Q.** Did Mike Simons -- if Mike Simons had
23 advised you, your accountant, against making these
24 gifts in 2013, would you still have made them?
25 **MR. BRUNSON:** Objection, leading.

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1 **THE WITNESS:** No.
2 **BY MR. ROBERT HOOD:**
3 **Q.** Did Peter encourage you to make these
4 gifts in January 2013?
5 **MR. BRUNSON:** Objection, leading.
6 **THE WITNESS:** No.
7 **BY MR. ROBERT HOOD:**
8 **Q.** And did you rely on the advice and
9 representations Peter and Ceth made in making
10 these gifts?
11 **A.** I did.
12 **MR. BRUNSON:** Objection, leading.
13 **BY MR. ROBERT HOOD:**
14 **Q.** And had you known the financial
15 consequences of making these gifts, would you have
16 made them?
17 **MR. BRUNSON:** Objection, leading.
18 **THE WITNESS:** No.
19 **BY MR. ROBERT HOOD:**
20 **Q.** Did you feel that your three children
21 misled you about the nature of these gifts and
22 acted against your interest?
23 **MR. BRUNSON:** Objection, leading.
24 **THE WITNESS:** I do.
25 **BY MR. ROBERT HOOD:**

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Keith Wellin
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1 Q. Sir?
2 A. Yes.
3 Q. Do you now wish to recover the value
4 of these gifts?
5 A. I would like to.
6 Q. The November '09 transaction, before
7 2013, did you ever understand that you were
8 selling 98.9 percent interest in Friendship
9 Partners to the 2009 Trust?
10 MR. BRUNSON: Objection, leading.
11 THE WITNESS: No.
12 BY MR. ROBERT HOOD:
13 Q. Were you in regular contact with Tom
14 Farace during the fall of 2009 as this transaction
15 developed?
16 A. No.
17 Q. Did you --
18 THE THERAPIST: He's going to answer.
19 THE WITNESS: No. I hardly heard from
20 him.
21 BY MR. ROBERT HOOD:
22 Q. No. I hardly heard from him. Is that
23 what you said? Thank you.
24 Did you trust your children and
25 believe that they would act in your best interest

Page 19

1 in discussing matters with Tom Farace?
2 MR. BRUNSON: Objection, leading.
3 THE WITNESS: I did.
4 BY MR. ROBERT HOOD:
5 Q. And what, if anything, did Peter tell
6 you about the November 2009 transaction?
7 A. Nothing.
8 Q. Did Peter ever tell you that that
9 transaction was a tax advantaged transaction?
10 MR. BRUNSON: Objection, leading.
11 BY MR. ROBERT HOOD:
12 Q. Did Peter tell you it was a tax
13 advantaged transaction?
14 A. Yes.
15 MR. BRUNSON: Objection, leading.
16 BY MR. ROBERT HOOD:
17 Q. Sir?
18 A. He did.
19 Q. He did.
20 From '09 to '13, as modifications were
21 made to the promissory note, did Peter or Ceth
22 ever explain to you the true nature of the
23 transaction as you now understand it?
24 MR. BRUNSON: Objection, leading.
25 THE WITNESS: No.

Page 20

1 BY MR. ROBERT HOOD:
2 Q. Did Peter tell you or lead you to
3 believe that this transaction was in your best
4 interest?
5 MR. BRUNSON: Objection, leading.
6 THE WITNESS: Yes.
7 BY MR. ROBERT HOOD:
8 Q. And did you rely upon this statement
9 in consenting to this transaction?
10 A. Absolutely.
11 MR. BRUNSON: Objection, leading.
12 BY MR. ROBERT HOOD:
13 Q. Was this statement by Peter, in fact,
14 true?
15 MR. BRUNSON: Objection, leading.
16 THE WITNESS: No.
17 BY MR. ROBERT HOOD:
18 Q. In effect, Mr. Wellin, did you
19 understand that in making this transaction, you
20 were transferring to your three children the stock
21 or money the stock was worth and taking a tax
22 liability upon yourself by retaining no upside
23 possibility other than minimal interest?
24 MR. BRUNSON: Objection, leading.
25 THE WITNESS: No. I didn't understand

Page 21

1 that at all.
2 BY MR. ROBERT HOOD:
3 Q. You did not understand that at all.
4 Was any of this told to you by Peter
5 or Ceth?
6 MR. BRUNSON: Objection, leading.
7 BY MR. ROBERT HOOD:
8 Q. The tax liability.
9 A. No.
10 Q. If you had been aware of the tax
11 consequences and other implications of the 2009
12 transaction, would you have consented to it?
13 MR. BRUNSON: Objection, leading.
14 THE WITNESS: I would not.
15 BY MR. ROBERT HOOD:
16 Q. Did you first learn of the
17 implications of what they did to you after meeting
18 and hiring Edward Bennett in 2013?
19 A. That's correct.
20 Q. And prior to that, did you ever
21 understand the nature of this transaction?
22 A. No.
23 Q. Do you feel that your three children
24 misled you about the nature of this transaction
25 and acted against your best interest?

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Peter J. Wellin, et al

Keith Wellin
February 7, 2014

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1 **MR. BRUNSON:** Objection, leading.
2 **THE WITNESS:** I do.
3 **BY MR. ROBERT HOOD:**
4 **Q.** Do you now wish to undo this
5 transaction?
6 A. I would like to.
7 **MR. BRUNSON:** Objection, leading.
8 **BY MR. ROBERT HOOD:**
9 **Q.** Now, this lawsuit, was this lawsuit
10 your idea?
11 A. Absolutely.
12 **Q.** Do you still want to pursue this
13 lawsuit, Mr. Wellin?
14 A. Until I drop dead.
15 **Q.** Did you review and approve this
16 lawsuit before I filed it?
17 A. I absolutely did.
18 (PLF. EXH. 5, Verified Complaint, was
19 marked for identification.)
20 **BY MR. ROBERT HOOD:**
21 **Q.** That's Exhibit 5. And you verified
22 the complaint on Exhibit 5, I believe. Is this
23 your signature on the last page? Next-to-the-last
24 page, probably. That's our lawsuit against them.
25 A. Uh-huh.

Page 23

1 **Q.** Is that your signature?
2 A. Yes.
3 **Q.** Sir?
4 A. Yes, it is.
5 **Q.** And did you thereby verify the
6 truthfulness and correctness of this lawsuit we
7 brought?
8 A. Uh-huh.
9 **MR. BRUNSON:** Objection, leading.
10 **BY MR. ROBERT HOOD:**
11 **Q.** Thank you. And your answer is yes?
12 A. Yes.
13 **Q.** Now, we also hired an attorney -- you
14 hired an attorney in Delaware and brought a
15 lawsuit there, and you verified the complaint in
16 Delaware as well. Is that correct?
17 A. That's correct.
18 (PLF. EXH. 6, Verified Complaint for
19 Injunctive and Declaratory Relief, was marked for
20 identification.)
21 **MR. ROBERT HOOD:** And the Delaware
22 complaint will be Exhibit 6.
23 **BY MR. ROBERT HOOD:**
24 **Q.** Are you aware that your children
25 maintain that this lawsuit is Wendy's bidding?

Page 24

1 A. My what?
2 **Q.** That your children are claiming that
3 this lawsuit is being brought because Wendy's
4 making you do it.
5 A. She didn't have a damn thing to do
6 with it.
7 **Q.** Is that crystal clear to you?
8 **MR. BRUNSON:** Objection to the form.
9 **BY MR. ROBERT HOOD:**
10 **Q.** Is that your truthful response, that
11 this is your lawsuit?
12 A. Absolutely. Wendy didn't have
13 anything to do with it.
14 **Q.** Every time we have a hearing, this
15 lawyer over here says this is Wendy's lawsuit.
16 Whose lawsuit is this?
17 A. He doesn't know what he's talking
18 about.
19 **MR. BRUNSON:** Objection, leading.
20 **THE WITNESS:** He's full of it.
21 **BY MR. ROBERT HOOD:**
22 **Q.** He's full of it. I agree with you.
23 Are you aware --
24 **MR. BRUNSON:** Objection and move to
25 strike.

Page 25

1 **BY MR. ROBERT HOOD:**
2 **Q.** Are you -- well, if someone claims
3 that this is Wendy's lawsuit and her doing and not
4 yours, would that be truthful?
5 A. No.
6 **MR. BRUNSON:** Objection, leading.
7 **BY MR. ROBERT HOOD:**
8 **Q.** Are you aware that your children
9 maintain -- I'm sorry. I just asked that.
10 How do you describe your feelings
11 towards Wendy?
12 A. I love her. I am completely dependent
13 on her in most matters except this. This is my
14 doing.
15 **Q.** You love her, you're completely
16 dependent upon her, and what was the other thing?
17 A. In most matters, but this is my doing.
18 **Q.** This lawsuit. Sir, is that correct?
19 A. Yes.
20 **Q.** Sir? It is?
21 A. (Witness nods head affirmatively.)
22 **Q.** Okay. Did you enter into a prenuptial
23 agreement with Wendy when y'all got married years
24 ago, prenuptial agreement?
25 A. I did.

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Peter J. Wellin, et al

Keith Wellin
February 7, 2014

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1 Q. No one disputes y'all had a prenuptial
2 agreement, but was that -- did that agreement go
3 into effect if you divorced?

4 MR. BRUNSON: Did he answer the first
5 question? Was that a yes or a no?

6 THE THERAPIST: I believe it was a
7 yes.

8 BY MR. ROBERT HOOD:

9 Q. Did you enter -- I'll ask it again.
10 Did you enter into a prenuptial agreement with
11 Wendy when y'all got married?

12 A. I did.

13 MR. BRUNSON: Is that a yes?

14 BY MR. ROBERT HOOD:

15 Q. Is that a yes answer?

16 A. Uh-huh.

17 Q. And you shook your head yes.
18 Was it your idea that your children be
19 parties to this agreement?

20 A. I can't remember, but I guess so.

21 Q. You can't remember, but you guess so.

22 Do you know whose idea it was? You
23 just don't remember?

24 MR. BRUNSON: Object to the form.

25 THE WITNESS: I don't remember.

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1 BY MR. ROBERT HOOD:

2 Q. If you do, you do. If you don't, you
3 don't. It's been a while.

4 A. I don't.

5 Q. Was it your intent that the prenuptial
6 agreement limit what you would give Wendy during
7 your lifetime or at your death?

8 A. Absolutely not.

9 Q. Would you ever want to tie your hands
10 on what gifts you could give to your wife during
11 your lifetime or at your death?

12 A. No.

13 MR. BRUNSON: Objection, leading.

14 BY MR. ROBERT HOOD:

15 Q. Did you understand that the prenuptial
16 agreement only came into play if there was a
17 divorce?

18 A. I don't remember.

19 Q. Did you transfer \$4.5 million to Wendy
20 to purchase y'all's home on Sullivan's Island?

21 A. I did.

22 Q. Did you do that voluntarily?

23 A. Yes.

24 MR. BRUNSON: Objection, leading.

25 BY MR. ROBERT HOOD:

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1 Q. Do you intend for Wendy to own that
2 home?

3 A. I do.

4 MR. BRUNSON: Objection, leading.

5 BY MR. ROBERT HOOD:

6 Q. In January 2013, you also gave Wendy a
7 gift of \$10 million. Do you approve of this gift
8 today?

9 A. I do.

10 Q. In 2013, did you also give Wendy
11 \$25 million?

12 A. I did.

13 Q. And have all of your gifts to Wendy
14 been what you desired to do?

15 A. Yes.

16 MR. BRUNSON: Objection, leading.

17 BY MR. ROBERT HOOD:

18 Q. Were all of these gifts to Wendy made
19 by you freely, voluntarily, and free from undue
20 influence?

21 MR. BRUNSON: Objection, leading.

22 THE WITNESS: They were.

23 BY MR. ROBERT HOOD:

24 Q. Was Wendy ever prevented from making
25 contact with your children?

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1 A. No.

2 Q. Ever prevented you, I'm sorry, from --
3 has Wendy ever prevented you from making contact
4 with your children?

5 A. No.

6 Q. Two of them are here today. When's
7 the last time you've seen them? Has it been over
8 a year?

9 MR. BRUNSON: Objection, leading.

10 THE WITNESS: About a year, I guess.

11 I don't know. I can't remember. It's been quite
12 a while.

13 BY MR. ROBERT HOOD:

14 Q. A good while?

15 A. (Witness nods head affirmatively.)

16 Q. Has Wendy ever prevented you from
17 contacting your advisers, a lawyer or accountant
18 or any adviser?

19 A. No.

20 Q. Has Wendy ever prevented you from
21 contacting or seeing anyone you want to contact or
22 to see?

23 A. No.

24 MR. BRUNSON: Objection, leading.

25 BY MR. ROBERT HOOD:

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1 Q. Have you ever -- have you been
2 satisfied with the way Wendy has managed your
3 health and healthcare?
4 A. Absolutely.
5 Q. Have you been satisfied with the way
6 Wendy's managed your financial affairs?
7 A. Uh-huh.
8 MR. BRUNSON: Objection, leading.
9 BY MR. ROBERT HOOD:
10 Q. Your answer's yes?
11 A. Yes.
12 Q. If someone is going to assist you in
13 managing your affairs, who do you want it to be?
14 A. Wendy.
15 Q. Have you today answered my questions
16 of your own free will, truthfully and accurately,
17 Mr. Wellin?
18 A. I have.
19 Q. And when this speech therapist has
20 helped us today, has she accurately repeated any
21 questions where we needed her to repeat what you
22 said?
23 A. Uh-huh.
24 Q. She has. Is that correct?
25 A. Yes.

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1 Q. I want you to turn to this camera, and
2 I want you to tell this lawyer and those two
3 children of yours watching why you brought this
4 lawsuit.
5 A. I brought this lawsuit because I
6 thought my children stole a large part of my
7 estate. They stole from me. That's why.
8 Q. And do you want them to give what
9 they've stolen from you back?
10 A. Absolutely I want to get it back.
11 Q. We were served with interrogatories in
12 this lawsuit, and we have answered those, and the
13 answer to Interrogatory No. 8, in substance,
14 starts with, after an objection: The plaintiff
15 responds that the current version of Keith S.
16 Wellin's Florida Revocable Living Trust contains
17 provisions for plaintiff's wife, Wendy, some of
18 his children, both his and Wendy's grandchildren,
19 various friends and employees, certain charities.
20 The current version of the revocable trust
21 provides for a larger distribution to Wendy upon
22 the plaintiff's -- your -- death than previous
23 versions of the revocable trust. The plaintiff --
24 you, Mr. Wellin -- intend to provide Wendy with a
25 larger amount under the revocable trust because of

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1 your love, your affection and -- for her and out
2 of appreciation for her acting in your best
3 interests while handling your finances, health
4 matters when you have been dealing with various
5 health issues over the past several years. Due to
6 the breach of the duties and obligations the
7 children owed to you in various capacities and the
8 children violated of your trust, you have reduced
9 or eliminated the distribution to the children
10 previously made -- previously, and you would --
11 that they would have received under the trust.
12 Instead, the plaintiff has left some of that
13 amount that he would have passed to his children
14 through the revocable trust to his and Wendy's
15 grandchildren, as he has great love and affection
16 for them. The plaintiff intentionally made these
17 changes to the revocable trust freely and
18 voluntarily without any undue influence.
19 Is that a true response to the
20 question they asked us?
21 MR. BRUNSON: Objection.
22 THE WITNESS: It is.
23 BY MR. ROBERT HOOD:
24 Q. Sir?
25 A. It is, yes.

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1 MR. BRUNSON: Object to the form.
2 BY MR. ROBERT HOOD:
3 Q. Did anybody influence you or make you
4 say those things that I just read?
5 MR. BRUNSON: Object to the form.
6 THE WITNESS: Nobody.
7 BY MR. ROBERT HOOD:
8 Q. And are they, in effect, your feelings
9 and your response to this situation?
10 A. They are.
11 Q. And then Question No. 11, we answered:
12 The Defendant Peter -- Peter S. Wellin, it should
13 say, it says J -- made a false representation --
14 no, I'm sorry. I don't know Peter's initial. I
15 thought it was you.
16 The Defendant Peter Wellin, who's
17 right behind me, made a false representation to
18 you, Mr. Wellin, that the --
19 MR. BRUNSON: I'm sorry. Don't you
20 need to read the question before the answer?
21 MR. ROBERT HOOD: No. I'm not going
22 to waste time with it because we have a time
23 limit.
24 MR. BRUNSON: Well, how does he know
25 the answer if he doesn't know the question?

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1 **MR. ROBERT HOOD:** He's read these. If
2 you'll let me conduct my examination correctly.
3 **BY MR. ROBERT HOOD:**
4 **Q. -- November '09 transaction was tax**
5 **advantaged and in the plaintiff's best interests**
6 **that you relied upon in consenting to that**
7 **transaction. In reality, the '09 transaction was**
8 **anything but tax advantaged for you, as it**
9 **benefited your three children while subjecting you**
10 **to a large amount of tax liability.**
11 **Is that a true statement?**
12 **A.** That is a true statement.
13 **Q. Mr. Wellin, the last one is --**
14 **MR. BRUNSON:** I object to the form of
15 the question.
16 **BY MR. ROBERT HOOD:**
17 **Q. -- Question No. 12, and your response**
18 **is the children did not inform you --**
19 **MR. BRUNSON:** Same objection, answer
20 with no question.
21 **BY MR. ROBERT HOOD:**
22 **Q. -- that they would use the November**
23 **'09 transaction to try to control your spending**
24 **during your lifetime and amount of assets that you**
25 **could leave to your wife at your death.**

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1 The children did not fully inform you
2 of the tax consequences of the November '09
3 transaction.
4 The children did not inform you
5 through the November '09 transaction that you were
6 taking all the tax liability upon yourself, but
7 retaining no upside possibility, other than a
8 minimal interest rate, under the terms of the
9 promissory note.
10 The children did not explain to you
11 that the gifts in January of 2000 (sic) would
12 cause such a large tax liability that coupled with
13 the income tax liability from '09 irrevocable
14 trust would leave you potentially insolvent and
15 restrict your ability to make charitable gifts and
16 gifts to your wife that you want to make at your
17 death.
18 **A.** (Inaudible)
19 **MR. BRUNSON:** I'm sorry. Objection.
20 There's no question. He's just reading to the
21 witness.
22 **BY MR. ROBERT HOOD:**
23 **Q. And did your children fail to inform**
24 **you that your long-time accountant, Mike Simons,**
25 **advised against the 2013 gifts?**

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1 **A.** No.
2 **MR. BRUNSON:** Objection. There's no
3 question.
4 **THE WITNESS:** No one said anything.
5 **BY MR. ROBERT HOOD:**
6 **Q. No one said anything.**
7 **And did Peter Wellin fail to inform**
8 **you that he instructed Mike Simons not to contact**
9 **Tom Farace, your attorney, about the 2000 (sic)**
10 **gifts?**
11 **A.** No.
12 **MR. BRUNSON:** Objection to the form.
13 The gifts were in 2013.
14 **BY MR. ROBERT HOOD:**
15 **Q. And that the children failed to inform**
16 **you that you did not have sufficient liquid assets**
17 **to cover the 2013 gifts?**
18 **A.** That's true.
19 **MR. BRUNSON:** Objection, leading and
20 asked and answered.
21 **BY MR. ROBERT HOOD:**
22 **Q. And finally, on Question 16, your**
23 **answer: On November the 18th, the plaintiff's**
24 **children's attorney, Mr. Brunson, stated they**
25 **intended to sell all of the Berkshire stock**

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1 controlled by Friendship Partners, LP. The
2 plaintiff recognized that such a sale of stock
3 would potentially cause you to incur considerable
4 tax liability, which you would be unable to
5 afford, due to the significant income tax and gift
6 tax liability that you already incurred from the
7 gifts your children wrongfully encouraged you to
8 make in 2013.
9 Upon hearing the children's intention
10 to sell the stock, you utilized the substitution
11 power retained by you as the grantor of the Wellin
12 Family 2009 Irrevocable Trust to substitute the
13 promissory note issued to you by the trust for an
14 equally-valued interest in Friendship Partners,
15 LP. You then executed a release of your
16 substitution power under the trust. By
17 effectively turning off the grantor trust status
18 of the Wellin 2009 Irrevocable Trust, you believed
19 that your children would reconsider selling the
20 Berkshire stock, as the trust of which they were
21 trustees and beneficiaries would now be
22 responsible for some of the tax consequences.
23 Had you not been able to turn off the
24 grantor trust status of the Wellin 2009
25 Irrevocable Trust, you would have -- you would

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1 have substituted the promissory note, along with
2 other assets, sufficient to gain control of all
3 interest in Friendship Partners, LP owned by the
4 2009 Irrevocable Trust. If you were to retain all
5 tax liability, you would have to own all the --
6 you wanted to own all of the partnership. At that
7 point, the children could not have benefited from
8 the sale of the stock and would have no reason to
9 sell it unless they were only trying to hurt you.
10 By taking these actions, the plaintiff, yourself,
11 hoped that your children would not sell the stock
12 solely to harm you by causing you a huge tax
13 liability.

14 Is that a truthful statement?

15 MR. BRUNSON: Object to the form.

16 THE WITNESS: It is.

17 BY MR. ROBERT HOOD:

18 Q. And have I correctly read your answers
19 under oath to their questions pertinent to this
20 lawsuit, the information you can give?

21 A. Yes.

22 MR. BRUNSON: His 30 minutes has
23 expired.

24 MR. ROBERT HOOD: We are two minutes
25 past 30 minutes, but I think we started two

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1 MR. BRUNSON: We have no objection.

2 MR. ROBERT HOOD: Okay. We're all
3 right? You're okay?

4 THE WITNESS: Uh-huh.

5 MR. BRUNSON: It's 11:02 on my watch.
6 We're ready to start.

7 EXAMINATION

8 BY MR. BRUNSON:

9 Q. Good morning, Mr. Wellin. I'm Robert
10 Brunson. I'm representing your children. Do you
11 understand that?

12 A. I do.

13 Q. I wanted to ask you just a couple of
14 questions. What medications are you taking today?

15 A. What what?

16 Q. What medications, what medicines are
17 you taking today?

18 A. I don't know.

19 Q. You don't?

20 A. My wife handles that.

21 THE THERAPIST: His wife knows all
22 that. There is a nurse in the back.

23 MR. BRUNSON: You can't -- he can only
24 answer.

25 BY MR. BRUNSON:

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1 minutes late.

2 BY MR. ROBERT HOOD:

3 Q. But I would like for you to -- we're
4 going to take a break to lay back in that special
5 chair you have and relax, and when you're ready --
6 we're going to leave the room. When you're ready,
7 we'll come back in, cut the TV on, and Mr. Brunson
8 has the right to ask you some questions.

9 Are you okay with that?

10 A. Uh-huh.

11 Q. Just take a rest.

12 MR. ROBERT HOOD: The nurses are here.
13 Y'all check his blood pressure and make sure he's
14 okay.

15 We'll go off the record.

16 (A recess transpired.)

17 MR. ROBERT HOOD: Before we go on the
18 record, Brew Hagood has requested that I put on
19 the record that this deposition can be used in all
20 pending cases involving Mr. Wellin and the Wellin
21 trust, including the one that's been brought in
22 probate court.

23 MR. HAGOOD: Correct, because the
24 parties agreed before Judge Norton that the cases
25 were going to be consolidated for discovery.

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1 Q. What is the date of today?

2 A. 7th.

3 THE THERAPIST: 7th.

4 THE WITNESS: February 7th.

5 BY MR. BRUNSON:

6 Q. And I'm going to tell you three words
7 right now. At the end of my 30 minutes, I'm going
8 to ask you to repeat these three words to me,
9 okay: Blue, pencil, and bus.

10 A. Blue, pencil, and what?

11 Q. Pencil.

12 A. What was the last one?

13 Q. Blue, bus, and pencil.

14 A. Blue, bus, and pencil.

15 Q. Do you understand those three words?

16 A. Uh-huh.

17 Q. And you understand I'm going to ask
18 you to repeat them to me at the end of the
19 deposition?

20 A. Uh-huh.

21 Q. Thank you.

22 What is your current net worth?

23 A. 30 million. (Inaudible) I can't
24 remember. Maybe 30 million, something like that.

25 MR. BRUNSON: Can you tell me what

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1 he's saying?
2 **THE WITNESS:** Maybe 30 million,
3 something like that.
4 **THE THERAPIST:** He said maybe
5 30 million.
6 **MR. BRUNSON:** Maybe 30 million. Do
7 you understand what he said before that?
8 **THE THERAPIST:** Keith, can you take a
9 deep breath and say it one more time really loud?
10 **THE WITNESS:** I said my children have
11 stolen a lot of my assets, but my net worth is
12 30 million until I get the money back.
13 **BY MR. BRUNSON:**
14 **Q.** I understand. You testified earlier
15 that in 2013, you gave your wife \$25 million.
16 **A.** Uh-huh.
17 **Q.** Is that correct? Is that right?
18 **A.** Yeah.
19 **Q.** Yes?
20 **A.** Yeah.
21 **Q.** That was a gift?
22 **A.** Uh-huh.
23 **Q.** Is that in addition to the \$10 million
24 you gave her in January of 2013?
25 **A.** It is.

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1 **Q.** So in 2013, you gave your wife a total
2 of \$35 million?
3 **A.** Uh-huh.
4 **Q.** When did you give her the 25 million,
5 what month?
6 **A.** I can't remember.
7 **Q.** You can't remember. Was it before or
8 after you brought this lawsuit?
9 **A.** I think it was before, but I'm not
10 sure.
11 **Q.** Okay. And in addition to that, you
12 also gave her a house -- four-and-a-half million
13 dollars to buy a house at Sullivan's Island. Is
14 that right?
15 **A.** Uh-huh.
16 **Q.** So actually, last year you gave Wendy
17 almost \$40 million?
18 **A.** Yeah.
19 **Q.** Did you consult with Mike Simons
20 before you gave her the \$25 million gift?
21 **A.** I don't think so. I can't remember.
22 **Q.** Why did you give her the \$25 million
23 gift?
24 **A.** Because I wanted to.
25 **Q.** Any other reason?

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1 **A.** No.
2 (DFT. EXH. 1, 1/13/10 Letter to Keith
3 Wellin from Tom Farace, was marked for
4 identification.)
5 **BY MR. BRUNSON:**
6 **Q.** I'm going to ask you some questions
7 now about the transaction that took place in 2009.
8 I'm going to ask the nurse here to hand you
9 Exhibit No. 1 to your deposition. This is
10 Defendant's Exhibit No. 1. This is a letter to
11 you dated January 13th, 2010.
12 **MR. BRUNSON:** If you could flip him
13 over to the third page.
14 **BY MR. BRUNSON:**
15 **Q.** Do you see that this letter is from
16 Tom Farace to you? Do you see his name on the
17 bottom of the letter?
18 **A.** Uh-huh.
19 **Q.** Now back to the first page. Do you
20 realize that January 13th, 2010, was after you had
21 exchanged your interest in the Friendship Limited
22 Partnership in exchange for a \$50 million note,
23 right?
24 **A.** I don't know.
25 **Q.** You don't know, okay.

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1 In the first paragraph of this letter,
2 Mr. Farace writes: It appears there is a bit of
3 confusion regarding the November 30th, 2009, sale
4 transaction and its impact on the distribution of
5 your estate, particularly to your children. I'm
6 led to believe that you may think that the result
7 of the November 30th transaction is a reduction of
8 wealth passing to your children. That is simply
9 not the case. In fact, the November 30th
10 transaction should result in more wealth passing
11 to your children.
12 Do you recall asking a question of
13 Mr. Farace, your attorney, after you had completed
14 the November 30th transaction, about the amount of
15 wealth that would be passing to your children?
16 **A.** No.
17 **Q.** Do you recall receiving this letter
18 from Mr. Farace?
19 **A.** No.
20 **Q.** In the next paragraph of the letter,
21 he states --
22 **MR. ROBERT HOOD:** Just so the record's
23 clear, by the use of this record and the
24 exhibit --
25 **MR. BRUNSON:** I'm going to pause the

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1 clock while you're talking. Go ahead.
2 **MR. ROBERT HOOD:** By the use of this
3 exhibit, you're violating his attorney-client
4 privilege with Mr. Farace, and we do not agree
5 that you have a right to have a copy of this
6 letter or the right to use this letter for any
7 purpose in this litigation.
8 Just so I don't waive my rights to
9 assert attorney-client privilege, the letter, on
10 its face, clearly states attorney-client
11 privileged communication. How you got it, I'd
12 love to know.
13 **MR. BRUNSON:** Anything else?
14 **MR. ROBERT HOOD:** No.
15 **MR. BRUNSON:** Are you done?
16 **BY MR. BRUNSON:**
17 **Q.** The second paragraph of the letter,
18 Mr. Wellin, states: Before I discuss the numbers,
19 I want to remind you of the prior planning. In
20 2003, you contributed Berkshire Hathaway shares to
21 Friendship Partners, LP for a 99-percent limited
22 partnership interest. The current liquidation
23 value for those units is approximately
24 \$90 million. By liquidation value, I'm referring
25 to the value of Berkshire Hathaway shares that

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1 would be received if the partnership were
2 liquidated and its assets distributed to its
3 partners.
4 Did you understand, in January 2010,
5 that in 2003, six years earlier, you had created
6 Friendship Partners and taken a 99-percent
7 interest in that entity?
8 A. I didn't create it. (Inaudible) I
9 had nothing to do with it.
10 **Q.** You had nothing to do with the 2003
11 transaction in which you gave up control of your
12 Berkshire Hathaway shares and took a 99-percent
13 interest in Friendship Limited Partners. Is that
14 correct?
15 A. I never thought I was giving up
16 control.
17 **Q.** You never thought that?
18 A. That was stolen from me.
19 **Q.** It was stolen from you? Do you think
20 it was stolen from you in 2003?
21 A. I don't know (inaudible).
22 **Q.** I'm sorry?
23 A. I don't know. 2003 was when they got
24 ahold of it.
25 **Q.** Today do you believe they stole the

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1 money from you in 2003?
2 A. Absolutely.
3 **Q.** They stole it in 2003?
4 A. Absolutely.
5 **Q.** Okay. Thank you.
6 Mr. Farace goes on in the next
7 paragraph to state: We put this partnership
8 structure in place in order to arrange your estate
9 for estate tax savings pursuant to the Strangi
10 case.
11 Do you recall the Strangi case?
12 A. No.
13 **Q.** He says: The Strangi case was later
14 questioned on appeal. Under the original Strangi
15 case, a significant lack of control and
16 marketability discount was allowed in valuing the
17 limited partnership units in a decedent's estate.
18 The Strangi discount, estimated at 40 to
19 45 percent, would likely not be available under
20 current law.
21 Was that your understanding?
22 A. I vaguely remember something about it.
23 **MR. BRUNSON:** Could you interpret
24 that?
25 **THE THERAPIST:** I really don't

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1 remember.
2 **THE WITNESS:** I vaguely remember
3 something about it. I don't remember the detail.
4 **BY MR. BRUNSON:**
5 **Q.** Okay. Do you remember that the 2003
6 transaction was undertaken in order, in part, to
7 save on estate and gift taxes?
8 A. Yes. That's what I was told.
9 **Q.** That's what you were told?
10 A. (Witness nods head affirmatively.)
11 **Q.** And who told you that?
12 A. Peter.
13 **Q.** Peter?
14 A. (Witness nods head affirmatively.)
15 **Q.** He told you that in 2003?
16 A. Uh-huh.
17 **Q.** Did you ever have a conversation with
18 Tom Farace about your estate planning?
19 A. No.
20 **Q.** Never once spoke to your lawyer about
21 estate planning ever?
22 A. I don't remember. I hardly ever heard
23 from him. He's the reason for (inaudible) with
24 Peter.
25 **MR. BRUNSON:** Can you understand that?

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1 **THE THERAPIST:** He's the reason for --
2 **THE WITNESS:** I hardly ever heard from
3 Tom Farace. I just heard everything through
4 Peter.
5 **BY MR. BRUNSON:**
6 **Q.** You've never heard from Tom Farace?
7 A. Hardly ever.
8 **Q.** Ever. Have you ever seen him?
9 A. Yeah, years ago.
10 **Q.** Years ago. When's the last time you
11 saw Tom Farace?
12 A. I can't remember. It was years ago.
13 **Q.** Do you understand that Tom Farace is
14 with a very large New York law firm, Nixon
15 Peabody?
16 A. He's a lousy lawyer.
17 **MR. BRUNSON:** Say that.
18 **THE THERAPIST:** He's a lousy lawyer.
19 **THE WITNESS:** He's a lousy lawyer.
20 **BY MR. BRUNSON:**
21 **Q.** He's a lousy lawyer?
22 A. I don't care what law firm he's with.
23 He ought to be disbarred.
24 **THE THERAPIST:** Say that again. Deep
25 breath.

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1 **THE WITNESS:** I don't care what law
2 firm he is with. He should be disbarred.
3 **MR. BRUNSON:** He should be --
4 **THE WITNESS:** Disbarred. He's not a
5 good lawyer.
6 **BY MR. BRUNSON:**
7 **Q.** Who prepared -- prior to your hiring
8 Edward Bennett, who prepared your estate planning
9 documents, what lawyer?
10 A. I didn't have any real estate
11 planning.
12 **THE THERAPIST:** Real loud, Keith.
13 **THE WITNESS:** I didn't have any real
14 estate planning. (Inaudible)
15 **MR. BRUNSON:** Can you repeat what he
16 said?
17 **THE THERAPIST:** Say it again, Keith.
18 **THE WITNESS:** I never had any formal
19 real estate planner.
20 **THE THERAPIST:** He never had a formal
21 real estate planner.
22 **BY MR. BRUNSON:**
23 **Q.** A formal estate planner? So did you
24 write your wills yourself?
25 A. Tom Farace wrote them.

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1 **THE THERAPIST:** Tom Farace wrote them.
2 **BY MR. BRUNSON:**
3 **Q.** Tom Farace wrote your wills, okay.
4 You testified earlier that Peter, your
5 son, who you trusted, told you -- made
6 misrepresentations to you. Is that right?
7 A. (Inaudible)
8 **MR. BRUNSON:** Can you repeat that?
9 **THE THERAPIST:** Say that again, Keith.
10 **THE WITNESS:** (Inaudible)
11 **THE THERAPIST:** What specifically.
12 **BY MR. BRUNSON:**
13 **Q.** Do you believe that Peter lied to you?
14 Did Peter lie to you?
15 A. I do.
16 **THE THERAPIST:** I do.
17 **BY MR. BRUNSON:**
18 **Q.** You do? What lie did Peter tell you?
19 A. I can't remember.
20 **Q.** You can't remember what lie he told
21 you?
22 A. No.
23 **Q.** Can you remember when he told you a
24 lie?
25 A. No.

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1 **Q.** Was anybody else there when Peter lied
2 to you?
3 A. No.
4 **Q.** Nobody else was there?
5 Where was it? Was it here or in Maine
6 or somewhere else?
7 A. I believe it was here, but I can't
8 remember.
9 **MR. BRUNSON:** Can you --
10 **THE THERAPIST:** I think it was here,
11 but I can't remember.
12 **BY MR. BRUNSON:**
13 **Q.** What did Peter or Ceth or Mari say to
14 you, if anything, that caused you to enter into
15 the transactions that you did in 2009?
16 A. Peter told me there would be some tax
17 advantage.
18 **Q.** Peter said it would be tax advantaged?
19 A. I believe so.
20 **Q.** And was it?
21 A. I relied completely on him.
22 (Inaudible)
23 **THE THERAPIST:** But I relied
24 completely on him.
25 And what else did you say after that,

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1 Keith?

2 **THE WITNESS:** I said go ahead.

3 **THE THERAPIST:** Say it again.

4 **THE WITNESS:** So I said go ahead.

5 **THE THERAPIST:** So I said go ahead.

6 **BY MR. BRUNSON:**

7 **Q.** And so you entered into the 2009 deal

8 because it was tax advantaged?

9 A. Because he told me it was.

10 **Q.** Now, were there tax advantages to

11 entering into the 2009 transaction?

12 A. I don't remember. I don't think so.

13 **Q.** You don't think so? Explain that.

14 A. I'm telling you I don't remember.

15 **Q.** Well, then how is it that you believe

16 it wasn't true if you don't remember?

17 A. Then I remembered.

18 **Q.** Did somebody else tell you that?

19 A. No.

20 **Q.** No? Nobody's told you that the 2009

21 transaction was, in fact, not a tax advantaged

22 transaction?

23 A. I learned later. (Inaudible) They

24 stole from me. I didn't have control of it.

25 **THE THERAPIST:** They stole from you

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1 and had control of it? Is that what you said,

2 Keith?

3 **THE WITNESS:** They stole from me, so I

4 did not control it.

5 **THE THERAPIST:** They stole it from me,

6 so I did not control it.

7 **BY MR. BRUNSON:**

8 **Q.** But my question was: Has anybody told

9 you that the 2009 transaction did not have tax

10 advantages?

11 A. I learned later it was (inaudible),

12 but (inaudible) didn't tell me anything, including

13 Peter and Tom Farace.

14 **Q.** Now, after the 2009 transaction was

15 completed, okay, what conversations have you had

16 with Peter, Ceth, or Mari about that transaction?

17 A. Practically none.

18 **MR. BRUNSON:** What was that?

19 **THE THERAPIST:** Say it again, Keith,

20 really loud.

21 **THE WITNESS:** Practically none.

22 **THE THERAPIST:** Practically none.

23 **THE WITNESS:** I don't remember any.

24 **BY MR. BRUNSON:**

25 **Q.** So I'm clear, you don't remember Peter

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1 or Ceth or Mari ever telling you anything about

2 the 2009 transaction after it was completed on

3 November 30th, 2009?

4 A. No.

5 **Q.** Now I want to ask you some questions

6 about the 2013 gifts that you made to your

7 children and to Wendy. Do you know what I'm

8 talking about?

9 A. Uh-huh.

10 **Q.** How much did you give to Peter?

11 A. Each 10 million.

12 **Q.** Gave them each 10 million. Was that

13 your idea?

14 A. Yeah.

15 **Q.** Yes?

16 A. (Witness nods head affirmatively.)

17 **Q.** Why?

18 A. Because I thought I had a lot more

19 money than I had.

20 **Q.** Did you have a conversation with Brian

21 McLaughlin about making those gifts?

22 A. No.

23 **Q.** Do you recall making a phone call,

24 being on a phone call with Brian McLaughlin and

25 instructing him what stock to sell in order to

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1 make those gifts?

2 A. I don't remember.

3 **Q.** You don't remember that call.

4 Can you testify today under oath that

5 you did not have that call?

6 A. I don't remember what we talked about.

7 **THE THERAPIST:** I don't remember what

8 we talked about.

9 **BY MR. BRUNSON:**

10 **Q.** Do you recall having a conversation

11 with Ceth and Mari, your daughters, after making

12 those gifts, about the gifts?

13 A. I think they called me and thanked me.

14 **THE THERAPIST:** I think they called me

15 and thanked me.

16 **BY MR. BRUNSON:**

17 **Q.** Do you recall meeting with them in

18 person?

19 A. No.

20 **Q.** You don't recall talking to Ceth where

21 she said she was thinking about hiring a money

22 manager to help her invest?

23 A. On the phone, yes.

24 **MR. BRUNSON:** What's that?

25 **THE THERAPIST:** On the phone, yes.

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1 **BY MR. BRUNSON:**
2 **Q. On the phone. And what did you tell**
3 **her?**
4 A. I think I told her that I thought she
5 could manage it herself.
6 **THE THERAPIST:** I think I told her
7 that I thought she could manage it herself.
8 **BY MR. BRUNSON:**
9 **Q. And did you tell the same thing to**
10 **Mari?**
11 A. Mari and I (inaudible) --
12 **MR. BRUNSON:** Can you repeat what he
13 said?
14 **THE THERAPIST:** Say it again, Keith,
15 really loud.
16 **THE WITNESS:** Mari and I did not
17 have that conversation.
18 **THE THERAPIST:** Mari I did not have
19 that conversation.
20 **BY MR. BRUNSON:**
21 **Q. Did any of your children tell you**
22 **anything that was not true that caused you to make**
23 **the 2013 gifts to them?**
24 A. No.
25 **Q. Who is Lester Schwartz?**

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1 A. He is the trustee.
2 **Q. The trustee?**
3 A. For me.
4 **Q. He's your trustee?**
5 A. (Witness nods head affirmatively.)
6 **Q. Why did you select him?**
7 A. He was recommended.
8 **Q. He's a friend of yours?**
9 A. No.
10 **Q. I couldn't understand you. Sorry.**
11 A. He was recommended to me.
12 **THE THERAPIST:** He was recommended to
13 me.
14 **BY MR. BRUNSON:**
15 **Q. And do you recall that your trust**
16 **protector before that was Tom Farace?**
17 A. I don't remember that.
18 **Q. You don't remember that?**
19 A. No.
20 **Q. Do you remember that you replaced Tom**
21 **Farace with Lester Schwartz as your trust**
22 **protector?**
23 A. Yes.
24 **Q. Yes? Why did you do that?**
25 A. Tom Farace is a bad lawyer. I told

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1 you before he should be sued for malpractice.
2 **THE THERAPIST:** Because Tom Farace is
3 a bad lawyer. I told you before he should be sued
4 for malpractice.
5 **BY MR. BRUNSON:**
6 **Q. Do you plan to sue Tom Farace for**
7 **malpractice?**
8 A. I haven't decided that. I may.
9 **Q. Do you recall testifying that on**
10 **November the 20th, you sought to substitute the**
11 **satisfied promissory note worth \$50 million on the**
12 **face of it for a percentage of ownership in**
13 **Friendship Limited Partners?**
14 A. Uh-huh.
15 **Q. Did you -- was it your idea to do**
16 **that?**
17 A. Uh-huh.
18 **Q. Why?**
19 A. I don't remember.
20 **Q. You don't remember? Okay.**
21 **MR. ROBERT HOOD:** Mr. Wellin, are you
22 getting tired? Do you want to take a break? Do
23 you want to lean back in your chair and just rest
24 for a minute?
25 **MR. BRUNSON:** I think he is, and I'd

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1 like to take a break for that reason. Let's stop.
2 It's 23 minutes into the examination.
3 **MR. ROBERT HOOD:** Just rest for a
4 minute. Do you want some water, or can the nurses
5 get you anything?
6 **MR. BRUNSON:** Would you like to rest
7 for a few minutes, and then we'll ask some more
8 questions?
9 This is on the record.
10 **THE WITNESS:** I'd rather wait. I
11 would like to get this over with.
12 **MR. ROBERT HOOD:** He'd like to get it
13 over with. Let's keep going.
14 **MR. BRUNSON:** Okay. That's fine.
15 Let's go back on the record.
16 **MR. ROBERT HOOD:** If you want to stop
17 at any time, tell him. Lean back in your chair.
18 You're in charge, not him.
19 **MR. BRUNSON:** And this is still on the
20 record.
21 **MR. ROBERT HOOD:** It's all on the
22 record, Mr. Brunson. He's in charge, and not you.
23 You be polite to him.
24 **MR. BRUNSON:** And what I was going to
25 say, Mr. Hood, is if at any point you think the

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1 witness needs to take a break, I'll obviously
2 defer to you, so just let me know.
3 **MR. ROBERT HOOD:** Are you okay?
4 **THE WITNESS:** (Nods head
5 affirmatively.)
6 **MR. ROBERT HOOD:** Good.
7 Do you have a question?
8 **MR. BRUNSON:** Yeah. I'll resume in
9 just a second. I had to turn off my computer
10 because we were taking a break. I've just resumed
11 my computer, so I will now resume the clock.
12 **BY MR. BRUNSON:**
13 **Q. Why did you enter into a prenuptial**
14 **agreement before you married Wendy?**
15 A. I really don't know. (Inaudible)
16 Somebody probably recommended it to me.
17 **THE THERAPIST:** Somebody probably
18 recommended it to me.
19 **BY MR. BRUNSON:**
20 **Q. Do you recall that the prenuptial**
21 **agreement limited the amount that Wendy was**
22 **entitled to inherit from you?**
23 A. I didn't want to (inaudible) the
24 agreement itself. My daughter wrote the pre-nup
25 agreement.

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1 **THE THERAPIST:** My daughter wrote the
2 prenuptial agreement.
3 What did you say before that, Keith?
4 Really loud, deep breath.
5 **THE WITNESS:** I said I don't remember
6 the details. My daughter wrote the agreement.
7 **THE THERAPIST:** I don't remember the
8 details. My daughter wrote the agreement.
9 **BY MR. BRUNSON:**
10 **Q. Do you recall your daughter wrote the**
11 **agreement?**
12 A. (Witness nods head affirmatively.)
13 **Q. Who? What daughter?**
14 A. (Indicating)
15 **Q. Ceth? You think Ceth wrote your**
16 **prenuptial agreement in 2001?**
17 A. That's the way I remember it.
18 **THE THERAPIST:** That's the way I
19 remember it.
20 **BY MR. BRUNSON:**
21 **Q. And do you recall that you amended the**
22 **prenuptial agreement about six months or so after**
23 **you got married?**
24 A. No.
25 **Q. You don't recall that?**

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1 A. I didn't give the damn thing any
2 thought.
3 **THE THERAPIST:** Can you say that
4 again?
5 **THE WITNESS:** I really didn't think
6 about it.
7 **THE THERAPIST:** I really didn't think
8 about it.
9 **BY MR. BRUNSON:**
10 **Q. Mr. Wellin, after you made the gifts**
11 **to your children in January of 2013, what happened**
12 **that caused you to decide to sue them for fraud?**
13 A. I'm sorry. My memory's not too good.
14 **THE THERAPIST:** I'm sorry. My
15 memory's not too good.
16 **THE WITNESS:** I've forgotten.
17 **THE THERAPIST:** I forgot.
18 **THE WITNESS:** I can't remember.
19 **BY MR. BRUNSON:**
20 **Q. Well, do you understand that there's a**
21 **big difference between on one day wanting to give**
22 **\$10 million to each of your children and then six**
23 **months later suing?**
24 A. (Inaudible)
25 **Q. You understand that those are two**

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1 different things?
2 A. And so is the -- I don't remember now
3 what it was.
4 **MR. BRUNSON:** Can you repeat?
5 **THE THERAPIST:** I can't remember now
6 what it was.
7 **THE WITNESS:** It was (inaudible).
8 **THE THERAPIST:** Really loud, Keith.
9 **THE WITNESS:** I don't remember now
10 what it was.
11 **THE THERAPIST:** I remember now what it
12 was.
13 **BY MR. BRUNSON:**
14 **Q. You don't remember now what it was?**
15 A. (Witness shakes head negatively.)
16 **Q. What happened that caused you to stop**
17 **using Tom Farace as your lawyer and start using**
18 **Edward Bennett?**
19 A. His bills were sky high, and his
20 recommendations (inaudible) were no good.
21 **THE THERAPIST:** His bills were sky
22 high.
23 **BY MR. BRUNSON:**
24 **Q. His bills were sky high and what was**
25 **no good?**

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1 A. His recommendations.
2 **Q. Representation was no good?**
3 A. Recommendations.
4 **THE THERAPIST:** Recommendations.
5 **BY MR. BRUNSON:**
6 **Q. Recommendations, okay.**
7 **And are there any particular**
8 **recommendations that he made that you now think**
9 **were no good?**
10 A. No. (Inaudible)
11 **Q. Mr. Wellin, you testified that you**
12 **have created an estate plan now, and you are**
13 **planning to leave some money to your**
14 **grandchildren. Is that right?**
15 A. (Witness nods head affirmatively.)
16 **Q. How much are you planning to leave**
17 **your grandchildren?**
18 **MR. ROBERT HOOD:** Wait a minute.
19 Keith, you don't have to answer that unless you
20 want to. What you do in your will is private for
21 you, and this man has no right to know about it.
22 You can answer it or not, whatever you want to do.
23 **THE WITNESS:** No answer.
24 **BY MR. BRUNSON:**
25 **Q. No answer.**

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1 **Mr. Wellin, at the beginning of this**
2 **deposition, I told you three words, and I told you**
3 **I would ask you to tell me what they were. Can**
4 **you tell me those three words?**
5 A. Give me -- give me a hint.
6 **Q. Sorry. Can't do that.**
7 **Mr. Wellin, before today, did you**
8 **practice your deposition? Did you practice giving**
9 **answers and questions with other people?**
10 A. No.
11 **Q. You did not? You just came in here**
12 **today and answered these questions that Mr. Hood**
13 **asked you for the very first time?**
14 A. (Witness nods head affirmatively.)
15 **Q. Is that right?**
16 A. Uh-huh.
17 **Q. Did you ever practice with Wendy, your**
18 **wife?**
19 A. She asked me some questions, none of
20 these questions.
21 **Q. Did Wendy suggest any answers that you**
22 **should give in your deposition?**
23 A. No.
24 **Q. She didn't tell you anything about**
25 **what you should say?**

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1 A. No.
2 **MR. ROBERT HOOD:** You've had your 30
3 minutes.
4 **MR. BRUNSON:** I've got 20 seconds
5 left.
6 **BY MR. BRUNSON:**
7 **Q. Is there anything else you'd like to**
8 **say, Mr. Wellin, to your children and your**
9 **grandchildren at this time?**
10 A. I've said it all. I think money was
11 stolen. I intend to get it back.
12 **MR. BRUNSON:** What did he say?
13 **THE THERAPIST:** Really loud, Keith.
14 Really loud, deep breath.
15 **THE WITNESS:** I have said it all. I
16 think money was stolen from me. I intend to get
17 it back.
18 **THE THERAPIST:** Money was stolen from
19 me, and I need to get it back.
20 **MR. ROBERT HOOD:** That's the end of
21 the deposition. You've had 30 minutes.
22 **MR. BRUNSON:** I agree.
23 **MR. ROBERT HOOD:** Thank you,
24 Mr. Wellin. Lean back in your chair and just
25 rest. We can tell you're very tired. Just rest.

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1 Thank you very much. We're through. Everybody's
2 going to leave.
3 **MR. BRUNSON:** You're not going to ask
4 any more?
5 **MR. ROBERT HOOD:** No. He's too tired.
6 (The deposition was concluded at 11:32
7 AM.)
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1	SIGNATURE OF DEPONENT	1	CERTIFICATE OF REPORTER
2	DEPONENT: KEITH S. WELLIN	2	
3	DEPOSITION DATE: FEBRUARY 7, 2014	3	I, Marie H. Bruegger, Registered
4	REPORTER: MARIE H. BRUEGGER	4	Professional Reporter, Certified Realtime
5	CASE CAPTION: KEITH WELLIN vs. PETER WELLIN	5	Reporter, and Notary Public for the State of South
6	(Please return both Signature of Deponent pages)	6	Carolina at Large, do hereby certify that the
7	I, the undersigned, KEITH S. WELLIN, do	7	foregoing transcript is a true, accurate, and
8	hereby certify that I have read the foregoing	8	complete record.
9	deposition and find it to be a true and accurate	9	I further certify that I am neither
10	transcription of my testimony, with the following	10	related to nor counsel for any party to the cause
11	corrections, if any:	11	pending or interested in the events thereof.
12	PAGE LINE CHANGE REASON	12	Witness my hand, I have hereunto
13		13	affixed my official seal this 10th day of
14		14	February, 2014, at Charleston, Charleston County,
15		15	South Carolina.
16		16	
17		17	
18		18	
19		19	
20		20	
21		21	Marie H. Bruegger
22		22	Registered Professional
23		23	Reporter, CCR
24		24	My commission expires
25		25	April 18, 2021

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2	DEPOSITION DATE: FEBRUARY 7, 2014	2	
3	REPORTER: MARIE H. BRUEGGER	3	STIPULATION 4 1
4	CASE CAPTION: KEITH WELLIN vs. PETER WELLIN	4	KEITH S. WELLIN 5 1
5	PAGE LINE CHANGE REASON	5	EXAMINATION BY MR. HOOD 5 5
6		6	EXAMINATION BY MR. BRUNSON 40 9
7		7	SIGNATURE OF DEPONENT 70 1
8	KEITH S. WELLIN Date	8	CERTIFICATE OF REPORTER 72 1
9	I, Marie H. Bruegger, Notary Public	9	
10	for the State of South Carolina at Large, do	10	
11	hereby certify that the deponent was advised	11	REQUESTED INFORMATION INDEX
12	of his or her right to read and sign said	12	
13	deposition both verbally and in writing. If	13	(No Information Requested)
14	the deponent fails to execute and return	14	
15	foregoing Signature of Deponent pages within	15	
16	the thirty (30) days allowed pursuant to the	16	
17	Rules of Civil Procedure, the original	17	
18	transcript may be filed with the court.	18	
19		19	
20		20	
21		21	
22		22	
23		23	
24	Marie H. Bruegger, RPR, CCR	24	
25	My commission expires	25	
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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Keith Wellin, individually and as Trustee of	)	C/A No. 2:13-cv-01831-DCN
the Keith S. Wellin Florida Revocable Living	)	
Trust u/a/d December 11, 2001,	)	
	)	
Plaintiff,	)	
	)	CONSENT ORDER
Versus	)	
	)	
Peter J. Wellin, Cynthia W. Plum and	)	
Marjorie W. King, individually, and as co-	)	
Trustees and beneficiaries of the Wellin	)	
Family 2009 Irrevocable Trust u/a/d	)	
November 2, 2009, and Friendship	)	
Management, LLC,	)	
	)	
Defendants.	)	

This matter came before the Court, upon a motion to substitute Wendy C. H. Wellin, as Special Administrator of the Estate of Keith S. Wellin and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2001 as the named Plaintiff in this action pursuant to Rule 25(a)(1) of the Federal Rules of Civil Procedure. The Defendants do not oppose this motion and have provided express consent to such a substitution. It appears to the Court that the current Plaintiff, Keith Wellin, passed away on September 14, 2014 and that Wendy C. H. Wellin was subsequently appointed as Special Administrator for his estate by the Charleston County Probate Court. As such, the Court finds that Wendy C. H. Wellin is the proper party to be substituted as the named Plaintiff in this litigation.

IT IS THEREFORE ORDERED that Wendy C. H. Wellin, as the Special Administrator of the Estate of Keith S. Wellin and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2001 is substituted for Keith Wellin, individually

and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2001,
as the named Plaintiff in this case.

IT IS SO ORDERED.



David C. Norton
United States District Judge

November 25, 2014
Charleston, South Carolina

WE SO MOVE:

HOOD LAW FIRM, LLC
172 Meeting Street
P.O. Box 1508
Charleston, SC 29402
Ph: (843) 577-4435 / Fax: (843) 722-1630
Email: Info@hoodlaw.com

s/ James B. Hood
Robert H. Hood (1939)
Molly H. Craig (6671)
James B. Hood (9130)

Attorneys for Wendy C. H. Wellin, as
Special Administrator of the Estate of Keith
S. Wellin and as Trustee of the Keith S.
Wellin Florida Revocable Living Trust u/a/d
December 11, 2001

November 20, 2014
Charleston, South Carolina

WE CONSENT:

NELSON MULLINS RILEY &
SCARBOROUGH, LLP
151 Meeting Street / Sixth Floor
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

s/ Robert H. Brunson
Robert H. Brunson (4971)
E-Mail: robert.burnson@nelsonmullins.com
Bryson M. Geer (7011)
E-Mail: bryson.geer@nelsonmullins.com
Patrick C. Wooten (10399)
E-Mail: patrick.wooten@nelsonmullins.com

Attorneys for Defendants Peter J. Wellin,
Cynthia W. Plum and Marjorie W. King,
individually, and as co-Trustees and
beneficiaries of the Wellin Family 2009
Irrevocable Trust u/a/d November 2, 2009,
and Friendship Management, LLC

November 20, 2014
Charleston, South Carolina

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

13 JUL 19 PM 4: 53

IN THE MATTER OF:
KEITH S. WELLIN

PROBATE COURT Case No. 2013-GC-10-_____
CHARLESTON COUNTY

Peter Wellin, Cynthia Wellin Plum, and
Marjorie Wellin King,

Petitioners,

SUMMONS

vs.

Keith S. Wellin,

Respondent.

TO THE RESPONDENT(S) ABOVE-NAMED

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Bryson M. Geer

Robert M. Brunson

SC Bar No. 11987

E-Mail: robert.brunson@nelsonmullins.com

Bryson M. Geer

SC Bar No. 13606

E-Mail: bryson.geer@nelsonmullins.com

Patrick C. Wooten

SC Bar No. 77985

E-Mail: patrick.wooten@nelsonmullins.com

151 Meeting Street / Sixth Floor

Post Office Box 1806 (29402-1806)

Charleston, SC 29401-2239

(843) 853-5200

Attorneys for Petitioners

Charleston, South Carolina

July 19, 2013

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF: CHARLESTON

IN THE MATTER OF: KEITH S. WELLIN

13 JUL 19 PM 4:53 CASE NUMBER:

PROBATE COURT PETITION FOR:
CHARLESTON COUNTY

PETER WELLIN, CYNTHIA WELLIN PLUM, AND
MARJORIE WELLIN KING,

Petitioners

vs.

☐ MINOR
☒ ADULT

KEITH S. WELLIN

☒ PROTECTIVE ORDER
☒ APPOINTMENT OF CONSERVATOR

Respondent(s)

Petitioners: PETER WELLIN, CYNTHIA WELLIN PLUM, AND MARJORIE WELLIN KING

1. Give your relationship to the alleged incapacitated person, if any, and your interest in this proceeding.

We are Keith Wellin's three children. We are concerned that our father can no longer manage his financial affairs and are concerned that his assets are at risk of being dissipated.

2. Information – Minor/Allegedly Incapacitated Person

Name: Keith S. Wellin Age: 86
Date of Birth: [REDACTED]
Last Four Digits of
Social Security Number: [REDACTED]
Address: 126 Tradd Street
City/State/Zip: Charleston, SC 29401
Telephone (Home): 843-853-8050 (Office/other): N/A

To my knowledge, the above-named ☒ DOES ☐ DOES NOT have a Will

To my knowledge, the above-named ☒ DOES ☐ DOES NOT have a Power of Attorney

3. Venue for this proceeding is proper in this county because the above minor/alleged incapacitated person:

☒ resides in this county
☐ does not reside in this county but has property in this county

4. The name and address of the above person's guardian, if any, is:

Keith Wellin lives with his wife, Wendy Wellin, but no guardian has been appointed for Keith Wellin.

5. Information — Family. (list nearest relative first) of minor/alleged incapacitated person, including dates of birth of minors:

Name	Date of Birth	Address	Relationship
Wendy Wellin	Unknown		Wife
Peter Wellin		2 Ship Channel Rd, South Portland, ME 04106	Son
Cynthia Plum		10 Waterman Ave., Philadelphia, PA 19118	Daughter
Marjorie King		1884 Beans Bight Road, Bainbridge Island, WA 98110	Daughter

(use additional sheet if necessary)

6. The following is a general statement of the property, assets, and income of the above person, together with an estimate of the value thereof. (A full inventory, Form #550PC, shall be completed and filed with the Court within thirty days of appointment.)

Description	Value
See Exhibit A.	

7. The appointment of a conservator for the above person is necessary because (state reasons justifying appointment):

See Exhibits A, B, C, and D.

8. I request the appointment of:

Name: Wells Fargo, NA
Address: 177 Meeting Street, 4th Floor
Charleston, SC 29401
Telephone (O): 843-724-4005
Telephone (H):
Email: elizabeth.rodgers@wellsfargo.com

whose priority for appointment as conservator for the above person is as follows:

- ☐ fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the minor/alleged incapacitated person resides
- ☐ individual or corporation nominated by the minor/alleged incapacitated person (if fourteen or more years of age and deemed mentally capable of making such a choice)
- ☐ attorney-in-fact appointed by protected person (Pursuant to S.C. Code Ann. Section 62-5-501)
- ☐ spouse of protected person
- ☐ adult child of protected person
- ☐ parent of protected person or person nominated by will of deceased parent
- ☐ other relative of protected person (specify): _____
- ☐ person nominated by the person who is caring for protected person or paying benefits to him/her
- ☐ nominated by one with priority to serve in his/her stead (specify): _____
- ☒ other (specify): As explained in Exhibit A to this petition, a neutral, third-party conservator would be best suited to serve as conservator of Keith Wellin's estate.

9. The following persons are required by statute to be given notice of the time and place of hearing on this Petition:

Name	Address	Relationship
Keith Wellin	126 Tradd Street, Charleston, SC 29401	Respondent
Wendy Wellin	[REDACTED]	Wife
Peter Wellin	2 Ship Channel Rd, South Portland, ME 04106	Son
Cynthia Plum	10 Waterman Ave., Philadelphia, PA 19118	Daughter
Marjorie King	1884 Beans Bight Road, Bainbridge Island, WA 98110	Daughter

10. I request that the Court set a time and place of hearing on this Petition; that the Court determine that the above person is a person for whom appointment of a conservator is proper; that the Court appoint Wells Fargo, NA as the conservator for the above minor/incapacitated person; and, that Letters of Conservatorship be issued to the conservator.

Executed this 17th day of July, 2013.

Signature: P. Wellin

VERIFICATION

The undersigned, being sworn, states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this 17th day of July, 2013.

Notary Public for MAINE
My Commission Expires: November 21, 2014

Signature: P. Wellin

Name: Peter Wellin

Address: 2 Ship Channel Rd, South Portland, ME 04106

E-mail: wellinp@me.com

Telephone (O): _____

(H): _____

9. The following persons are required by statute to be given notice of the time and place of hearing on this Petition:

Name	Address	Relationship
Keith Wellin	126 Tradd Street, Charleston, SC 29401	Respondent
Wendy Wellin		Wife
Peter Wellin	2 Ship Channel Rd, South Portland, ME 04106	Son
Cynthia Plum	10 Waterman Ave., Philadelphia, PA 19118	Daughter
Marjorie King	1884 Beans Bight Road, Bainbridge Island, WA 98110	Daughter

10. I request that the Court set a time and place of hearing on this Petition; that the Court determine that the above person is a person for whom appointment of a conservator is proper, that the Court appoint Wells Fargo, NA as the conservator for the above minor/incapacitated person; and, that Letters of Conservatorship be issued to the conservator.

Executed this 18 day of July, 2013.

Signature:

Cynthia Wellin Plum

VERIFICATION

The undersigned, being sworn, states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this _____ day of
July, 2013

Signature:

Name: Peter Wellin

Address: 2 Ship Channel Rd, South Portland, ME
04106

Notary Public for _____
My Commission Expires: _____

E-mail: wellinp@me.com

Telephone (O): _____

(H): _____

9. The following persons are required by statute to be given notice of the time and place of hearing on this Petition:

Name	Address	Relationship
Keith Wellin	126 Tradd Street, Charleston, SC 29401	Respondent
Wendy Wellin	[REDACTED]	Wife
Peter Wellin	2 Ship Channel Rd, South Portland, ME 04106	Son
Cynthia Plum	10 Waterman Ave., Philadelphia, PA 19118	Daughter
Marjorie King	1884 Beans Bight Road, Bainbridge Island, WA 98110	Daughter

10. I request that the Court set a time and place of hearing on this Petition; that the Court determine that the above person is a person for whom appointment of a conservator is proper; that the Court appoint Wells Fargo, NA as the conservator for the above minor/incapacitated person; and, that Letters of Conservatorship be issued to the conservator.

Executed this day of July, 2013.

Signature: Marjorie W. King

July 17, 2013

VERIFICATION

The undersigned, being sworn, states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this day of
July , 20 13

Signature:

Name: Peter Wellin
Address: 2 Ship Channel Rd, South Portland, ME
04106

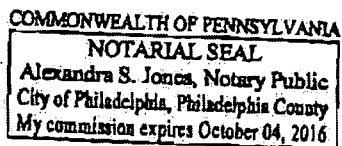
Notary Public for _____
My Commission Expires: _____

E-mail: wellinp@me.com
Telephone (O): _____
(H): _____

The undersigned, being sworn, states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this 18th day of
July, 20 13

Alexandra S. Jones
Notary Public for Pennsylvania
My Commission Expires: 10/4/2016

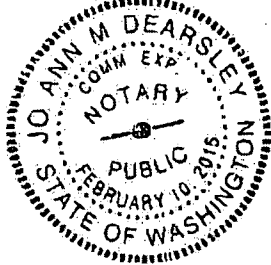


Signature: Cynthia Wellin Plum
Name: Cynthia Wellin Plum
Address: 10 Waterman Ave., Philadelphia, PA
19118
E-mail: cp208@comcast.net
Telephone (O): _____
(H): 215 248 3559

The undersigned, being sworn, states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this 17th day of July, 2013

Marjorie Wellin King
Notary Public for Washington
My Commission Expires: Feb 10, 2015



Signature: Marjorie Wellin King

Name: Marjorie Wellin King

Address: 1884 Beans Bight Road, Bainbridge Island, WA 98110

E-mail: marjoriewk@gmail.com

Telephone (O): 206-794-3560

(H): 206-842-1885

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Conservator of the conservatorship of Keith Wellin, subject to review and approval of the court order.

Executed this 19th day of July, 2013.

SWORN to before me this 19th day of July, 2013.
Andrea Hogan
Notary Public for South Carolina
My Commission Expires: April 4, 2023

ANDREA HOGAN
NOTARY PUBLIC
SOUTH CAROLINA
MY COMMISSION EXPIRES APRIL 4, 2023

Signature: [Signature]
Name: Well Fargo, NA
Address: 177 Meeting Street, 4th Floor
Charleston, SC 29401
E-mail: elizabeth.rodgers@wellsfargo.com
Telephone (O): 843-724-4005
(H): _____

Signature: _____
Name: _____
Address: _____

E-mail: _____
Telephone (O): _____
(H): _____

Signature: _____
Name: _____
Address: _____

E-mail: _____
Telephone (O): _____
(H): _____

EXHIBIT A

6. The following is a general statement of the property, assets, and income of the above person, together with an estimate of the value thereof:

- a. Through hard work and wise investing, Keith Wellin ("Wellin") amassed a large fortune during his lifetime. Upon information and belief, Wellin currently owns stock and cash worth over \$50 million.
- b. Wellin also holds a promissory note with a face value of approximately \$49 million.
- c. Wellin also owns residential properties in Friendship, Maine, and Stockton, Georgia. While Wellin used his money to purchase his current residence in Charleston and a residential property in Vero Beach, Florida, title to both of these properties, upon information and belief, has been placed in the name of his wife, Wendy Wellin.
- d. In addition to the above, Wellin owns various types of personal property.

7. The appointment of a Conservator for the above person is necessary because (state the reasons justifying appointment):

- a. Wellin is now 86 years old and will turn 87 next month. Upon information and belief, Wellin is in failing health, both mentally and physically. Several years ago, Wellin suffered from a stroke, the lingering effects of which are permanent dependence on a feeding tube, immobility without assistance, and a speech deficit impacting his ability to communicate. Wellin's wife, Wendy Wellin, is his primary caregiver.
- b. Wellin has three children, all from his first marriage: Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King (hereinafter, "Petitioners"). Wellin married Wendy Wellin,

his fourth wife, in 2002. Increasingly over the course of their marriage, Wendy Wellin has restricted Wellin's children's and grandchildren's access to Wellin.

- c. In the last few months, Wellin has engaged in a course of conduct, effectuated through legal counsel purporting to represent Wellin's interests, that is highly uncharacteristic of Wellin and that has caused Petitioners to have grave concerns that Wellin can no longer manage his financial affairs and is being unduly influenced and controlled by Wendy Wellin.
- d. Over the course of his life, Wellin has made clear and consistent efforts to preserve his fortune for his children, grandchildren, and lineal descendants. The central tenet of Wellin's estate planning was always to protect his estate for his lineal descendants while providing a substantial but smaller amount for Wendy Wellin and her two daughters. Upon information and belief, for over a decade, Wellin used the same accountant (Michael E. Simon), the same stock broker at UBS (Brian McLoughlin) and the same attorney at Nixon Peabody, LLP (Thomas Farace, Esq.) to assist him with his extensive estate. However, upon information and belief, over the past few months, Wellin has replaced Nixon Peabody as his estate planning counsel, has apparently removed his investments from UBS, and has disinherited his children, including removal of them from all fiduciary positions within his control. Further, according to Wellin's new lawyers, Wellin has purported to remove Petitioner Peter Wellin as Wellin's power of attorney and has also removed Petitioners Peter Wellin and Cynthia Wellin Plum as successor trustees of Wellin's trust.
- e. Upon information and belief, these abrupt changes have coincided with sudden efforts by Wendy Wellin to remove at least tens of millions of dollars from Wellin's estate into her

own individual name, accelerating her efforts over many years to enrich herself at the expense of her husband and his estate. Most recently, upon information and belief, Wendy Wellin has taken steps to remove stocks valued at approximately \$52 million from a UBS account which Wellin owns but for which Wendy Wellin presently serves as Wellin's Power of Attorney (the "UBS account"). Petitioners, who now have purportedly been removed from the fiduciary positions – including general power of attorney and trustee – through which they could protect their father's estate, do not know the whereabouts of the funds from the UBS account.¹ Petitioners' concern over the whereabouts of these funds is heightened by the fact that Wendy Wellin, upon information and belief, very recently attempted to place \$25 million from Wellin's estate into an account in her name to guarantee her inheritance and also attempted to purchase a house on Sullivan's Island for approximately \$4.5 million using Wellin's money.²

- f. For the foregoing reasons, Petitioners are extremely concerned that, unless a conservator is appointed, Wellin's estate will be dissipated as a result of actions taken by Wendy Wellin.
- g. Moreover, Wellin recently filed two lawsuits – one in South Carolina District Court and one in the Delaware Court of Chancery – in which Wellin, through his new legal counsel, seeks to undo certain estate planning transactions, which Wellin previously

¹ While the terms of the Power of Attorney contract for the UBS account, along with Wendy Wellin's fiduciary duties to Wellin, require Wendy Wellin to spend money from the UBS account for Wellin's benefit only, Petitioners believe that Wendy Wellin has spent and, unless and until a conservator is appointed, is likely to continue to spend, money from the UBS account for her own benefit and for the benefit of others in violation of her fiduciary duties.

² Wendy Wellin took or attempted to take these steps despite the fact that, as discussed below, Wellin recently filed lawsuits through his new counsel alleging that his estate is in danger of being dissipated and that Wellin is in danger of being rendered bankrupt.

executed through his long-time legal counsel and which benefited Wellin's children and grandchildren. A copy of the South Carolina District Court action is attached hereto as Exhibit B, and a copy of the Delaware Court of Chancery action is attached hereto as Exhibit C. In these lawsuits, Wellin makes allegations which further bolster Petitioners' belief that appointment of a conservator is proper. In these lawsuits, Wellin effectively claims he cannot adequately manage his financial affairs on his own anymore. Specifically, Wellin alleges, among other things, that:

- i. "Plaintiff's medical conditions and medications at times rendered him unable to manage the complexities of his financial affairs." (Exhibit B, ¶ 40; Exhibit C, ¶ 79).
- ii. "Plaintiff is an infirm, 86 year-old entrepreneur and Wall Street investor." (Exhibit C, ¶ 53).
- iii. "Due to Plaintiff's age and temporary and permanent health problems," Wellin relied on Petitioners Peter Wellin and Cynthia Wellin Plum for purposes of the care, welfare and administration of Plaintiff's property and assets. (Exhibit B, ¶¶ 41-42; Exhibit C, ¶¶ 80-81).
- iv. Wellin sold his interest in a partnership that was, at the time, worth approximately \$90 million, and Wellin did not understand the nature of the transaction and how it affected him financially for approximately three and a half years (from November 2009 through the spring of 2013). (Exhibit B, ¶¶ 58-70).

- v. In January of 2013, Wellin misinterpreted a financial statement he received from UBS. (Exhibit B, ¶ 71). Based on his interpretation of the financial statement, Wellin believed that he had in excess of \$220 million of liquid assets. (*Id.*).³
- vi. In the first part of 2013, Wellin gave \$10 million each to his three children and to his wife, Wendy Wellin (\$40 million total), mistakenly believing that he had sufficient liquid assets to cover these gifts and to allow himself to maintain his lifestyle and cover gifts intended in his will and revocable trust. (Exhibit B, ¶ 76). At the time he made these gifts, Wellin did not understand that making these gifts would result in an income tax liability of approximately \$27 million. (Exhibit B, ¶¶ 78-80).
- h. In addition to these allegations indicating that Wellin can no longer effectively manage his financial affairs, Wellin, through his new counsel, has also made allegations that Wellin's estate is at risk of being dissipated. In the South Carolina District Court case, Wellin requested and received an *ex parte* temporary restraining order against Petitioners based on alleged concerns that Wellin's assets might be dissipated, rendering Wellin bankrupt, as a result of future actions taken by Petitioners. (See Memorandum in Support of Motion for TRO, attached hereto as Exhibit D).⁴ Wellin has requested

³ According to this allegation, Wellin mistakenly believed that he had over \$100 million more in liquid assets than he actually had.

⁴ Notwithstanding the allegations made throughout the two complaints indicating that Wellin can no longer effectively manage his financial affairs due to temporary and permanent mental health issues, Wellin's counsel asserts in the memorandum in support of the temporary restraining order that Wellin "is currently in very poor physical health but is mentally competent in all regards." (Exhibit D, at p. 17). Wellin's counsel provides no support for this assertion, which is contradicted by the allegations made throughout the complaints.

similar relief based on the same concerns in the Delaware action. (Exhibit C, ¶ 10 and Prayer for Relief).

- i. Petitioners are confused by – and vigorously dispute – Wellin’s bizarre allegations that the estate plan he personally prepared with great care and with very involved, sophisticated legal counsel in New York was procured by fraud and other similar misconduct on the part of his children. These claims, coupled with the equally baseless charges that Petitioners may take actions to dissipate their father’s estate, are completely uncharacteristic of the father known to Petitioners over the course of their lifetime. However, this Court need not resolve the factual dispute between the parties. Instead, what is important for purposes of this petition is that both Petitioners and Wellin have expressed serious concerns that Wellin may lack the capacity to manage his very complex financial affairs and that Wellin’s estate is at risk of being dissipated. In light of these concerns, Petitioners respectfully submit that the most appropriate course is for the Court to appoint a conservator to protect Wellin’s estate.
- j. Accordingly, Petitioners respectfully submit that a neutral, third-party conservator capable of managing very large financial portfolios is needed to manage and protect Wellin’s estate.
- k. Petitioners request that the Court appoint qualified, neutral examiners to assess Wellin’s ability to manage his financial affairs, pursuant to South Carolina Code Section 62-5-407.
- l. Petitioners further request that the Court appoint Wells Fargo as Conservator of Wellin’s estate and grant Wells Fargo all authority typically granted to a Conservator. Petitioners’ counsel has spoken to a representative from Wells Fargo and procured Wells

Fargo's consent to serve as Conservator in this case, if so appointed by this Court. In the alternative, Petitioners request that this Court appoint as conservator another neutral, third party with the appropriate sophistication, training, and experience, and whose financial interests do not conflict or potentially conflict with Wellin's.

- m. Due to the risk that Wellin's assets will be dissipated prior to appointment of a permanent conservator in this action, Petitioners also request that this Court immediately schedule a hearing, appoint a temporary conservator and order the temporary conservator to provide this Court with an accounting of Wellin's assets and take steps to ensure that Wendy Wellin does not dissipate those assets prior to the date that the Court makes its decision regarding appointment of a permanent conservator. Petitioners request that this Court appoint Wells Fargo, or some other neutral, third-party as a temporary conservator.
- n. In the alternative to the above request for appointment of a temporary conservator, Petitioners request that this Court immediately schedule a hearing and issue a protective order prohibiting Wendy Wellin from taking any actions or engaging in any conduct detrimental to Wellin or his estate.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Keith Wellin, individually and as Trustee of	)	C/A No. 2:13-cv-01831-DCN
the Keith S. Wellin Florida Revocable Living	)	
Trust u/a/d December 11, 2001,	)	
	)	
Plaintiff,	)	
	)	
Versus	)	VERIFIED COMPLAINT
	)	(Jury Trial Demanded)
	)	
Peter J. Wellin, Cynthia W. Plum and	)	
Marjorie W. King, individually, and as co-	)	
Trustees and beneficiaries of the Wellin	)	
Family 2009 Irrevocable Trust u/a/d	)	
November 2, 2009, South Dakota Trust	)	
Company, LLC as co-Trustee of the Wellin	)	
Family 2009 Irrevocable Trust u/a/d	)	
November 2, 2009, Friendship Management,	)	
LLC, Friendship Partners, LP,	)	
	)	
Defendants.	)	

Now comes Plaintiff, Keith Wellin, by his undersigned attorneys and files this Complaint alleging the following:

PARTIES

1. Plaintiff, Keith Wellin, is and was at all times mentioned, domiciled in and a citizen of the State of South Carolina.
2. Defendant Peter Wellin is, and was at all times mentioned, domiciled in and a citizen of the State of Maine.
3. Peter Wellin is being sued in his individual capacity and in his capacity as co-Trustee and beneficiary of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009.
4. Defendant Cynthia W. Plum is, and was at all times mentioned, domiciled in and a citizen of the State of Pennsylvania.

EXHIBIT B

5. Cynthia W. Plum is being sued in her individual capacity and in her capacity as co-Trustee and beneficiary of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009.

6. Defendant Marjorie W. King is, and was at all times mentioned, domiciled in and a citizen of the State of Washington.

7. Marjorie W. King is being sued in her individual capacity and in her capacity as co-Trustee and beneficiary of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009.

8. Defendant South Dakota Trust Company, LLC is a Limited Liability Company organized under the laws of the State of South Dakota.

9. South Dakota Trust Company, LLC is being sued in its capacity as co-Trustee of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009.

10. Friendship Management, LLC is a Limited Liability Company organized under the laws of the State of Delaware.

11. The registered agent for Friendship Management, LLC is Nationwide Information Services, Inc., 3500 South DuPont Highway, Dover, DE, 19901.

12. Friendship Partners, LP is a Limited Partnership organized under the laws of the State of Delaware.

13. The registered agent for Friendship Partners, LP is Nationwide Information Services, Inc., 3500 South DuPont Highway, Dover, DE, 19901.

VENUE AND JURISDICTION

14. The amount in controversy, without interest and costs, exceeds the sum or value specified by 28 U.S.C. § 1332.

15. Every issue of law and fact is wholly between citizens of different states.

16. The United States District Court for the District of South Carolina has jurisdiction over this claim based on diversity jurisdiction pursuant to 28 U.S.C. § 1331.

17. Venue is proper in this District and the Charleston Division pursuant to 28 U.S.C. § 1391(b)(2) and L.R. 3.01(A)(1) because a substantial part of the transactions or occurrences underlying Plaintiff's claims occurred within the Charleston Division of this District.

18. Plaintiff received communication from Defendants regarding the three transactions that are the subject of this case while he was residing in Charleston, SC.

19. Plaintiff executed the documents effectuating the three transactions that are the subject of this case in Charleston, SC.

FACTUAL ALLEGATIONS

20. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

21. Plaintiff is an 86 year-old entrepreneur and Wall Street investor.

22. In the 1960s, Plaintiff purchased a large amount of Class A Berkshire Hathaway common shares. The value of those shares have since grown and, with other investments, resulted in substantial wealth for the Plaintiff.

23. Plaintiff is married to Wendy Wellin.

24. Plaintiff has three children from a prior marriage: Defendants Peter J. Wellin, Marjorie W. King, and Cynthia W. Plum.

Plaintiff's Estate Planning

25. As he grew older, Plaintiff sought to manage his assets in such a manner that his spouse, his children, his grandchildren, and future generations would be provided for financially with the least amount of tax consequences possible.

26. The Keith S. Wellin Florida Revocable Living Trust was created on December 11, 2001. Plaintiff was named Trustee, his son Defendant Peter Wellin as successor Trustee, and his daughter Defendant Cynthia W. Plum as backup successor Trustee. Plaintiff held certain assets in this trust during his lifetime.

27. Friendship Management, LLC, a Delaware Limited Liability Company was formed on December 8, 2003.

28. The members of Friendship Management, LLC are The 2003 KSW Family Trust (40%), Defendant Peter Wellin (20%), Defendant Marjorie King (20%), and Defendant Cynthia Plum (20%).

29. Pursuant to the Operating Agreement, Defendant Cynthia W. Plum is the sole Manager of Friendship Management, LLC and will serve in that capacity until the Plaintiff's death.

30. Friendship Partners LP, a Delaware Limited Partnership with Plaintiff, as limited partner, and Friendship Management, LLC, as general partner, was formed on December 12, 2003.

31. Plaintiff transferred 896 shares of Class A Berkshire Hathaway common shares (hereinafter BRKa) to Friendship Partners, LP upon the partnership's formation.

32. Plaintiff owned 98.90% of Friendship Partners LP and the remaining percentage was owned by Friendship Management, LLC.

33. In 2007, Plaintiff Keith S. Wellin, in his individual capacity, was replaced as limited partner by Plaintiff Keith S. Wellin, Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d 12/11/01.

Plaintiff's Health

34. In 2006, Plaintiff's health began to deteriorate.

35. On May 23, 2006, Plaintiff executed a Florida General Power of Attorney and a New York Durable General Power of Attorney making his physician son, Defendant Peter J. Wellin, his attorney-in-fact. These documents also made Defendant Cynthia W. Plum Plaintiff's successor attorney-in-fact. Plaintiff executed both documents from his home in Charleston, SC.

36. On September 20, 2006, Plaintiff executed a South Carolina General Durable Power of Attorney, a Georgia Financial Power of Attorney, and a Maine General Durable Power of Attorney, all appointing his physician son, Defendant Peter Wellin, his attorney-in-fact. These documents made Defendant Cynthia W. Plum Plaintiff's successor attorney-in-fact.

37. In or around 2008, Plaintiff was diagnosed with and treated for tongue cancer.

38. In and throughout 2009, the Plaintiff experienced other adverse health problems which required him to take various medications.

39. In 2011, Plaintiff suffered a stroke.

40. Plaintiff's medical conditions and medications at times rendered him unable to manage the complexities of his financial affairs.

41. Due to Plaintiff's age and temporary and permanent health problems, he relied upon Defendant Peter Wellin's knowledge, expertise, personal integrity and relationship as his son and placed special trust and confidence in him regarding the care, welfare and administration of Plaintiff's property and assets.

42. Due to Plaintiff's age and temporary and permanent health problems, he relied upon Defendant Cynthia W. Plum's education, knowledge, expertise, personal integrity and relationship as his daughter and placed special trust and confidence in her regarding the care, welfare and administration of Plaintiff's property and assets.

43. At all times relevant to the allegations contained in this Complaint, Defendant Peter J. Wellin was empowered to act on Plaintiff's behalf and bind Plaintiff in business transactions by way of five (5) different powers of attorney.

44. At all times relevant to the allegations contained in this Complaint, Plaintiff reposed special confidence in Defendant Peter Wellin to act in good faith with respect to Plaintiff's interests.

45. At all times relevant to the allegations contained in this Complaint, Plaintiff reposed special confidence in Defendant Cynthia W. Plum to act in good faith with respect to Plaintiff's interests.

46. At all times relevant to the allegations contained in this Complaint, Plaintiff was in a confidential relationship with his son, Defendant Peter Wellin, as his attorney-in-fact, who had the highest fiduciary duty under the law.

47. At all times relevant to the allegations contained in this Complaint, Plaintiff was in a confidential relationship with his daughter, Defendant Cynthia W. Plum, as his successor attorney-in-fact, who had the highest fiduciary duty under the law.

48. Due to the serious breaches of fiduciary duty committed by Defendants Peter Wellin and Cynthia W. Plum, which are described below, Plaintiff revoked the five Durable Powers of Attorney on June 20, 2013.

49. Defendant has named his wife, Wendy Wellin, as his new attorney-in-fact.

The November 2009 Transaction

50. In November 2009, Defendant Peter Wellin visited Plaintiff to propose that the Plaintiff execute a two-part "tax advantaged transaction" (hereinafter the "November 2009 Transaction").

51. This conversation took place in Charleston, SC.

52. Defendants Peter Wellin and Cynthia W. Plum failed to inform Plaintiff that this transaction would actually cause Plaintiff to lose control of his limited partnership interest and expose Plaintiff to significant income tax liability without corresponding access to cash flow, which could render him bankrupt.

53. Defendants Peter Wellin and Cynthia W. Plum failed to raise any concern with Plaintiff that the November 2009 Transaction would severely decrease Plaintiff's net worth and liquidity.

54. Defendants Peter Wellin, Cynthia W. Plum and Marjorie W. King participated in the execution of documents to effectuate the November 2009 Transaction. All were fully aware that the November 2009 Transaction would substantially decrease Plaintiff's net worth and liquidity.

55. Defendants Peter Wellin and Cynthia W. Plum induced the Plaintiff to create the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009 (hereinafter "Wellin Family 2009 Irrevocable Trust."). The Wellin Family 2009 Irrevocable Trust was created on November 2, 2009.

56. The trustees of the Wellin Family 2009 Irrevocable Trust are (1) Defendant Peter Wellin; (2) Defendant Marjorie W. King; (3) Defendant Cynthia W. Plum; and (4) Defendant South Dakota Trust Company, LLC.

57. The beneficiaries of the Wellin Family 2009 Irrevocable Trust are (1) Defendant Peter Wellin; (2) Defendant Marjorie W. King; and (3) Defendant Cynthia W. Plum, and their respective issue.

58. Defendants Peter Wellin and Cynthia W. Plum then induced the Plaintiff to sell his 98.90% limited partnership interest in Friendship Partners LP to the newly formed Wellin Family 2009 Irrevocable Trust.

59. At the time of the sale of Plaintiff's partnership interest, the value of the 896 BRKa shares originally held by Plaintiff and then held by Friendship Partners LP, was approximately \$90,000,000.

60. In return for selling his 98.90% interest in Friendship Partners LP, Plaintiff received a Promissory Note (hereinafter "Note") with a nominal of \$49,802,115.00 from the Wellin Family 2009 Irrevocable Trust.

61. The terms of the Note show that it was not a fair market transaction.

62. The principal amount of the Note was not due for nine (9) years and was not callable prior to the maturity date.

63. When the Note comes due, repayment is not required to be made in cash, but rather can be made by transferring an illiquid limited partnership interest in Friendship Partners LP back to the Plaintiff, with respect to which the Plaintiff has no right to compel distributions or liquidation.

64. The Note contains only a nominal interest rate. Under the terms of the Note, interest could be paid with (i) interests in Friendship Partners LP, or (ii) another note in the amount of the interest, with terms substantially similar to the original Note.

65. The appraisal for Plaintiff's partnership interest was significantly undervalued.

66. Plaintiff unknowingly sold his partnership interest for less than market rate while also retaining the income tax liability should any of the BRKa shares be sold.

67. Today, a sale of the Plaintiff's 896 BRKa shares held by the Friendship Partners LP would generate approximately forty million dollars (\$40,000,000.00) in tax liability to the Plaintiff, which would lead to Plaintiff's insolvency.

68. Prior to Spring 2013, Plaintiff did not know or understand that he had lost all control over and access to his securities, which are now solely in control of his children through the Wellin Family 2009 Irrevocable Trust, Friendship Management, LLC, and Friendship Partners, LP.

69. Defendant Peter Wellin induced the Plaintiff to execute the November 2009 Transaction while he was Plaintiff's attorney-in-fact and in a confidential relationship with the Plaintiff.

70. Defendants Peter Wellin and Cynthia W. Plum orchestrated the November 2009 Transaction at a time when Plaintiff was vulnerable and unable to appreciate the complexities of the transaction.

2013 Gifts

71. In January of 2013, Plaintiff received a financial statement from UBS stating that he had in excess of \$220 million in liquid assets.

72. Unbeknownst to Plaintiff, this financial statement actually included assets of the Friendship Partners, LP which were not assets that Plaintiff had within his control or possession.

73. Based upon this financial statement, Plaintiff mistakenly believed that he had the financial capacity to make substantial gifts to his children without damaging his own liquidity. Accordingly, he liquidated enough shares of BRKa to make a gift of \$10,000,000 each to Defendants Peter Wellin, Defendant Cynthia W. Plum, and Defendant Marjorie W. King (hereinafter the "2013 Gifts").

74. Plaintiff was in a compromised mental state at the time of the 2013 Gifts due to his health conditions and medications. Also, at this time, Plaintiff was in a fiduciary and confidential relationship with his son, whom he had appointed his attorney in fact, and relied upon his son's advice and counsel with regard to the 2013 Gifts.

75. He also gifted \$10 million to his wife, Wendy Wellin.

76. Plaintiff mistakenly believed that he had liquid assets in such an amount sufficient to cover the 2013 Gifts and allow his to retain sufficient liquid assets to maintain his lifestyle and cover gifts intended in his Will and Revocable Trust, of which Defendant Peter Wellin was aware.

77. In order to give the 2013 Gifts, the Plaintiff liquidated stock into cash which caused Plaintiff to owe substantial sums to the IRS in both income tax and gift tax. This liquidation was at the behest of Defendant Peter Wellin, as a gift of stock would have required the Defendants to pay any income tax due when they liquidated the stock.

78. As a result of the 2013 Gifts, the Plaintiff now faces income tax liability in the amount of approximately \$27 million.

79. Plaintiff did not know that making the 2013 gifts would so drastically decrease his financial assets to the point of insolvency.

80. Plaintiff did not know the full impact of the tax consequences of the 2013 Gifts.

81. Defendants Peter Wellin and Cynthia W. Plum, failed to raise the issue of the tax consequences Plaintiff would incur in making the 2013 Gifts to the individual Defendants.

82. Defendants Peter Wellin and Cynthia W. Plum failed to inform Plaintiff that making the 2013 Gifts would leave Plaintiff in a precarious financial situation.

83. Defendants Peter Wellin and Cynthia W. Plum failed to inform Plaintiff that the financial statement issued by UBS did not accurately reflect Plaintiff's actual financial condition.

84. Defendants Peter Wellin and Cynthia W. Plum failed to encourage, suggest or insist that Plaintiff obtain independent, professional legal advice regarding the 2013 Gifts.

85. Defendant Peter Wellin discussed the 2013 Gifts with Plaintiff's long-time accountant, who advised against the gifts. Plaintiff himself did not have an opportunity to speak to his accountant.

86. Defendant Peter Wellin failed to consult the Plaintiff's long-time tax lawyer regarding the 2013 Gifts, even though Defendant Peter Wellin regularly consulted with such attorney regarding the Plaintiff's estate planning.

87. Defendant Peter Wellin improperly used the confidential relationship imposed upon him by each of the five (5) Durable Powers of Attorney in failing to advise Plaintiff as to the financial and tax effects of the 2013 Gifts and in actively encouraging him to incur the additional income tax liability caused by making the 2013 Gifts in cash rather than stock.

88. Through the November 2009 transaction and the 2013 Gifts, Defendants Peter Wellin, Cynthia W. Plum and Marjorie W. King have taken advantage of their vulnerable father and effectively siphoned off a substantial portion of Plaintiff's assets, leaving Plaintiff with such a large tax liability that he will soon be insolvent.

FOR A FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty as to Peter Wellin)

89. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

90. Defendant Peter Wellin acted as an agent for Plaintiff pursuant to five (5) different Durable Powers of Attorney.

91. Defendant Peter Wellin, in accepting appointment under one or more of the Florida General Power of Attorney, South Carolina Durable General Power of Attorney, Georgia Financial Power of Attorney, New York Durable General Power of Attorney and Maine General Durable Power of Attorney, all appointing his son, Defendant Peter Wellin, his attorney-in-fact, accepted this fiduciary duty.

92. At the time of the transactions at issue, Defendant Peter Wellin was a successor trustee of the Keith S. Wellin Florida Revocable Living Trust w/a/d December 11, 2001 and, therefore, owed Plaintiff a fiduciary duty.

93. Defendant Peter Wellin owed Plaintiff the utmost duty of care, loyalty and good faith.

94. Plaintiff reposed a special confidence and trust in Defendant Peter Wellin and Defendant owed Plaintiff a fiduciary duty to act in Plaintiff's best interests.

95. Defendant Peter Wellin, as Plaintiff's attorney-in-fact, had a fiduciary duty of loyalty to the Plaintiff.

96. Defendant Peter Wellin, under the duty of loyalty, had the obligation to act in the best interests of Plaintiff.

97. Defendant Peter Wellin breached his fiduciary duty to Plaintiff by, among other things:

- a. Failing to safeguard Plaintiff's funds;
- b. Failing to act in Plaintiff's best interests;
- c. Breaching his duty of loyalty to the Plaintiff;
- d. Failing to fully inform Plaintiff of the impact on Plaintiff's financial condition the November 2009 Transaction and 2013 Gifts would have;
- e. Failing to fully inform Plaintiff of the tax implications the November 2009 Transaction and 2013 Gifts;

- f. Making misrepresentations to Plaintiff about Plaintiff's financial condition and the consequences of the November 2009 Transaction and the 2013 Gifts;
- g. Violating the terms of the five Durable Power of Attorney documents under which he was designated Plaintiff's attorney-in-fact;
- h. Misleading Plaintiff;
- i. Taking advantage of Plaintiff's compromised mental state, whether due to medications or temporary or permanent physical conditions or illnesses;
- j. Retaining Plaintiff's funds for his own benefit;
- k. Putting Defendant's own personal interests over those of Plaintiff; and
- l. Failing to reimburse Plaintiff for the 2009 Transaction and 2013 Gifts

98. Defendant/Agent Peter Wellin is responsible to Plaintiff, as his principal, for any and all losses, including interest, lost appreciation on the BRKa shares, gift and income taxes incurred, and attorney fees that occurred as a result of Peter Wellin's negligence or bad faith.

99. There is a presumption of undue influence as Defendant Peter Wellin was in a confidential relationship with Plaintiff and there were suspicious circumstances surrounding the preparation, formulation, or execution of the November 2009 Transaction and the 2013 Gifts.

100. The Plaintiff suffered financial loss as a direct and proximate result of Defendant Peter Wellin's breach of fiduciary duty.

101. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendant Peter Wellin for actual damages with pre-judgment and post-judgment interest thereon and attorney fees and expenses for having to bring this lawsuit.

102. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendant Peter Wellin for punitive damages in an amount to be determined at trial, for the fees and costs of this action, and for such other and further relief as this Court may deem just and proper, all with pre-judgment and post-judgment interest thereon.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty as to Cynthia W. Plum)

103. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

104. Defendant Cynthia W. Plum was appointed Successor Power of Attorney under Plaintiff's Florida General Power of Attorney, South Carolina General Durable Power of Attorney, Georgia Financial Power of Attorney, New York General Durable Power of Attorney and Maine General Durable Power of Attorney and, therefore, owed Plaintiff a fiduciary duty.

105. At the time of the transactions at issue, Defendant Cynthia W. Plum was a backup successor trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2001 and, therefore, owed Plaintiff a fiduciary duty.

106. Defendant Cynthia W. Plum owed Plaintiff the utmost duty of care, loyalty and good faith.

107. Plaintiff reposed a special confidence and trust in Defendant Cynthia W. Plum and Defendant owed Plaintiff a fiduciary duty to act in Plaintiff's best interests.

108. Defendant Cynthia W. Plum had a fiduciary duty of loyalty to the Plaintiff.

109. Defendant Cynthia W. Plum, under the duty of loyalty, had the obligation to act in the best interests of Plaintiff.

110. Defendant Cynthia W. Plum breached her fiduciary duty to Plaintiff by, among other things:

- a. Failing to safeguard Plaintiff's funds;
- b. Failing to act in Plaintiff's best interests;
- c. Breaching her duty of loyalty to the Plaintiff;
- d. Failing to fully inform Plaintiff of the impact on Plaintiff's financial condition the November 2009 Transaction and 2013 Gifts would have;

- e. Failing to fully inform Plaintiff of the tax implications the November 2009 Transaction and 2013 Gifts;
- f. Violating the terms of the five Durable Power of Attorney documents under which she was designated Plaintiff's successor attorney-in-fact;
- g. Misleading Plaintiff;
- h. Taking advantage of Plaintiff's compromised mental state, whether due to medications or temporary or permanent physical conditions or illnesses;
- i. Retaining Plaintiff's funds for her own benefit;
- j. Putting her own personal interests over those of Plaintiff; and
- k. Failing to reimburse Plaintiff for the 2009 transaction and 2013 Gifts

111. Defendant/Agent Cynthia W. Plum is responsible to Plaintiff, as her principal, for any and all losses, including interest, lost appreciation on the BRKa shares, gift and income taxes incurred, and attorney fees that occurred as a result of her negligence or bad faith.

112. There is a presumption of undue influence as Defendant Cynthia W. Plum was in a confidential relationship with Plaintiff and there were suspicious circumstances surrounding the preparation, formulation, or execution of the November 2009 Transaction and the 2013 Gifts.

113. The Plaintiff suffered financial loss as a direct and proximate result of Defendant Cynthia W. Plum's breach of fiduciary duty.

114. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendant Cynthia W. Plum for actual damages with pre-judgment and post-judgment interest thereon and attorney fees and expenses for having to bring this lawsuit.

115. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendant Cynthia W. Plum for punitive damages in an amount to be determined at trial, for the fees and costs of this action, and for such other and further relief as this Court may deem just and proper, all with pre-judgment and post-judgment interest thereon.

FOR A THIRD CAUSE OF ACTION

(Aiding and Abetting Breach of Fiduciary Duty as to Marjorie King)

116. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

117. Defendants Peter Wellin and Cynthia W. Plum breached the fiduciary duties they owed to Plaintiff, as described in the paragraphs above.

118. Defendant Marjorie W. King knowingly participated in the breach of fiduciary duty by participating in effectuating the November 2009 Transaction.

119. Defendant Marjorie W. King knowingly participated in the breach of fiduciary duty by supporting, receiving and retaining the 2013 Gifts.

120. The Plaintiff suffered financial loss as a direct and proximate result of Defendant Marjorie W. King aiding and abetting Defendants Peter Wellin and Cynthia W. Plum's breach of fiduciary duty.

121. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Marjorie W. King for actual damages with pre-judgment and post-judgment interest thereon and attorney fees and expenses for having to bring this lawsuit.

122. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Marjorie W. King for punitive damages in an amount to be determined at trial, for the fees and costs of this action, and for such other and further relief as the Court may deem just and proper, all with pre-judgment and post-judgment interest thereon.

FOR A FOURTH CAUSE OF ACTION

(Fraud as to Peter Wellin)

123. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

124. Defendant Peter Wellin made a false representation that the November 2009 transaction was a "tax advantaged transaction" and was in Plaintiff's best interest.

125. Defendant Peter Wellin made false representations to the Plaintiff that Plaintiff had the solvency to afford the 2013 Gifts and the tax consequences for the same.

126. The false representations made to the Plaintiff were significant and material representations, leading to Plaintiff's damages.

127. Defendant Peter Wellin had either knowledge of the falsity of these statements or acted with a reckless disregard for the truth or falsity of the statements.

128. Defendant Peter Wellin made these representations to Plaintiff with the intent that Plaintiff would act upon the statements by (1) consenting to and executing documents to effectuate the November 2009 Transaction without question and (2) making the 2013 Gifts to the Defendants Peter Wellin, Cynthia W. Plum and Marjorie W. King.

129. Plaintiff was ignorant of the falsity of Defendant Peter Wellin's representations regarding the alleged tax advantages and financial implications of the November 2009 Transaction.

130. Plaintiff relied on the truth of the representations made by Defendant Peter Wellin.

131. Plaintiff had the right to rely on the truth of the statements made by his attorney-in-fact and son, Peter Wellin.

132. The Plaintiff suffered financial loss as a direct and proximate result of reliance on the Defendant Peter Wellin's above-alleged representations.

133. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendant Peter Wellin for actual damages with pre-judgment and post-judgment interest thereon and attorney fees and expenses for having to bring this lawsuit.

134. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendant Peter Wellin for punitive damages in an amount to be determined at trial, for the fees and costs of this action, and for such other and further relief as the Court may deem just and proper, all with pre-judgment and post-judgment interest thereon.

FOR A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation as to Peter Wellin)

135. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

136. Defendant Peter Wellin made a false representation that the November 2009 Transaction was a "tax advantaged transaction" and was in Plaintiff's best interest.

137. Defendant Peter Wellin made false representations to the Plaintiff that Plaintiff had the solvency to afford the 2013 Gifts and the tax consequences for the same.

138. Defendant Peter Wellin had a pecuniary interest in making the false representation to the Plaintiff that the 2009 Transaction was in the Plaintiff's best interest.

139. Defendant Peter Wellin had a pecuniary interest in making the false representation to the Plaintiff that Plaintiff was in a sufficient financial condition to make the 2013 Gifts to the Defendants.

140. Defendant Peter Wellin owed a duty of care to the Plaintiff to see that truthful information was communicated to the Plaintiff regarding management of Plaintiff's finances and Plaintiff's financial condition.

141. Defendant breached his duty of care to the Plaintiff by failing to exercise due care and willfully, recklessly and intentionally misrepresenting facts to the Plaintiff.

142. The Plaintiff was justified in relying on Defendant Peter Wellin's misrepresentations as to the November 2009 Transaction and the 2013 Gifts.

143. The Plaintiff suffered financial loss as a direct and proximate result of reliance on Defendant's misrepresentations.

144. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendant Peter Wellin for actual damages with pre-judgment and post-judgment interest thereon and attorney fees and expenses for having to bring this lawsuit.

145. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendant Peter Wellin for punitive damages in an amount to be determined at trial, for the fees and costs of this action, and for such other and further relief as the Court may deem just and proper, all with pre-judgment and post-judgment interest thereon.

FOR A SIXTH CAUSE OF ACTION
(Breach of Contract as to Peter Wellin)

146. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

147. On May 23, 2006, Plaintiff executed a Florida General Power of Attorney and a New York Durable General Power of Attorney making his son, Defendant Peter J. Wellin, his attorney-in-fact.

148. On September 20, 2006, Plaintiff executed a South Carolina General Durable Power of Attorney, a Georgia Financial Power of Attorney, and a Maine General Durable Power of Attorney, all appointing his son, Defendant Peter Wellin, his attorney-in-fact.

149. Each of these written Durable Powers of Attorney is a formal contract that created a principal-agency relationship between Plaintiff and Defendant Peter Wellin.

150. The contractual principal-agent relationship was predicated upon Defendant Peter Wellin acting in Plaintiff's best interests regarding all transactions related to the Plaintiff.

151. Defendant Peter Wellin breached each of the Durable Power of Attorney contracts by his false representations, omissions and conduct connected with the November 2009 Transaction and the 2013 Gifts.

152. Defendant Peter Wellin breached each of the Durable Power of Attorney contracts by inducing Plaintiff to make the 2013 Gifts.

153. The Plaintiff suffered financial loss as a direct and proximate result of Defendant Peter Wellin's breach of contract.

154. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendant Peter Wellin for actual damages with pre-judgment and post-judgment interest thereon and attorney fees and expenses for having to bring this lawsuit.

155. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendant Peter Wellin for punitive damages in an amount to be determined at trial, for the fees and costs of this action, and for such other and further relief as the Court may deem just and proper, all with pre-judgment and post-judgment interest thereon.

FOR A SEVENTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

156. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

157. For the reasons alleged in Plaintiff's Sixth Cause of Action, Defendant Peter Wellin breached each of the five Durable Power of Attorney contracts that created the agency relationship between Plaintiff and Defendant.

158. Defendant Peter Wellin breached these contracts by failing to act honestly and in Plaintiff's best interests related to the November 2009 Transaction and the 2013 Gifts.

159. Defendant Peter Wellin had a fraudulent intent when he breached these contracts.

160. Defendant Peter Wellin's false representation that the November 2009 Transaction was a "tax advantaged transaction" that was in Plaintiff's best interest was a fraudulent act that shows Defendant's fraudulent intent.

161. Defendant's actions in connection with the November 2009 Transaction were characterized by dishonesty in fact or unfair dealing.

162. Defendant Peter Wellin's representation that Plaintiff had the solvency to afford the 2013 Gifts and their tax consequences was a fraudulent act that shows Defendant's fraudulent intent.

163. Defendant Peter Wellin's failure to inform Plaintiff of the financial consequences of the 2013 Gifts and their tax implications was a fraudulent act that shows Defendant's fraudulent intent.

164. Defendant's actions in connection with the 2013 Gifts were characterized by dishonesty in fact or unfair dealing.

165. The Plaintiff suffered financial loss as a direct and proximate result of Defendant Peter Wellin's breach of contract with fraudulent intent.

166. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendant Peter Wellin for actual damages with pre-judgment and post-judgment interest thereon and attorney fees and expenses for having to bring this lawsuit.

167. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendant Peter Wellin for punitive damages in an amount to be determined at trial, for the fees and costs of this action, and for such other and further relief as the Court may deem just and proper, all with pre-judgment and post-judgment interest thereon.

FOR AN EIGHTH CAUSE OF ACTION

(Violation of the South Carolina Uniform Securities Act of 2005, S.C. Code §35-1-101, et seq. as to Defendant Peter Wellin, individually and as co-Trustee of the Wellin Family 2009 Irrevocable Trust)

168. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

169. The November 2009 Transaction involved a contract of sale, contract to sell, or disposition of a security or interest in a security for value.

170. Pursuant to the South Carolina Uniform Securities Act of 2005, S.C. Code §35-1-501, it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- a. to employ a device, scheme, or artifice to defraud;
- b. to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

171. Defendant Peter Wellin, individually and as co-trustee of the Wellin Family 2009 Irrevocable Trust, employed a device, scheme, or artifice to defraud Plaintiff in connection with the November 2009 Transaction.

172. Defendant Peter Wellin, individually and as co-trustee of the Wellin Family 2009 Irrevocable Trust, made an untrue statement of a material fact when he told Plaintiff that the November 2009 Transaction was a "tax advantaged transaction" that was in Plaintiff's best interest.

173. Defendant Peter Wellin, individually and as co-trustee of the Wellin Family 2009 Irrevocable Trust, omitted the following material facts necessary to make his statement that the November 2009 Transaction was a "tax advantaged transaction" not misleading:

- a. Defendant failed to inform Plaintiff of the overall impact the November 2009 Transaction would have on Plaintiff's finances;
- b. Defendant failed to inform Plaintiff that Plaintiff will lose all access to and control over his assets, but still would be left with tax liability; and
- c. Defendant failed to inform Plaintiff that the November 2009 Transaction was not advantageous from a tax perspective for Plaintiff during his lifetime.

174. Through the above-referenced untrue statements of a material fact and omissions, Defendant Peter Wellin, individually and as co-trustee of the Wellin Family 2009 Irrevocable Trust, engaged in an act, practice or course of business that operated as a fraud or deceit upon Plaintiff.

175. Defendant Peter Wellin, individually and as co-trustee of the Wellin Family 2009 Irrevocable Trust, entered into the November 2009 Transaction in violation of S.C. Code Ann. §35-1-501.

176. Plaintiff, as seller in the November 2009 Transaction, was unaware of Defendant's untruths and omissions.

177. Defendant Peter Wellin, individually and as co-trustee of the Wellin Family 2009 Irrevocable Trust, knew, or in the exercise of reasonable care, could have known of his untruths and omissions.

178. Defendant Peter Wellin's violation of the South Carolina Uniform Securities Act of 2005, proximately caused Plaintiff significant financial damages.

179. Under the South Carolina Uniform Securities Act of 2005, Plaintiff is entitled to recover the securities and any income received on the securities, costs, and reasonable attorney's fees to be determined by the court.

FOR A NINTH CAUSE OF ACTION
(Constructive Fraud as to Peter Wellin)

180. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

181. Defendant Peter Wellin made a false representation that the November 2009 transaction was a "tax advantaged transaction" and was in Plaintiff's best interest.

182. Defendant Peter Wellin made false representations to the Plaintiff that Plaintiff had the solvency to afford the 2013 Gifts and the tax consequences for those gifts.

183. The false representations made to the Plaintiff were significant and material representations, leading to Plaintiff's damages.

184. Defendant Peter Wellin had either knowledge of the falsity of these statements or acted with a reckless disregard for the truth or falsity of the statements.

185. Plaintiff was ignorant of the falsity of Defendant Peter Wellin's statements.

186. Plaintiff relied on the truth of the representations made by Defendant Peter Wellin.

187. Plaintiff had the right to rely on the truth of the statements made by his attorney-in-fact and son, Peter Wellin.

188. Plaintiff was subsequently financially injured by the statements.

189. Constructive fraud has the same legal effect as actual fraud.

190. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendant Peter Wellin for actual damages with pre-judgment and post-judgment interest thereon and attorney fees and expenses for having to bring this lawsuit.

191. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendant Peter Wellin for punitive damages in an amount to be determined at trial, for the fees and costs of this action, and for such other and further relief as the Court may deem just and proper, all with pre-judgment and post-judgment interest thereon.

FOR A TENTH CAUSE OF ACTION

(Rescission of 2013 Gifts based on Mistake of Fact as to Defendants Peter Wellin, Cynthia W. Plum and Marjorie W. King)

192. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

193. Plaintiff was informed and believed that he had sufficient cash flow to make the 2013 Gifts.

194. The 2013 Gifts were induced by fraud, error or misrepresentation, which invalidates the 2013 Gifts.

195. The 2013 Gifts were induced by mistake of fact as to Plaintiff's financial condition and his solvency to make the 2013 Gifts.

196. The 2013 Gifts were induced by mistake of fact as to the tax consequences of such 2013 Gifts and how significantly the tax consequences would diminish Plaintiff's solvency.

197. Plaintiff is entitled to rescission of the 2013 Gifts based upon his Mistake of Fact.

FOR AN ELEVENTH CAUSE OF ACTION
(Unjust Enrichment as to all Defendants)

198. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

199. Defendants obtained and wrongfully retained money and securities that belong to the Plaintiff.

200. Defendants have been unjustly enriched by the retention of these funds.

201. The Plaintiff suffered financial loss as a direct and proximate result of Defendants' retention of Plaintiff's BRKa shares transferred by the November 2009 Transaction and funds from the 2013 Gifts.

202. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendants, jointly and severally, for actual damages with pre-judgment and post-judgment interest thereon.

203. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to judgment against Defendants, jointly and severally, for punitive damages in an amount to be determined at trial, for the fees and costs of this action, and for such other and further relief as the Court may deem just and proper, all with pre-judgment and post-judgment interest thereon and attorney fees and expenses for having to bring this lawsuit.

FOR A TWELFTH CAUSE OF ACTION
(Constructive Trust as to all Defendants)

204. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

205. There existed a confidential relationship between Plaintiff as the principal and Defendant Peter Wellin as his attorney-in-fact.

206. Defendant Peter Wellin abused his confidential relationship as Plaintiff's attorney-in-fact by inducing Plaintiff through misrepresentations to make the November 2009 Transaction and 2013 Gifts that transferred significant assets to Defendants.

207. Plaintiff allowed these transfers in reliance on the above-described representations of Defendant Peter Wellin.

208. Defendants obtained funds through the November 2009 transaction and 2013 Gifts through fraud, bad faith, abuse of confidence and/or violation of a fiduciary duty, which gives rise to an obligation in equity to make restitution to Plaintiff.

209. Defendants Peter Wellin, Cynthia W. Plum and Marjorie W. King participated in and ratified the November 2009 Transaction and 2013 Gifts to the detriment of Plaintiff.

210. All Defendants have retained Plaintiff's assets transferred through the November 2009 Transaction and 2013 Gifts.

211. All Defendants have been unjustly enriched as a result of the November 2009 Transaction and 2013 Gifts.

212. The abuse of confidence committed by Defendants Peter Wellin and Cynthia W. Plum with respect to Plaintiff's property renders it unconscionable and inequitable for Defendants to retain the property transferred through the November 2009 Transaction and 2013 Gifts.

213. The Plaintiff suffered financial loss as a direct and proximate result of Defendants retention of funds from the November 2009 Transaction and 2013 Gifts.

214. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to the imposition of the equitable remedy of a constructive trust.

215. Based upon the foregoing, Plaintiff is informed and believes that he is entitled to restitution in the amount unjustly retained, including interest and attorney fees and expenses for having to bring this lawsuit.

FOR A THIRTEENTH CAUSE OF ACTION

(Appointment of a Receiver as to Peter J. Wellin, Cynthia W. Plum, Marjorie W. King, and South Dakota Trust Company, LLC, as co-Trustees of the Wellin Family 2009 Irrevocable Trust w/a/d November 2, 2009)

216. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

217. Plaintiff has a right under the terms of the Note and the security interest granted by the Trust to secure the Note to the limited partnership interest in Friendship Partners LP that is currently being held by Defendants Peter Wellin, Cynthia W. Plum, Marjorie W. King and South Dakota Trust Company, LLC, as co-Trustees of the Wellin Family 2009 Irrevocable Trust w/a/d November 2, 2009.

218. The partnership interest currently being held by Defendants Peter Wellin, Cynthia W. Plum, Marjorie W. King and South Dakota Trust Company, LLC as co-Trustees of the Wellin Family 2009 Irrevocable Trust w/a/d November 2, 2009 is the subject of this action.

219. The partnership interest is in the possession of the Defendants as co-Trustees of the Wellin Family 2009 Irrevocable Trust w/a/d November 2, 2009.

220. Defendants Peter Wellin, Cynthia W. Plum, Marjorie W. King and South Dakota Trust Company, LLC as co-Trustees of the Wellin Family 2009 Irrevocable Trust w/a/d

November 2, 2009 could sell or encumber the partnership interest that is the subject of this suit, causing irreparable harm to the Plaintiff.

221. The subject property is in danger of being lost, materially injured or impaired.

222. Appointment of a receiver is necessary to preserve the subject property.

223. Through the acts or misconduct of co-Trustees Peter Wellin, Cynthia W. Plum and Marjorie W. King, the trust property is in danger of misapplication, waste or other serious loss.

224. The facts of this case, as alleged, warrant the appointment of a receiver to take control of and preserve the assets of the Wellin Family 2009 Irrevocable Trust w/a/d November 2, 2009.

FOR AN FOURTEENTH CAUSE OF ACTION
(Appointment of a Receiver as to Friendship Management, LLC
and Friendship Partners, LP)

225. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

226. Plaintiff has a right to a substantial portion of the BRKa shares held by Friendship Partners, LP and controlled by Defendant Friendship Management, LLC.

227. The BRKa shares currently being held by Defendant Friendship Partners, LP and controlled by Defendant Friendship Management, LLC are the subject of this action.

228. The BRKa shares are in possession of Defendant Friendship Partners, LP.

229. Cynthia W. Plum, as Manager of Friendship Management, LLC, could cause the sale or encumbrance of the BRKa shares that are the subject of this suit, causing irreparable harm to the Plaintiff.

230. The subject property is in danger of being lost, materially injured or impaired.

231. Appointment of a receiver is necessary to preserve the subject property.

232. Through the acts or misconduct of the Defendants to this action, the securities held by Friendship Partners, LP and controlled by Friendship Management, LLC are in danger of misapplication, waste or other serious loss.

233. The facts of this case, as alleged in this Complaint, warrant the appointment of a receiver to take control of and preserve the assets of Friendship Partners, LP and Friendship Management, LLC.

FOR A FIFTEENTH CAUSE OF ACTION

(Reformation of the Promissory Note as to Peter J. Wellin, Cynthia W. Plum and Marjorie W. King and South Dakota Trust Company, LLC as co-Trustees of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009)

234. The preceding paragraphs are incorporated by reference as if stated herein verbatim.

235. In the alternative to the requested rescission of the November 2009 Transaction, equity requires reformation of the Promissory Note from the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009 payable to the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2001.

236. For the reasons alleged in the above paragraphs, Defendant Peter Wellin fraudulently induced Plaintiff to consent to the November 2009 Transaction.

237. The terms of the Promissory Note are egregiously below fair market value at the time it was signed.

238. The appraisal of Plaintiff's limited partnership interest that was sold to the Wellin Family 2009 Irrevocable Trust was significantly undervalued.

239. Plaintiff did not have an understanding of the inequity of the terms of the Promissory Note, nor did he understand what such a transaction would do to his finances.

240. Equity requires reformation of the Promissory Note so that it reflects fair market interest rate, duration, valuation and repayment terms.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Award judgment against Defendants, jointly and severally, for actual damages with pre-judgment and post-judgment interest thereon and attorney fees and expenses for having to bring this lawsuit;
- B. Award judgment against the Defendants, jointly and severally, for punitive damages in an amount to be determined at trial;
- C. Award judgment against the Defendants, jointly and severally, for the fees and costs of this action;
- D. Imposition of a Constructive Trust;
- E. Appointment of a Receiver to take control of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009, Friendship Partners, LP and Friendship Management, LLC;
- F. Rescission of the November 2009 Transaction or, in the alternative, reformation of the Promissory Note;
- G. Rescission of the 2013 Gifts to Individual Defendants;
- H. A Temporary Restraining Order barring Defendants from selling, trading, gifting, transferring, negotiating, or otherwise disposing of any or all of the 897 BRKa shares owned by Friendship Partners LP without the express, written, and notarized consent of the Plaintiff or his attorney-in-fact; and
- I. Such other and further relief as this Court may deem just and proper, all with pre-judgment and post-judgment interest thereon.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

s/ Robert H. Hood

Robert H. Hood (1939)
Molly H. Craig (6671)
James B. Hood (9130)
Jeffrey M. Bogdan (10453)

Attorneys for the Plaintiff
Keith Wellin, individually and as Trustee of the
Keith S. Wellin Florida Revocable Living Trust
w/a/d. December 11, 2001

July 3, 2013
Charleston, South Carolina

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

KEITH WELLIN, individually and as Trustee of)
THE KEITH S. WELLING FLORIDA)
REVOCABLE LIVING TRUST w/a/d)
December 11, 2001, Trustee of THE KSW 2011)
QUALIFIED GRANTOR RETAINED ANNUITY)
TRUST w/a/d November 20, 2011, and Trustee of)
THE KSW 2012 QUALIFIED GRANTOR)
RETAINED ANNUITY TRUST)
w/a/d November 28, 2012)

Plaintiffs,)

v.)

PETER J. WELLIN, CYNTHIA W. PLUM and)
MARJORIE W. KING, individually, and as)
co-Trustees and beneficiaries of the WELLIN)
FAMILY 2009 IRREVOCABLE TRUST w/a/d/)
November 2, 2009, SOUTH DAKOTA TRUST)
COMPANY, LLC as co-Trustee Of the WELLIN)
FAMILY 2009 IRREVOCABLE TRUST w/a/d/)
November 2, 2009, FRIENDSHIP)
MANAGEMENT LLC, CYNTHIA W. PLUM,)
As Manager of FRIENDSHIP)
MANAGEMENT LLC, and FRIENDSHIP)
PARTNERS LP)

Defendants.)

C. A. No. _____

VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

COMES NOW Keith S. Wellin ("Plaintiff") in his individual capacity, and as Trustee of Keith S. Welling Florida Revocable Living Trust w/a/d December 11, 2001 ("Wellin 2001 Florida Trust") as Trustee of the KSW 2011 Qualified Grantor Retained Annuity Trust w/a/d November 20, 2011 (the "2011 GRAT"), and as Trustee of the KSW 2012 Grantor Retained Annuity Trust w/a/d November 28, 2012 (the "2012 GRAT"), by and through undersigned counsel, with this action against Peter J. Wellin, Cynthia W. Plum, Marjorie W. King, the South

MEI 16042719v.1

EXHIBIT C

Dakota Trust Company, LLC, and Friendship Management-LLC ("FM LLC"), and Friendship Partners LP ("FP LP") (collectively, "Codefendants"), seeking declaratory, statutory, or equitable relief, including preliminary and permanent injunctions, monetary damages, costs and attorneys fees, and in support thereof, states, upon personal knowledge or upon information and belief, as follows:

PRELIMINARY STATEMENT

1. Plaintiff Keith S. Wellin is eighty-six years of age. He resides in Charleston, South Carolina. He is married to Wendy Wellin. Since 2006, his physical health has deteriorated leaving him more and more reliant on medications, medical treatments, and assistance of his wife, family, and caregivers.
2. Over time, Plaintiff has amassed considerable wealth, including significant holdings of Berkshire Hathaway shares. He is father to three adult children, in whom, for many recent years, he placed significant trust and confidence. And relying on the integrity and expertise of each of his three children, especially his son, Peter J. Wellin, and his older daughter, Cynthia W. Plum, he trusted his three children for at least over the preceding nine years, with safe-guarding and managing his considerable financial assets and affairs as his health declined.
3. In December 2003, manifesting his significant trust and confidence in his children, he formed a Delaware limited partnership, Friendship Partners, LP. He capitalized it with valuable Berkshire Hathaway shares then worth over \$70 million and left himself as a Limited Partner having little or no control over the use or disposition of his shares under the limited partnership agreement. In exchange for the Shares, Plaintiff received 98.9% of the total limited partnership interest. Demonstrating even more trust and confidence, he appointed FM,

LLC, which his three children collectively and effectively controlled and managed, as General Partner, thereby yielding almost complete partnership control over his shares to his daughters and son:

4. In November 2009, one or more of the Plaintiff's children proposed that he change his estate plan by entering into a complex, multi-faceted supposedly "tax advantaged" transaction involving his 98.9% interest in the limited partnership. Believing and trusting his children, he agreed to their proposal and thereupon established an irrevocable trust, designed and controlled completely by his children as co-trustees of that new trust; and to which, at their urging, he "sold" his Delaware 98.9% limited partnership interest.

5. In return, unbeknownst to him at the time, he received next to nothing. In reality, all that remained of his 98.9% limited partnership interest and control over his shares was an unjustifiably discounted selling price, an unreasonably one-sided, highly over-valued Promissory Note having specious terms overly favoring his three children as trustees and beneficiaries of the new irrevocable trust, a Pledge Agreement granting him a security interest in his limited partnership interest, rights to recover his interest in events of default, minimally valued Guarantee Agreements with his three children, and considerable and potentially crippling retained tax exposure.

6. By their designed and detailed actions in 2009, Plaintiff's children, who by Delaware law owed defined fiduciary, partnership, and legal duties to their father and the limited partnership, placed what control or influence he retained with his limited partnership interest and valuable Berkshire Hathaway shares beyond his reach.

7. Plaintiff's children knowingly used their falsely presented "tax advantaged" transaction to intentionally benefit themselves. By design, through self-dealing, his children

committed wrongful acts, abused their appointments and positions, and breached their fiduciary and partnership duties to their father and the limited partnership for their own economic benefit.

8. In 2010, after essentially stripping their father of his interest and control over a majority of his wealth, the Wellin children, as well as their spouses and children, accepted significant transfers from their father's assets. And in early 2013, one or more of his children again facilitated substantial additional gifts, this time convincing the Plaintiff to make the gifts with cash, rather than Berkshire Hathaway stock, knowing that this would cause the Plaintiff to incur massive income tax liability, in addition to the already over-burdensome gift taxes due on these transfers, tax burdens of which one or more of the Defendants was aware were advised against by the Plaintiff's accountant prior to the completion of the transfers.

9. Plaintiff then learned in late May of 2013 the full, dormant, concealed truth about his children's manipulations, dealings, and abuse of his trust, confidence, and appointments; he learned the full impact of the 2009 transaction and the real consequences of the transfer of his limited partnership interest.

10. Today, as a consequence of the 2009 transaction, if his children sell either the limited partnership interest in FP LP held by the 2009 Trust or the Berkshire Hathaway shares he transferred to the limited partnership in 2003, Plaintiff, not his children, will incur an enormous tax liability that will render him insolvent and likely bankrupt.

11. On June 20, 2013, Plaintiff revoked all powers-of-attorney that he had previously granted to his son with one of his daughters as successor. He replaced them by appointing his wife, Wendy Wellin, as his attorney-in-fact. He had discovered the truth about the misconduct of his children, the state of his financial affairs, and the status of his financial assets. He not only had unknowingly acquired considerable tax liabilities, but he had lost complete control

over assets valued at well over \$150 million while believing that his net worth was considerably higher. Had he been told the full truth about the transactions, complexities, impacts and consequences of the 2009 transaction, he would have rejected it.

12. On July 3, 2013, armed with new understandings about his assets, precarious financial condition, and misconduct of his children, whom he had unqualifiedly trusted, Plaintiff filed a lawsuit against his children and others in United States District Court for the District of South Carolina seeking damages and other remedies.

13. This is Plaintiff's action in this Court to equitably repair the damage done to Plaintiff and FP LP, which he formed and funded. It is brought to recover control over the very valuable partnership interest he was wrongfully and illegally induced to sell. It is brought to undo the unquantifiable damage his children have caused.

THE PARTIES

14. Plaintiff Keith S. Wellin is domiciled in and a citizen of the State of South Carolina. He is suing in his individual capacity and in his capacity as Trustee of the Wellin 2001 Florida Trust, the 2011 GRAT and the 2012 GRAT.

15. Codefendant Peter J. Wellin is domiciled in and a citizen of the State of Maine.

16. Peter J. Wellin is being sued in his individual capacity and in his capacities as (i) a Member of FM LLC, and (ii) Co-Trustee and beneficiary of the Wellin Family 2009 Irrevocable Trust w/a/d November 2, 2009 ("2009 Irrevocable Trust").

17. This Court has personal jurisdiction over Peter J. Wellin pursuant to 10 Del. C. §3104.

18. Codefendant Cynthia W. Plum is domiciled in and a citizen of the Commonwealth of Pennsylvania.

19. Cynthia W. Plum is being sued in her individual capacity and in her capacities as (i) a Member of FM LLC, (ii) the Manager of FM LLC, and, (iii) Co-Trustee and beneficiary of the 2009 Irrevocable Trust.

20. This Court has personal jurisdiction over Cynthia W. Plum pursuant to 10 Del. C. §3104.

21. Codefendant Marjorie W. King is domiciled in and a citizen of the State of Washington.

22. Marjorie W. King is being sued in her individual capacity and in her capacities as (i) a Member of FM LLC, and (ii) Co-Trustee and beneficiary of the 2009 Irrevocable Trust.

23. This Court has personal jurisdiction over Marjorie W. King pursuant to 10 Del. C. §3104.

24. Codefendant South Dakota Trust Company, LLC ("SDTC") is a Limited Liability Company organized under the laws of the State of South Dakota.

25. SDTC is being sued in its capacity as Co-Trustee of the 2009 Irrevocable Trust.

26. This Court has personal jurisdiction over SDTC pursuant to 10 Del. C. §3104.

27. Codefendant FM LLC is a Limited Liability Company organized under the laws of the State of Delaware.

28. FM LLC is being sued in its corporate capacity and as General Partner of FP LP.

29. The registered agent for FM LLC is Nationwide Information Services, Inc., 3500 South DuPont Highway, Dover, DE, 19901.

30. FP LP is a Limited Partnership organized under the laws of the State of Delaware.

31. The registered agent of FP LP is Nationwide Information Services, Inc., 3500

South DuPont Highway, Dover, DE, 19901.

JURISDICTION

32. This civil proceeding seeks direct relief, preliminary and permanent injunctions, declarations of rights, relief authorized for protection of collateral, and other remedies afforded Plaintiffs with respect to (i) the control and management of FP LP, (ii) the limited partnership interest of Plaintiff Keith S. Wellin in FP LP, and (iii) the 2009 transaction, which, with all its constituent parts and restatements, through fraud and other wrongful or illegal acts by certain Codefendants, transferred Plaintiff Keith S. Wellin's entire limited partner interest in FP LP by sale to a successor Limited Partner controlled exclusively by certain Codefendants ("2009 Transfer Transaction").

33. This Verified Complaint arises from, and relates to, the misconduct, mismanagement, and abuse of control of FP LP by its General Partner, FM LLC, and to the 2009 Transfer Transaction between Plaintiff and certain self-dealing Codefendants, whereby Plaintiff's limited partnership interest in FP LP, including rights respecting capital assets valued at over \$90 million, was wrongfully and illegally transferred to certain Codefendants in their capacities as Co-Trustees of the 2009 Irrevocable Trust.

34. This action arises from the Codefendants' active and personal participation, in their individual and other capacities, in the management, operation, and control of both FM LLC and, by virtue of FM LLC's role as General Partner of FP LP, the Partnership itself.

35. The action furthermore arises from the terms of the FP LP Partnership Agreement and violations of Plaintiff's rights as a limited partner of FP LP by Codefendants, Peter J. Wellin, Cynthia W. Plum, Marjorie W. King, and FM LLC in the design, approval,

proposition, execution, and perpetuation of performance of the 2009 Transfer Transaction; and it therefore arises from breaches of the Partnership Agreement and breaches of fiduciary duties owed directly to Plaintiff as a limited partner of FP LP.

36. Said misconduct, violations, and abuse by the Codefendants arise from or relate, more specifically, to material terms of the Partnership Agreement, specific conduct and active participation of Codefendants in conducting and controlling FM LLC and FP LP and certain material terms and conditions, including reversionary rights and guarantees, of the several constituent agreements, and restatements of agreements, comprising the 2009 Transfer Transaction.

37. This Court has personal jurisdiction over Codefendant FM LLC because it is organized under the laws of Delaware.

38. At all relevant times, FM LLC, in its role as General Partner of FP LP, had fiduciary and partnership contractual duties to FP LP and Plaintiff, a Limited Partner of FP LP.

39. At all relevant times, FM LLC's Manager, and all Members of FM LLC actively participating in management and control of FM LLC in its role as General Partner of FP LP, had fiduciary and partnership contractual duties to FP LP and Plaintiff, a Limited Partner of FP LP.

40. Codefendants Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King (collectively the "Codefendant Children"), in all of their relevant capacities, including particularly, their individual capacities, by actively and personally participating in the management and control of FM LLC or FP LP and in designing, approving, proposing, executing, and perpetuating the performance of the 2009 Transfer Transaction, purposefully availed themselves of the benefits and protections of Delaware law for their individual benefits in at least the following ways:

- a. Codefendants as natural persons formed, approved, and agreed to participate with FM LLC and FP LP in furtherance of the entities' purposes;
- b. The 2009 Transfer Transaction, in which they actively and personally participated, involved the sale and financing of a Delaware limited partnership interest;
- c. The Note(s), Pledge Agreement(s), and Guarantee Agreement(s), as original or restated constituent agreement(s) of the 2009 Transfer Transaction, which they executed as Co-Trustees, beneficiaries, and guarantors are by agreement governed and to be construed by Delaware law;
- d. The defined collateral of the Pledge Agreement(s) of the 2009 Transfer Transaction, comprises, among other things, a Delaware Limited partnership interest, which Codefendants control by virtue of their control of FM LLC; and,
- e. Codefendants' Guarantee Agreements, which in part assisted Codefendants in wrongfully inducing execution of the 2009 Transfer Transaction involves a Delaware limited partnership interest, and a guarantor's obligations under each respective Guarantee Agreement is triggered by defaults of other constituent agreements of the 2009 Transfer Transaction.

41. Codefendants Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King, at all relevant times, were Members, the Manager, and/or actively participated in the management and control of FM LLC in its role as General Partner of FP LP.

42. The Codefendants were Members, the Manager, and/or otherwise actively participated in the management and control of FM LLC in its role as General Partner of FP LP

while at the same times designing, approving, proposing, executing, or perpetuating the performance of the 2009 Transfer Transaction, the set of constituent agreements that comprised or caused the fraudulent, wrongful, or illegal transfer of Plaintiff's limited partner interest in FP LP to Codefendants as Co-Trustees and beneficiaries of the 2009 Irrevocable Trust.

43. This Court has personal jurisdiction over Codefendants Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King because (i) the Court has jurisdiction over FM LLC and FP LP; (ii) they are Members of FM LLC, a Delaware LLC; and (iii) as individuals, Members, or Managers of FM LLC, they have acted collectively according to a common scheme, plan, or conspiracy to commit wrongful and illegal acts against FP LP or Plaintiff in his capacity as a Limited Partner of FP LP; (iv) they each have actively and personally participated in the management, operation, or control of FM LLC in its role as General Partner of FP LP, a Delaware LP, in designing, approving, proposing, executing, or perpetuating the performance of the 2009 Transfer Transaction; and (v) a transaction or course of business comprising fraud or other wrongful or illegal acts or omissions in violation of partnership and/or fiduciary duties owed to FP LP or Plaintiff Keith S. Wellin.

44. This Court has personal jurisdiction over Codefendants Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King because, alternatively, (i) they are Members of FM LLC, and (ii) as individuals, Members, or Managers of FM LLC, they have each individually acted, or aided or abetted each other, in committing fraud or other wrongful acts against Plaintiff in his capacity as a Limited Partner of FP LP; (iii) by actively and personally participating in the management, operation, or control of FM LLC in its role as General Partner of FP LP in designing, approving, proposing, executing, or perpetuating the performance of the 2009 Transfer Transaction; (iv) a transaction or course of business comprising fraud or other

wrongful acts or omissions in violation of partnership or fiduciary duties owed to FP LP or Plaintiff.

45. This Court has personal jurisdiction over all of the Codefendants because this action arises out of their default of constituent agreements of the 2009 Transfer Transaction, which agreements are governed by the laws of the State of Delaware.

46. This Court has personal jurisdiction over FM LLC because it is organized under the laws of Delaware.

47. This Court has personal jurisdiction over all of the defendants because this action arises out of their default of agreements governed by the laws of the State of Delaware.

48. This Court has subject matter jurisdiction pursuant to 10 *Del. C.* § 6501, the Declaratory Judgment Act, which permits the Court to "declare rights, status and other legal relations whether or not further relief is or could be claimed," and pursuant to 10 *Del. C.* §§ 341 and 342, because Keith Wellin is seeking equitable relief and has no adequate remedy at law.

49. This Court has subject matter jurisdiction pursuant to 6 *Del. C.* §17-111 to interpret a Delaware limited partnership agreement.

50. This Court has subject matter jurisdiction pursuant 6 *Del. C.* §17-110 to hear and determine disputes concerning a general partner's right to serve as a general partner of a Delaware limited partnership.

51. The Court has subject matter jurisdiction to grant injunctive and equitable relief pursuant to 10 *Del. C.* §§341 and 342.

FACTUAL ALLEGATIONS

52. The preceding paragraphs are incorporated by reference as if stated here.

53. Plaintiff is an infirm, 86 year-old entrepreneur and Wall Street investor.

54. In the 1960s, Plaintiff purchased a large amount of Class A Berkshire Hathaway common shares (the "Shares"). The value of that stock has since grown and, with other investments, resulted in substantial wealth for the Plaintiff.

55. Plaintiff is married to Wendy Wellin.

56. Plaintiff has three children from a prior marriage: Codefendants Peter J. Wellin, Marjorie W. King, and Cynthia W. Plum.

Plaintiff's Estate Planning

57. The Wellin 2001 Florida Trust was created on December 11, 2001. Plaintiff was named Trustee; his son, Codefendant Peter J. Wellin was named successor Trustee, and his daughter Codefendant Cynthia W. Plum was appointed as backup successor Trustee.

58. To further Plaintiff's estate and asset planning, the Codefendant children formed FM LLC on or about December 9, 2003, funding FM LLC with shares of Berkshire Hathaway received from the Plaintiff.

59. The Members of FM LLC and their respective percentage interests are: The 2003 KSW Family Trust (40%), Codefendant Peter J. Wellin (20%), Codefendant Marjorie W. King (20%), and Codefendant Cynthia W. Plum (20%). The three Codefendant children have controlled, and now control, FM LLC.

60. On information and belief, the Codefendant Children, by actively and personally participating in the design, approval, structuring, capitalization, or designation of the purpose of FM LLC, knew the purposes for forming the entity and their father's intentions and expectations for the management, operation, and control of it as part of his estate planning.

61. FM LLC's "Friendship Management LLC Operating Agreement" was executed by its Members as effective on December 11, 2003. (a true and correct copy of which is

attached herewith as Exhibit A) ("Operating Agreement").

62. Pursuant to the Operating Agreement, Codefendant Cynthia W. Plum is, and has been, the sole designated formal Manager of FM LLC; and she will serve in that capacity until the Plaintiff's death, or until her earlier death, disability or resignation.

63. On information and belief, Cynthia W. Plum's designation as Manager notwithstanding, Codefendants Peter J. Wellin and Marjorie W. King have actively and personally participated with Codefendant Cynthia W. Plum in the actual management, operation, control of FM LLC at times and in ways relevant to this action, in particular, with respect to the operation and control of FP LP and the 2009 Transfer Transaction.

64. By virtue of the Codefendant Children's collective controlling interest in FM LLC, which in turn acts as the General Partner of FP LP, which had and still has complete control of FP LP as its General Partner, the Codefendant Children control FP LP through their majority ownership and control of FM LLC.

65. FP LP was formed on December 12, 2003 with Plaintiff in his individual capacity as a Limited Partner, and FM LLC initially as both the sole General Partner and a Limited Partner. Plaintiff's rights as a Limited Partner and rights in and to the assets of FP LP as a Limited Partner were set out in the "Agreement of Limited Partnership of Friendship Partners LP," dated December 12, 2003, (a true and correct copy of which is attached and incorporated here by reference as Exhibit B) ("Partnership Agreement").

66. On information and belief, the Codefendant Children actively and personally participated in the design, approval, structuring, capitalization, designation of the purpose of FP LP, and the designation of FM LLC as sole General Partner of FP LP; and by so acting, they each knew the purposes for forming the entity and their father's intentions and expectations for

the management; operation, and control of it as part of his estate planning.

67. On information and belief, the Codefendant Children have actively and personally participated in the management, operations, and control of FM LLC and FP LP at times and in ways relevant to this Verified Complaint, including, without limitation, transfer-of-limited-partner-interest transactions involving Keith S. Wellin in his individual capacity and in his capacity as Trustee of the Wellin 2001 Florida Trust and the 2009 Transfer Transaction.

68. In or about 2003, in reliance on the Partnership Agreement and the specific purpose and intentions for the formation and operation of FM LLC and FP LP, and furthermore on the respective integrity and other attributes of each of the Codefendant Children, Plaintiff transferred the Shares to FP LP.

69. Plaintiff's transfer of assets to FP LP effectively ceded control of his Shares to FP LP and to FM LLC as its General Partner, and thus gave sole discretion respecting the use or disposition of the Shares to its General Partner, FM LLC, which entity was managed, operated or controlled, in form or substance, by his Codefendant Children.

70. Initially, in December 2003, Plaintiff owned an approximate 98.9% interest in FP LP and the remaining percentage of "units" was owned by FM LLC, acting both as the General Partner and a Limited Partner of FP LP.

Plaintiff's Health, Personal Appointments, and a First Transfer-of-Interest

71. In 2006, Plaintiff's health began to deteriorate.

72. On May 23, 2006, Plaintiff executed a Florida General Power of Attorney and a New York Durable General Power of Attorney making his physician son, Codefendant Peter J. Wellin, his attorney-in-fact. These documents also made Codefendant Cynthia W. Plum Plaintiff's successor attorney-in-fact. Plaintiff executed both documents from his home in

Charleston, SC. Both Peter and Cynthia specifically accepted appointment under one or more of these powers of attorney.

73. On information and belief Peter J. Wellin and Cynthia W. Plum acted in their respective roles on behalf of Plaintiff between May 23, 2006 and June 20, 2013.

74. On September 20, 2006, Plaintiff executed a South Carolina General Durable Power of Attorney, a Georgia Financial Power of Attorney, and a Maine General Durable Power of Attorney, all appointing his son, Codefendant Peter J. Wellin, his attorney-in-fact. These documents made Codefendant Cynthia W. Plum Plaintiff's successor attorney-in-fact.

75. In 2007, Plaintiff Keith S. Wellin, in his individual capacity, was replaced as Limited Partner by Plaintiff Keith S. Wellin, Trustee of the 2001 Wellin Florida Trust as, by information and belief, a "Substituted Limited Partner" under and in compliance with the Partnership Agreement's Section 9.2.

76. In or around 2008, Plaintiff was diagnosed with and treated for tongue cancer.

77. In and throughout 2009, the Plaintiff experienced other adverse health problems, which required him to take various medications.

78. In 2011, Plaintiff suffered a stroke.

79. Plaintiff's medical conditions and medications at times rendered him unable to manage the complexities of his financial affairs.

80. Due to Plaintiff's age and temporary and permanent health problems, he justifiably relied upon Codefendant Peter J. Wellin's personal integrity, relationship as his son, and other attributes; and he placed special trust and confidence in him regarding the care, welfare and administration of Plaintiff's property, assets, and financial well-being, including his interest in FP LP.

81. Due to Plaintiff's age and temporary and permanent health problems, he relied justifiably upon Codefendant Cynthia W. Plum's personal integrity, relationship as his daughter, and other attributes; and he placed special trust and confidence in her regarding the care, welfare and administration of Plaintiff's property, assets and financial well-being, including his interest in FP LP.

82. At all times relevant to the allegations contained in this action, Plaintiff expected his Codefendant Children to conduct themselves in reasonable, lawful, loyal, truthful, and trustworthy manners with respect to his Shares, his interest in FP LP, and the operation, management, and control of FM LLC or FP LP.

83. At all times relevant to the allegations contained in this action, Plaintiff relied justifiably upon the terms of agreements, specific purposes, and intentions for the formation and lawful management, operation and control of FP LP and FM LLC.

84. At all times relevant to the allegations contained in this action, Plaintiff relied justifiably upon the personal integrity and other attributes of his Codefendant Children with respect to their relationships with FM LLC or FP LP and their lawful and proper management and control of the business and operations of FP LP and FM LLC.

85. Prior to June 20, 2013, at all times relevant to the allegations contained in this action, Codefendant Peter J. Wellin has been empowered to act on Plaintiff's behalf and bind Plaintiff in business transactions by way of five (5) different powers of attorney.

86. At all times relevant to the allegations contained in this action, Plaintiff reposed special confidence in Codefendant Peter J. Wellin to act in good faith with respect to Plaintiff's interests.

87. At all times relevant to the allegations contained in this action, Plaintiff reposed

special confidence in Codefendant Cynthia W. Plum to act in good faith with respect to Plaintiff's interests.

88. At all times relevant to the allegations contained in this action, Plaintiff was in a confidential relationship with Codefendant Peter Wellin, as his attorney-in-fact, who had the highest fiduciary duty under the law.

89. At all times relevant to the allegations contained in this action, Plaintiff was in a confidential relationship with his daughter, Codefendant Cynthia W. Plum, as his successor attorney-in-fact, who had the highest fiduciary duty under the law.

90. Due to their conduct, including serious breaches of fiduciary duties and other wrongs committed by the Codefendant Children, on June 20, 2013, Plaintiff revoked all powers of attorney he had previously accorded them.

91. Defendant has named his wife, Wendy Wellin, as his new attorney-in-fact.

92. On July 3, 2013, Plaintiff Keith Wellin, in his individual capacity and as Trustee of the 2001 Wellin Florida Trust, filed a verified civil complaint for damages and equitable relief in United States District Court for the District of South Carolina captioned:

Keith Wellin, individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust w/a/d December 11, 2001 v. Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, individually, and as co-Trustees and beneficiaries of the Wellin Family 2009 Irrevocable Trust w/a/d November 2, 2009, South Dakota Trust Company, LLC as co-Trustee of the Wellin Family 2009 Irrevocable Trust w/a/d November 2, 2009, Friendship Management, LLC, Friendship Partners, LP, Civil Action No. 2:13-cv-01831-DCN. ("South Carolina District Court Complaint")

93. With the South Carolina District Court Complaint, Plaintiff sought and obtained an Order for Temporary Restraining Order and Order to Show Cause for Preliminary Injunction ("South Carolina TRO") (true and correct copies of the South Carolina District Court Complaint and the South Carolina TRO are attached hereto respectively as Exhibits C and D).

The 2009 Transfer Transaction

94. Upon information and belief, approximately six years after Plaintiff transferred his Shares to FP LP, Codefendant Peter J. Wellin proposed that the Plaintiff execute the 2009 Transfer Transaction, a supposed "tax advantaged transaction."

95. Despite knowing the material truth about the 2009 Transfer Transaction, and while having fiduciary and other duties owed to Plaintiff, including a duty not to conceal material information, Codefendants Peter J. Wellin and Cynthia W. Plum failed to inform Plaintiff that the 2009 Transfer Transaction would actually cause Plaintiff to lose all control of his Limited Partner units and interest in FP LP; and it would expose him to significant income tax liability without corresponding access to cash flow, which could render him insolvent.

96. Upon information and belief, despite knowing the material truth about the 2009 Transfer Transaction, and while having fiduciary and other duties owed to Plaintiff, including a duty not to conceal material information, Codefendants Peter J. Wellin and Cynthia W. Plum failed to disclose that the 2009 Transfer Transaction, taken as a whole, was designed intentionally by or among the Codefendant Children to take away all of his control over his Limited Partner units and interest; and by its terms and constituent agreements to specifically, preferentially, and one-sidedly benefit Codefendants to Plaintiff's detriment.

97. Despite knowing the material truth about the 2009 Transfer Transaction, and while having fiduciary and other duties owed to Plaintiff, including a duty not to conceal material information, neither Codefendants Peter J. Wellin, Cynthia W. Plum, or Marjorie W. King raised any concern with Plaintiff that the 2009 Transfer Transaction would severely decrease Plaintiff's net worth and liquidity.

98. On information and belief, the Codefendant Children each knowingly, personally

and actively participated in the design, approval, proposition, or execution of documents to effectuate the 2009 Transfer Transaction.

99. At all relevant times, respecting the 2009 Transfer Transaction, the Codefendant Children acted as fiduciaries or had other duties of disclosure in relation to their father and their treatment and handling of his interests on his behalf.

100. At all relevant times, Codefendant Peter J. Wellin had fiduciary duties to Plaintiff because he: (i) served as Plaintiff's attorney-in-fact, (ii) personally and actively participated in the design, approval, proposition, execution, or perpetuation of performance of the 2009 Transfer Transaction while serving as a Member of FM LLC, which served as General Partner of FP LP; or (iii) personally and actively participated in the design, approval, proposition, execution, or perpetuation of performance of the 2009 Transfer Transaction while serving in a confidential relationship with his father.

101. At all relevant times, Codefendant Cynthia W. Plum had fiduciary duties to Plaintiff because she: (i) served as Plaintiff's successor attorney-in-fact, (ii) served as Manager of FM LLC, which served as General Partner of FP LP, which by virtue of the Partnership Agreement or statute or Delaware law reposed such status on her in relation to FP LP or any Limited Partner; (iii) personally and actively participated in the design, approval, proposition, execution, or perpetuation of the 2009 Transfer Transaction while serving as a Member or the Manager of FM LLC, which served as General Partner of FP LP; or (iv) personally and actively participated in the design, approval, proposition, execution, or perpetuation of the 2009 Transfer Transaction while serving in a confidential relationship with his father.

102. At all relevant times, Codefendant Marjorie W. King had fiduciary duties to Plaintiff because she: (i) personally and actively participated in the design, approval,

proposition, execution, or perpetuation of performance of the 2009 Transfer Transaction while serving as a Member of FM LLC, which served as General Partner of FP LP; or (ii) personally and actively participated in the design, proposition, execution, or perpetuation of performance of the 2009 Transfer Transaction as part of and in furtherance of a common scheme, plan or conspiracy with Peter J. Wellin or Cynthia W. Plum, where one or both had fiduciary duties to her father.

103. As fiduciaries, Members of FP LP actively participating in its operations, the Manager of FP LP operating as General Partner of FP LP, or on other grounds under Delaware law, the Codefendant children owed duties of care, candor, and loyalty to their father when participating in the design, approval, or execution of documents designed to effectuate the 2009 Transfer Transaction.

104. By designing, approving, proposing, executing, or perpetuating performance of the 2009 Transfer Transaction while engaging in self-dealing for their own preferential benefit with respect to the 2009 Transfer Transaction or the 2009 Irrevocable Trust, each or all of the Codefendant Children owed Plaintiff heightened duties of candor, care, and loyalty.

105. The conduct of the three Codefendant Children in their various capacities in designing, approving, proposing, executing, and perpetuating performance of the 2009 Transfer Transaction on behalf of themselves, FM LLC, or as putative Trustees or beneficiaries of the 2009 Irrevocable Trust violated the terms of the Partnership Agreement or breached their duties of care, candor, and loyalty to Plaintiff as attorneys-in-fact, fiduciaries, Members, General Partners, or individuals under Delaware law.

106. As part of the 2009 Transfer Transaction, Codefendants Peter J. Wellin and Cynthia W. Plum induced the Plaintiff to create the 2009 Irrevocable Trust under South Dakota

law. The 2009 Irrevocable Trust was created on November 2, 2009 (a true and correct copy of the document establishing the 2009 Irrevocable Trust is attached hereto as Exhibit E.)

107. The Co-Trustees of the 2009 Irrevocable Trust are (1) Codefendant Peter J. Wellin; (2) Codefendant Marjorie W. King; (3) Codefendant Cynthia W. Plum; and (4) Codefendant South Dakota Trust Company, LLC.

108. The beneficiaries of the 2009 Irrevocable Trust are (1) Codefendant Peter J. Wellin; (2) Codefendant Marjorie W. King; and (3) Codefendant Cynthia W. Plum, and their respective issue.

109. As part of the 2009 Transfer Transaction, Codefendants Peter J. Wellin and Cynthia W. Plum induced the Plaintiff to sell and transfer his 98.9% limited partnership interest in FP LP to the newly formed 2009 Irrevocable Trust, which trust or trustee constituted a "transferee" of a Limited Partner's "interest" under Section 9.2 of the Partnership Agreement.

110. A Limited Partner may transfer a limited partner interest only under specified conditions, set out in Section 9.2(a)(i)-(iv) of the Partnership Agreement.

111. Section 9.2(a)(iv) requires a putative "transferee" to represent and if requested by the General Partner, furnish "an opinion of counsel satisfactory to the General Partners" that the transfer does not violate "the Securities Act of 1933, as amended," or any "other applicable Federal, state or local laws."

112. The Codefendant Children, through self-dealing and other wrongful, fraudulent, illegal conduct rendered Section 9.2(a)(iv) ineffective with respect to the 2009 Transfer Transaction.

113. Codefendants' conduct in respect of Section 9.2 breached the Partnership Agreement and harmed Plaintiff and FP LP.

114. On information and belief, the 2009 Transfer Transaction violates securities laws of South Carolina or Delaware or other applicable federal, state or local laws.

115. The Codefendant Children in all their capacities, and FM LLC, acted fraudulently, in bad faith, or with gross negligence or willful misconduct in designing, approving, proposing, approving, executing, performing, or perpetuating performance of the 2009 Transfer Transaction.

116. At the time of the sale of Plaintiff's partnership interest, the value of the Shares originally held by Plaintiff and then held by FP LP was approximately \$90,000,000.

117. To induce the sale, and in return for selling his 98.90% limited partnership interest in FP LP to the Co-Trustees of the 2009 Irrevocable Trust, Plaintiff received a Promissory Note ("Note(s)") (true and correct copies of the original and restated Notes of which are attached hereto collectively as Exhibit F and incorporated herein by reference) with a nominal value of \$49,802,115.00 from the Wellin Family 2009 Irrevocable Trust.

118. The Note(s) was executed (or as later restated) effective November 30, 2009, between the Codefendant Children and Codefendant South Dakota Trust Company LLC, as Co-Trustees of the 2009 Irrevocable Trust, on the one hand, and the Keith S. Wellin, as trustee of the Wellin 2001 Florida Trust on the other hand.

119. The Note's (and any restatements of the Note's) terms are the product of self-dealing, fraud, or breached fiduciary or partnership duties; and they are unreasonable, one-sided, unduly preferential to Codefendants, and entirely unfair to Plaintiff.

120. The Note's (and any restatements of the Note's) terms under the circumstances were and remain unconscionable.

121. The terms of the Note show that it was not an arms-length transaction predicated

on fair market values.

122. The principal amount of the Note was not due for nine (9) years and was not callable prior to the maturity date with an Event of Default.

123. When the Note comes due, repayment is not required to be made in cash, but rather can be made by transferring an illiquid limited partnership interest in FP LP back to the Plaintiff, with respect to which the Plaintiff has no right to compel distributions or liquidation.

124. The Note contains only a nominal interest rate. Under the terms of the Note, interest could be paid with (i) interests in FP LP, or (ii) another note in the amount of the interest, with terms substantially similar to the original Note.

125. Plaintiff unknowingly sold his partnership interest for less than fair market value while also retaining the income tax liability should the limited partnership interest or any of the Shares be sold.

126. The Note(s) defines several events of defaults, the occurrence of any one of which triggers acceleration of the Note's maturity ("Event of Default").

127. The Note(s) at Section 9 establishes Events of Default relevant to this case as follows:

(b) Any representation or warranty made herein (or in any modification or supplement hereto)...shall prove to have been false or misleading as of the time made or furnished in any material respect; [and] ... (d) A proceeding or case shall be commenced, without the application or consent of the Borrowers, in any court of competent jurisdiction, seeking... (ii) the appointment of a receiver, custodian, trustee... or the like of the Borrowers or of all or any substantial part of their Property.

The following Events of Default have occurred:

(1) Plaintiff filed the South Carolina District Court Complaint against
"Borrowers" as such parties are defined in the Note(s) and Pledge

Agreement(s); and

- (2) Representations that induced Plaintiff were false or misleading when made or furnished.

128. The Note(s) provides that in an Event of Default, the principal amount then outstanding of, and the accrued interest on, the Note is accelerated and therefore immediately due and payable without presentment, demand, protest or other formalities of any kind.

129. The principal amount now outstanding of, and the accrued interest on, the Note(s) is now accelerated and are therefore immediately due and payable without presentment, demand, protest or other formalities of any kind.

130. As part of the 2009 Transfer Transaction, and as a companion agreement to the Note(s), a Pledge Agreement was executed between the same parties.

131. The Pledge Agreement (a true and correct copy of which is attached as Exhibit G and incorporated here by reference) specified certain Collateral and adopted Events of Default as "defined in the Promissory Note."

132. Under the Pledge Agreement, Keith S. Wellin, as Trustee of Wellin 2001 Florida Trust stands as a secured party of defined secured property (defined therein as "Collateral") under the terms of the agreement and the Uniform Commercial Code of Delaware.

133. The Pledge Agreement defines other assurances and remedies for control, protection, recovery, or repossession of the Collateral as such items are defined in the agreement.

134. The Collateral is defined by the Pledge Agreement at Section 3 to include "all the right, title and interest of the Borrowers (defined therein as "Peter J. Wellin, Cynthia W. Plum, Marjorie W. King, and South Dakota Trust Company LLC, as trustees, and not

individually, including any successor Trustee(s) serving from time to time") in: (a) the "membership interest" of the Borrowers in FP LP ; (b) "all of the rights of the Borrowers under the Partnership Agreement" with express inclusions; (c) all present and future rights of the Borrowers to receive payments or distributions arising out of or in connection with the membership interest of the Borrowers in FP LP and of the Borrowers' rights under the Partnership Agreement; (d) "all proceeds of and to any of the property of the Borrowers" described in Section 3 of the Pledge Agreement; (e) certain defined books, correspondence, and other records; and (f) other items defined by Section 3.

135. The Pledge Agreement further provides that upon occurrence of an Event of Default, "Payee" (defined therein as "Keith S. Wellin Florida Revocable Living Trust") is "hereby appointed the attorney-in-fact of the Borrowers for the purpose of carrying out the provisions in Section 4 of the Pledge Agreement" and taking other actions that "the Payee may deem necessary or advisable to accomplish the purposes hereof."

136. Under Section 4.05 of the Pledge Agreement, the "Payee...shall have all of the rights and remedies with respect to the Collateral of a secured party under the Delaware UCC" and other remedies.

137. Under the Guarantee Agreement (a true and correct copy of which is attached herewith as Exhibit H), certain "Guaranteed Obligations" of the Codefendant Children in their individual capacities are defined and established. Such Guaranteed Obligations apply and are effective when certain payments "under the Note" are due. Payments under the Note(s) are now due and payable; and therefore said Guaranteed Obligations are effective..

COUNT I
DECLARATORY JUDGMENT

138. Plaintiff hereby adopts and incorporates by reference the allegations set forth

above in Paragraphs 1 through 137 inclusive, as and for this Paragraph 138 as if those allegations were specifically alleged herein.

139. Delaware law at 10 *Del. C.* §§6501 *et seq.* and 6 *Del. C.* §17-111 empower the Court of Chancery to make declaratory judgments on the rightful interpretation of contracts, including Delaware limited partnership agreements.

140. A real, present, justiciable controversy exists between the parties over possession, ownership, or control of Plaintiff's 98.9% interest in FP LP.

141. The Note(s), Pledge Agreement(s), Guarantee Agreement(s) and other agreements of the 2009 Transfer Transaction evidence and specify terms and conditions governing the wrongful, illegal, or fraudulent transfer of Plaintiff's interest in FP LP to the Codefendant Children and the South Dakota Trust Company ("the Borrowers").

142. The Note(s) at Paragraph 9 defines several acts that constitute Events of Default.

143. The Events of Default that have occurred are: (i) pursuant to Paragraph 9(d) in that Plaintiff filed the South Carolina District Court Complaint on July 3, 2013; and (ii) pursuant to Paragraph 9(b) in that Borrowers' representations respecting the 2009 Transfer Transaction were and will be proven to have been "false or misleading as of the time made or furnished in any material respect." Either basis for default is sufficient for Plaintiff's right to remedies based on default.

144. The Pledge Agreement provides that, in the Event of Default, the Plaintiff becomes attorney-in-fact for the Borrowers "for the purpose of carrying out the provision of this Section 4 [of the Pledge Agreement] and taking any action and executing any instruments that the [Plaintiff] may deem necessary or advisable to accomplish the purposes [of Section 4 of the Pledge Agreement], which appointment as attorney-in-fact is irrevocable and coupled with

an interest."

145. Because an Event of Default has occurred or will occur, Plaintiff is, or will be, the attorney-in-fact for the Borrowers "for the purpose of carrying out the provision of this Section 4 [of the Pledge Agreement] and taking any action and executing any instruments that the [Plaintiff] may deem necessary or advisable to accomplish the purposes [of Section 4 of the Pledge Agreement], which appointment as attorney-in-fact is irrevocable and coupled with an interest."

146. Codefendant Children, pursuant to their Guaranteed Obligations, must now "promptly pay" as set forth in the Guarantee Agreement.

**COUNT II.
BREACH OF THE FP LP AGREEMENT (FM LLC, PETER J. WELLIN,
MARJORIE W. KING, AND CYNTHIA W. PLUM)**

147. Plaintiff hereby adopts and incorporates by reference the allegations set forth above in Paragraphs 1 through 148, inclusive, as and for this Paragraph 149 as if those allegations were specifically alleged herein.

148. The Court of Chancery is empowered to hear actions alleging breach of Delaware limited partnership agreements pursuant to 6 *Del. C.* §17-111.

149. The Partnership Agreement is a valid and enforceable contract representing a legitimate exchange of consideration, rights, and liabilities between Plaintiff and FM LLC.

150. FM LLC owes contractual duties to Plaintiff under the Partnership Agreement pursuant to Delaware law.

151. The Codefendant Children own and control a majority interest in FM LLC.

152. Under the Partnership Agreement, FM LLC is the General Partner and the Plaintiff is a Limited Partner.

153. Sections 8.1, 8.2, and 8.5 of the Partnership Agreement set out a General Partner's powers, authorities, roles and responsibilities. The Partnership Agreement also contains an implied covenant of good faith and fair dealing. Abuse by a General Partner of its power, authority, role, or responsibilities is a breach of the Partnership Agreement or at least a breach of the implied covenant of good faith and fair dealing.

154. Section 9.2 of the Partnership Agreement sets forth certain conditions that must be met for a Limited Partner's interest in the Partnership to be transferred. A General Partner is duty bound to enforce the provisions of Section 9.2 and related other provisions for the material protection and benefit of the limited partnership and its "Partners."

155. The Codefendant Children and FM LLC, acting as General Partner of FP LP, individually or collectively, directly or through FM LLC, under all circumstances, breached the Partnership Agreement by abusing the power, authority, role, or responsibilities of a General Partner or breaching the said implied covenant of good faith and fair dealing, by (i) designing, approving, proposing, executing, and effectuating the 2009 Transfer Transaction for their own individual benefits and economic gain at the expense and to the detriment of Plaintiff, a Limited Partner of FP LP; (ii) promoting, facilitating and approving the transaction with their father, the Limited Partner and "transferor" under Section 9 while knowing (or recklessly disregarding the fact) that the transaction was fraudulent, wrongful, or illegal; and (iii) failing to require, ensure, or receive representations or equivalent assurances as set forth in and required by Section 9.2(a)(iv) of the Partnership Agreement; or (iv) by their self-interested dealing, rendering said section illusory or ineffective.

156. The breaches resulted from Codefendants' acts or omissions that were "performed or omitted fraudulently or in bad faith or constituted gross negligence or willful

misconduct," as such provision is set out in Section 8.5 of the Partnership Agreement.

157. The said breaches caused irreparable harm by depriving the Plaintiff of the ownership, control, and true value and benefit of his limited partnership interest in FP LP; said ownership, control, and true value being in part intangible and unquantifiable.

**COUNT III
BREACH OF FIDUCIARY DUTY
(FM LLC, PETER J. WELLIN,
MARJORIE W. KING, AND CYNTHIA W. PLUM)**

158. Plaintiff hereby adopts and incorporates by reference the allegations set forth above in Paragraphs 1 through 157, inclusive, as and for this Paragraph 158 as if those allegations were specifically alleged herein.

159. Codefendant FM LLC, as the General Partner of FP LP owes fiduciary duties to both FP LP and Plaintiff.

160. Codefendant Cynthia W. Plum, as the Manager of FM LLC acting in its role as General Partner of FP LP, or due to her active and personal participation in a general partnership role as defined by the Partnership Agreement in control of FP LP, owes fiduciary duties to both FP LP and Plaintiff.

161. Codefendants Peter J. Wellin and Marjorie W. King, by actively and personally participating in the control of FM LLC as General Partner of FP LP, or by actively and personally participating in the control of FP LP as a General Partner owe fiduciary duties to both FP LP and Plaintiff.

162. The Codefendant Children have acted in concert or conspired to act in concert in controlling FM LLC or FP LP and therefore, they owe fiduciary duties to both FP LP and Plaintiff.

163. The Partnership Agreement §8.5(a) expressly preserves the right of FP LP or the Limited Partner, i.e. Plaintiff, to sue the General Partner, i.e. FM LLC, and its affiliate, officers, and agents for any "act or omission [that] was performed or omitted fraudulently, or in bad faith or constituted gross negligence or willful misconduct".

164. The acts described in this Verified Complaint, including without limitation the self-dealing 2009 Transfer Transaction, constitute breaches of the fiduciary duties of loyalty, candor, care, and good faith under Delaware law.

165. The acts described in this Verified Complaint, including without limitation the self-dealing 2009 Transfer Transaction in violation of the Partnership Agreement, were fraudulent, wrongful or illegal and they constitute "gross negligence", "willful misconduct", and "bad faith" within the meaning of the Partnership Agreement §8.5(a) and Delaware law.

166. The said breaches caused irreparable harm by depriving the Plaintiff of the ownership, control, and true value and benefit of his limited partnership interest in FP LP; said ownership, control, and true value being in part intangible and unquantifiable.

**COUNT IV
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(PETER J. WELLIN AND MARJORIE W. KING)**

167. Plaintiff hereby adopts and incorporates by reference the allegations set forth above in Paragraphs 1 through 166, inclusive, as and for this Paragraph 167 as if those allegations were specifically alleged herein.

168. Notwithstanding allegations of Count III, FM LLC and Cynthia W. Plum, as the Manager of FM LLC, owe FP LP and Plaintiff fiduciary duties.

169. The acts described in this Verified Complaint, including without limitation the self-dealing 2009 Transfer Transaction, constitute a breach of the fiduciary duties of candor,

loyalty, care, and good faith under Delaware law by FM LLC and Cynthia W. Plum.

170. To the extent Codefendant Peter J. Wellin did not owe FP LP and Plaintiff fiduciary duties, said Codefendant knowingly promoted, facilitated, aided or abetted the breach of fiduciary duties by FM LLC or Cynthia W. Plum by actively participating in the said breach of fiduciary duty by, *inter alia*, travelling to South Carolina to urge, induce, or convince Plaintiff to execute the 2009 Transfer Transaction, which was described as a "tax advantaged" transaction, and by executing the documents and agreements necessary to effectuate the 2009 Transfer Transaction.

171. To the extent Codefendant Marjorie W. King did not owe FP LP and Plaintiff fiduciary duties, said Codefendant knowingly promoted, facilitated, aided or abetted the breach of fiduciary duties by FM LLC or Cynthia W. Plum by actively participating in the said breach of fiduciary duty by, *inter alia*, approving executing, performing, or perpetuating performance of the 2009 Transfer Transaction.

172. Due to the said individual or concerted actions of Codefendants FM LLC, and the Codefendant Children in connection with the 2009 Transfer Transaction, and the breaches of fiduciary duty therein, Plaintiff has suffered irreparable harm to the ownership, control, and true value and benefit of his limited partnership interest in FP LP; said ownership, control, and true value being in part intangible and unquantifiable.

173. Because the harms caused by said breaches are not entirely compensable by monetary damages, the 2009 Transfer Transaction is voidable, and should be declared void.

**COUNT V
CIVIL CONSPIRACY
(PETER J. WELLIN, MARJORIE W. KING, CYNTHIA W. PLUM AND
SOUTH DAKOTA TRUST COMPANY)**

174. Plaintiff hereby adopts and incorporates by reference the allegations set forth

above in Paragraphs 1 through 173, inclusive, as and for this Paragraph 174 as if those allegations were specifically alleged herein.

175. In or about 2009, the Codefendant Children devised and agreed to an illicit plan to induce Plaintiff, their father, to enter into the 2009 Transfer Transaction.

176. The purpose of the illicit plan of the Codefendant Children was to enhance their own personal wealth and derive financial benefits, to the detriment of Plaintiff and FP LP, under the guise that the transaction was a "tax advantaged transaction."

177. In furtherance of their illicit scheme, among other acts, said Codefendants made false representations to Plaintiff by misrepresentations or omissions of material information concerning the consequences and impacts of and the purported "tax advantages" to the 2009 Transfer Transaction with the intention that Plaintiff would rely on such false representations or omissions.

178. In furtherance of their illicit scheme, among other acts, the Codefendant Children caused the creation of the Wellin Family 2009 Irrevocable Trust along with Codefendant South Dakota Trust Company, LLC, for the purpose of effectuating the 2009 Transfer Transaction.

179. Plaintiff has been damaged as a direct and proximate result of said Codefendants' actions, the exact amount to be proven at trial.

180. Codefendant Children and Codefendant South Dakota Trust Company, LLC are jointly and severally liable to Plaintiff.

**COUNT VI
REMOVAL OF FM LLC AS THE GENERAL PARTNER OF FP LP**

181. Plaintiff hereby adopts and incorporates by reference the allegations set forth above in Paragraphs 1 through 180, inclusive, as and for this Paragraph 181 as if those allegations were specifically alleged herein.

182. Pursuant to 6 Del. C. §17-402(a) a general partner of a Delaware limited partner may be "removed as a general partner of the limited partnership in accordance with the partnership agreement."

183. The Partnership Agreement does not contain a provision that allows for the limited partner to remove the general partner.

184. Pursuant to 6 Del. C. §17-110(a), "upon application of any partner, the Court of Chancery may hear and determine the validity of ... the right of any person to ... continue to be a general partner of the limited partnership."

185. Moreover, this Court has the general equitable power to remove a general partner or grant other relief that is tantamount to removal for breaches of fiduciary duty.

186. Plaintiff remains a limited partner in FP LP because he serves as the Trustee of both the 2011 GRAT and the 2012 GRAT.

187. Due the serious breaches of the fiduciary duties of loyalty, care, candor and good faith under Delaware law by the Codefendants FM LLC and Defendant Children, as described in this Verified Complaint, Plaintiff as a limited partner in FP LP prays that this Court remove FM LLC as the general partner of FP LP and appoint Plaintiff or his designee as the General Partner.

**COUNT VII-
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING
(FM LLC, PETER J. WELLIN,
MARJORIE W. KING, AND CYNTHIA W. PLUM)**

188. Plaintiff hereby adopts and incorporates by reference the allegations set forth above in Paragraphs 1 through 180, inclusive, as and for this Paragraph 181 as if those allegations were specifically alleged herein.

189. There is implied in the Partnership Agreement a covenant of good faith and fair dealing whereby Codefendants agreed that they would perform their obligations in good faith and in the exercise of fair dealing.

190. As alleged herein, Codefendants have breached the covenant of good faith and fair dealing by acting to evade the letter and spirit of the bargain between the parties.

191. Plaintiff has performed all its duties, obligations, conditions and covenants under the Partnership Agreement, except for those promises, performances, duties and obligations which have been excused by Codefendants' breaches.

192. As a direct and proximate result of Codefendants' breach of covenant of good faith and fair dealing, Plaintiff has suffered damages, the exact amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully petitions the Court to enter an Order:

A. Issuing a declaratory judgment that:

- a. Plaintiff is the attorney-in-fact for the Borrowers for the purpose of carrying out the provisions of Section 4 of the Pledge Agreement (and any restatements of said agreements) and for the purpose of taking any action and executing any instruments that the Plaintiff may deem necessary or advisable to accomplish the purposes of Section 4 of the Pledge Agreement, which appointment as attorney-in-fact is irrevocable and coupled with an interest.
- b. Codefendant shall accept and faithfully, accurately, and promptly comply with and execute directions of Plaintiff in his or her capacity as attorney-in-fact for the Borrowers to accomplish the purposes of Section 4 of the Pledge Agreement.
- c. Codefendant Children, pursuant to the Guarantee Agreement, in their individual capacities shall make immediate payments to Plaintiff in US Dollars in the percentage and as applied to the principal of and interest on the Note and all other amounts owed to Plaintiff as required by the agreement and in an amount as ordered by the Court.

B. Preliminarily and permanently enjoining Defendants from:

- a. Transferring or selling the Shares or any interest in FP LP; and

- b. Serving as General Partner in FP LP or participating in the management or control of FP LP
- C. Removing FM LLC as General Partner of FP LP.
- D. Reforming the Partnership Agreement to state that: Keith Wellin or his designee is the General Partner of FP LP.
- E. Imposing a constructive trust over the FP LP interests transferred to the Wellin Family 2009 Irrevocable Trust;
- F. Issuing a mandatory injunction and order of specific performance requiring Defendants to execute any and all documents necessary for Defendants to transfer the Limited Partnership interests to Plaintiff;
- G. Awarding monetary damages for those claims for which monetary compensation is adequate relief pursuant to Delaware law, including compensatory and consequential damages, pre-judgment and post-judgment interest;
- H. Awarding costs, attorney's fees and granting all other relief that the Court deems appropriate, equitable and just.

Dated: July 12, 2013

McCARTER & ENGLISH, LLP

/s/ Thomas Stevens

David White (DE# 2644)
Thomas Stevens (DE# 3039)
Daniel J. Brown (DE# 4688)
Brian Lemon (DE# 4730)
Renaissance Centre
405 N. King Street 8th Floor
Wilmington, DE 19801
Tel: (302) 984-6300
Fax: (302) 984-6399

*Attorneys for Plaintiff
Keith S. Wellin*

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Keith Wellin, individually and as Trustee of	)	C/A No. 2:13-cv-01831-DCN
the Keith S. Wellin Florida Revocable Living	)	
Trust u/a/d December 11, 2001,	)	
	)	
Plaintiff,	)	
	)	
Versus	)	PLAINTIFF'S MEMORANDUM IN
	)	SUPPORT OF HIS MOTION FOR
	)	TEMPORARY RESTRAINING ORDER
	)	AND ORDER TO SHOW CAUSE FOR
	)	PRELIMINARY INJUNCTION
Peter J. Wellin, Cynthia W. Plum and	)	
Marjorie W. King, individually, and as co-	)	
Trustees and beneficiaries of the Wellin	)	
Family 2009 Irrevocable Trust u/a/d	)	
November 2, 2009, South Dakota Trust	)	
Company, LLC as co-Trustee of the Wellin	)	
Family 2009 Irrevocable Trust u/a/d	)	
November 2, 2009, Friendship Management,	)	
LLC, Friendship Partners, LP,	)	
	)	
Defendants.	)	

Plaintiff hereby submits this Memorandum in Support of Motion for Temporary Restraining and Order to Show Cause for Preliminary Injunction.

BACKGROUND FACTS

The following facts are supported by the Verified Complaint filed in this matter, and thus subscribed to under oath by the Plaintiff. Plaintiff is an 86 year-old entrepreneur and Wall Street investor. In the 1960s, he purchased a large amount of Class A Berkshire Hathaway common stock (hereinafter "BRKa"). The value of those shares has since grown exponentially and, coupled with many other wise investments, resulted in substantial wealth for the Plaintiff. Plaintiff is married to Wendy Wellin. Plaintiff has three children from a prior marriage: Defendants Peter J. Wellin, Marjorie W. King, and Cynthia W. Plum. Plaintiff has numerous grandchildren.

EXHIBIT D

Due to his substantial wealth and large family, Plaintiff made efforts in his older years to set up and manage his assets and estate in such a manner that his spouse Wendy Wellin, his children, his grandchildren, and future generations would be provided for financially with the least amount of tax consequences possible. This estate planning included the creation of various trusts, LLCs, partnerships, and other entities.

One such entity is the Keith S. Wellin Florida Revocable Living Trust which the Plaintiff created on December 11, 2001, naming himself as the Trustee, his son Peter Wellin as the successor trustee, and his daughter Cynthia W. Plum as the backup successor trustee. Plaintiff transferred and held certain assets in this trust during his lifetime.

Another entity is Friendship Management, LLC, a Delaware Limited Liability Company formed on December 8, 2003. Its members are The 2003 KSW Family Trust (40%), Defendant Peter Wellin (20%), Defendant Marjorie W. King (20%), and Defendant Cynthia W. Plum (20%). Defendant Cynthia W. Plum was nominated as Manager of Friendship Management LLC by its Operating Agreement. Pursuant to Friendship Management, LLC's Voting Agreement, Defendant Cynthia W. Plum will serve as its sole Manager until the time of the Plaintiff's death. Upon the Plaintiff's death, Defendant Peter Wellin or Defendant Marjorie W. King have the option to amend the Operating Agreement such that Defendants Peter Wellin, Marjorie W. King, and Cynthia W. Plum become co-Managers of Friendship Management, LLC. Accordingly, until the time of Plaintiff's death, Defendant Cynthia W. Plum, as Manager of Friendship Management, LLC, has the power and authority to manage the assets and affairs of Friendship Management, LLC.

Another such entity is Friendship Partners, LP, a Delaware Limited Partnership created by Plaintiff, as limited partner, and Friendship Management, LLC, as general partner, on December 12,

2003.¹ Plaintiff owned 98.90% of Friendship Partners, LP and the remaining percentage was owned by Friendship Management, LLC. Pursuant to its Agreement of Limited Partnership, Friendship Management, LLC, as the general partner, has the "exclusive and complete authority and discretion to manage the operation and affairs of [Friendship Partners LP] and to make all decisions regarding the business of [Friendship Partners LP]." Conversely, Plaintiff, as the limited partner, was given no authority in the management or control of Friendship Partners, LP's business. However, since Plaintiff owned 98.90% of Friendship Partners, LP and had the ability to liquidate such interest through a sale of the same, Plaintiff was willing to relinquish direct individual control over Friendship Partners, LP and any assets placed therein. Plaintiff was also comfortable not having direct individual control over Friendship Partners, LP because he had confidence that his fiduciary relationship with his children would cause them to act in his best interests at all times with regards to Friendship Partners, LP. Plaintiff funded Friendship Partners, LP with 896 shares of BRKa and \$2,000.00 cash.

In or around 2006, Plaintiff's health began deteriorating. Accordingly, he decided to name his son, Defendant Peter Wellin, as his Attorney-in-Fact by way of five different durable powers of attorney in the five different states where Plaintiff owned property and/or conducted business. On May 23, 2006, while physically located in Charleston County, South Carolina, Plaintiff executed a Florida General Power of Attorney – Durable and a New York Durable General Power of Attorney. On September 20, 2006, Plaintiff executed a South Carolina General Durable Power of Attorney, a Georgia Financial Power of Attorney, and a Maine

¹ In 2007, Plaintiff Keith S. Wellin, in his individual capacity, was replaced as limited partner by Plaintiff Keith S. Wellin, Trustee of the Keith S. Wellin Florida Revocable Living Trust.

General Durable Power of Attorney. Each power of attorney also named Plaintiff's daughter Defendant Cynthia W. Plum as successor Attorney-in-Fact.

In or around 2008, Plaintiff was diagnosed and treated for tongue cancer. In and throughout 2009, the Plaintiff, while living full time in Charleston County, South Carolina, experienced numerous other adverse health problems which required him to take various medications and, at times, rendered him mentally and physically incapacitated.

In or around October and November 2009, Defendant Peter Wellin contacted the Plaintiff and proposed that the Plaintiff execute a "tax advantaged transaction" (hereinafter the "November 2009 Transaction"). Defendant Peter Wellin convinced the Plaintiff to create the Wellin Family 2009 Irrevocable Trust, with the trustees being: (1) Defendant Peter Wellin, (2) Defendant Marjorie W. King, (3) Defendant Cynthia W. Plum, and (4) South Dakota Trust Company, LLC, which was named as trustee solely to place the trust in South Dakota. Plaintiff signed the Wellin Family 2009 Irrevocable Trust Agreement on November 2, 2009 in Charleston County, South Carolina.

Defendant Peter Wellin then convinced the Plaintiff to sell his limited partnership interest in Friendship Partners, LP to the Wellin Family 2009 Irrevocable Trust. At this time, Plaintiff's 896 shares of BRKa held by Friendship Partners, LP, of which he owned 98.90%, were worth approximately \$90,000,000. In return for selling his \$90,000,000 interest in Friendship Partners, LP, Plaintiff received a note in the amount of \$49,802,115 from the Wellin Family 2009 Irrevocable Trust (hereinafter the "Note"). The principal amount of the Note is not due for nine (9) years from its creation and not callable prior to then. Further, when the Note finally matures, repayment is not required to be made in cash, but rather can be made by transferring property, including an illiquid limited partner interest of like value in Friendship Partners, LP, to the

Plaintiff, or any other holder of the Note. Additionally, the Note carried the minimum interest allowed by the IRS to disqualify the sale from being a "gift." Today, the interest rate on the Note is approximately 0.8%. Based on these limitations, the Note was not then and is not now worth anywhere close to its \$49,802,115 face value and is worth even further from the \$90,000,000 of assets it purchased. On November 30, 2009, while physically located in Charleston County, South Carolina, Plaintiff signed various documents effectuating the sale of his limited partner interest in Friendship Partners, LP to the Wellin Family 2009 Irrevocable Trust.

To make matters worse for the Plaintiff, despite the fact that he was swindled into exchanging approximately \$90,000,000 in BRKa shares for a Note that is worth nothing close to its \$49.8 million face value, Plaintiff retained all income tax liability associated with a sale BRKa shares or a sale of the 98.90% limited partnership interest in Friendship Partners, LP. Since Plaintiff purchased those BRKa shares approximately 50 years ago for less than \$200 per share, if they are sold at today's share price of approximately \$168,000 per share, Plaintiff will incur significant income tax liability that is estimated in the \$40,000,000 range.

Plaintiff's 896 BRKa shares are currently owned by Friendship Partners, LP of which the Wellin Family 2009 Irrevocable Trust owns a 98.90% limited partner interest. However, the Wellin Family 2009 Irrevocable Trust does not control the shares because, as it is a limited partner in Friendship Partners, LP, it has no authority over management or control of Friendship Partners, LP's business or assets. Instead, sole control over Plaintiff's 896 BRKa shares is held by Friendship Partners, LP's general partner, Friendship Management, LLC. As Friendship Management, LLC is owned 60% by Defendants Peter Wellin, Marjorie W. King, and Cynthia W. Plum, and managed solely by Defendant Cynthia W. Plum, those Defendants have sole

control over Plaintiff's 896 BRKa shares and can, at any time, sell the stock and impose approximately \$40,000,000 in income tax liability on the Plaintiff. See Affidavit of Michael E. Simon ¶ 12. Also, if Defendants sell or transfer the 98.90% limited partnership interest in Friendship Partners, LP, to anyone other than the Plaintiff, Plaintiff will incur the same \$40,000,000 tax consequence as if the BRKa shares were sold. Id.

If the Defendants opt to trade, transfer, liquidate, sell, gift, negotiate, or otherwise dispose of Plaintiff's 896 BRKa shares or the 98.90% limited partnership interest in Friendship Partners, LP and Plaintiff incurs and satisfies roughly \$40,000,000 in tax liability, he will have no liquid assets and, in fact, will be forced to re-pay other liabilities which are secured by certain assets which he would need to liquidate in order to satisfy the \$40,000,000 in tax liability, thus leaving the Plaintiff with a negative net worth and essentially bankrupt.² Id. ¶ 14. The Note is essentially worthless to the Plaintiff, who is in very poor health, as it cannot be called until 2021,³ and can only be sold for a fraction of its face value because of its nominal interest rate, its maturity date and provision that it cannot be called early, and the fact that it can be repaid with any property, including an illiquid limited partner interest in Friendship Partners, LP which would not provide any control to the holder of the payee of the Note over the consideration he was just paid.

In sum, in or around October and November 2009, Defendants convinced the Plaintiff to create the Wellin Family 2009 Irrevocable Trust and sell his then \$90,000,000 interest in Friendship Partners, LP to the Wellin Family 2009 Irrevocable Trust in exchange for the Note

² Upon information and belief, the Defendants desire this outcome as they do not want the Plaintiff to have assets at the time of his death, or during his life, that he could give to his wife, Wendy Wellin, who is not the mother of the individual Defendants.

³ The Note has been modified over the years to adjust the interest rate and extend the term such that the original maturity date of 2018 is no longer applicable.

which is not worth a fraction of its \$49.8 million face value. Defendants convinced the Plaintiff to enter into these transactions at a time when his mental capacity was severely diminished such that Plaintiff could not comprehend the present or future ramifications of the November 2009 Transaction, particularly that he would lose all control over his BRKa shares held by Family Partners, LP, that the shares or the limited partnership interest could be sold such, that he would incur the resulting income tax liability, and that the resulting income tax liability would bankrupt him. Defendants Peter Wellin and Cynthia W. Wellin also convinced the Plaintiff and/or assisted the Plaintiff in carrying out the November 2009 Transaction, which was not in the Plaintiff's best interest, despite the fact that they each had a fiduciary relationship with the Plaintiff by virtue of their holding five powers of attorney/successor powers of attorney and serving as successor trustees of the Keith S. Wellin Florida Revocable Living Trust. Accordingly, Defendants Peter Wellin and Cynthia W. Plum had a duty to act in the Plaintiff's best interests regarding any transaction to which they were aware the Plaintiff was involved.

Now, under Rule 65 of the Federal Rules of Civil Procedure, the Plaintiff seeks: (1) a temporary restraining order to preserve the *status quo* and prevent Defendants from being able to sell, trade, negotiate, gift, or otherwise dispose of the BRKa shares held by Friendship Partners, LP without the express, written, and notarized consent of the Plaintiff or the current holder of his durable power of attorney;⁴ (2) a temporary restraining order to preserve the *status quo* and prevent Defendants from being able to sell, trade, negotiate, gift, or otherwise dispose of the 98.90% limited partnership interest in Friendship Partners, LP without the express, written, and notarized consent of the Plaintiff or the current holder of his durable power of attorney; and (3)

⁴ Plaintiff has revoked the five durable powers of attorney naming his son, Defendant Peter Wellin, as his Attorney-in-Fact and his daughter, Defendant Cynthia W. Plum, as his Successor Attorney-in-Fact and appointed his wife Wendy Wellin as his new Attorney-in-Fact.

an order to show cause why a subsequent preliminary injunction should not be entered enjoining Defendants from being able to sell, trade, negotiate, gift, or otherwise dispose of the BRKa shares and/or the limited partnership interest without the express, written, and notarized consent of the Plaintiff or the current holder of his durable power of attorney, until the final adjudication of the merits of this action.

LAW/ANALYSIS

I. THE COURT SHOULD ISSUE A TEMPORARY RESTRAINING ORDER ENJOINING THE DEFENDANTS FROM SELLING THE BRKa SHARES HELD BY FRIENDSHIP PARTNERS, LP AND THE 98.90% LIMITED PARTNERSHIP INTEREST IN FRIENDSHIP PARTNERS, LP

When a party reasonably fears irreparable injury, a temporary restraining order may be granted to preserve the *status quo* until all parties have a chance to be heard, and the court has an opportunity to rule on the application for a preliminary injunction. See MOORE'S FEDERAL PRACTICE, §65.30 (internal citations omitted). A temporary restraining order is intended to preserve the *status quo* only until a hearing on a preliminary injunction can be held. Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, 415 U.S. 423, 439, (1974); Hoechst Diafoil Co. v. Nan Ya Plastics Corp., 174 F.3d 411, 422 (4th Cir. 1999). The Fourth Circuit has defined the *status quo* as "the last uncontested status between the parties which preceded the controversy." Aggarao v. MOL Ship Mgmt. Co., 675 F.3d 355, 378 (4th Cir. 2012) (quoting Siemple v. Bd. of Educ., 623 F.2d 893, 898 (4th Cir. 1980)). Under Rule 65(b)(1)(A), FRCP, the court may issue a temporary restraining order, without notice to the adverse party, if (1) the movant shows that immediate and irreparable injury, loss, or damage will result and (2) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

a. The Requested Temporary Restraining Order would be Narrowly Tailored to Only Preserve the Status Quo Until a Hearing on a Temporary Injunction can be Held

The relief the Plaintiff requests by way of this Motion for Temporary Restraining Order is simply that the Defendants continue to do what they have been doing since November 2003: hold the BRKa shares as assets of Friendship Partners, LP as opposed to selling, gifting, trading, negotiating, liquidating, transferring or otherwise disposing of the shares. Plaintiff also requests that the Defendants not sell, gift, trade, negotiate, liquidate, transfer or otherwise dispose of the 98.90% limited partnership interest in Friendship Partners, LP. The last uncontested status of the shares prior to this controversy was that they were owned by Friendship Partners, LP. The last uncontested status of the 98.90% limited partnership interest in Friendship Partners, LP was its ownership by the Wellin Family 2009 Irrevocable Trust. Accordingly, Friendship Partners LP's continued ownership of the BRKa shares and the Wellin Family 2009 Irrevocable Trust's continued ownership of the limited partnership interest would be a preservation of the *status quo*. Friendship Partners, LP's sale or other form of transfer or disposal of the BRKa shares would a change in the *status quo*. Similarly, the Wellin Family 2009 Irrevocable Trust's sale or other form of transfer of the limited partnership interest in Friendship Partners, LP would be a change in the *status quo* while its continued ownership of the limited partnership interest would be a preservation of the *status quo*. Accordingly, the issuance of a temporary restraining order enjoining the Defendants from selling, trading, gifting, negotiating, or otherwise disposing of some or all of those BRKa shares and/or the 98.90% limited partnership interest is simply a preservation of the *status quo* and appropriate grounds to grant this motion. Granny Goose, 415 U.S. at 439; Aggarao, 675 F.3d at 378; Hoechst Diafoil, 174 F.3d at 422.

b. Plaintiff Will Suffer Immediate and Irreparable Injury if the Temporary Restraining Order is not Issued

Plaintiff's health has continued to deteriorate, and he is severely limited in his physical abilities. Plaintiff has no control or ownership over the BRKa shares that are held by Friendship Partners, LP and no control over the 98.90% limited partnership interest owned by the Wellin Family 2009 Irrevocable Trust. Should those shares, at current market price, be sold today, tomorrow, or at any time, Plaintiff will incur approximately \$40,000,000 in income tax liability, which will render him bankrupt. Plaintiff will experience that same tax liability if Defendants sell or transfer the 98.90% limited partnership interest. The imposition of such tax liability, especially at this physically and financially fragile time in the Plaintiff's life, is certainly an irreparable injury.

Further, Plaintiff is using these last years of his life to ensure that his estate is in order for proper administration according to his wishes. The status of the BRKa shares is prohibiting the Plaintiff from accomplishing such a task. Knowing that the Defendants are stripped of the ability to sell the BRKa shares or the limited partnership interest, and thus saddle the Plaintiff with \$40,000,000 in tax liability, will allow the Plaintiff to move forward with his estate planning.

Finally, while the Plaintiff is currently in good mental health, his physical condition is quickly deteriorating. This matter, and especially the threat that his children could and may cause the BRKa shares or the limited partnership interest to be sold and impose \$40,000,000 in tax liability on the Plaintiff weighs heavily on the Plaintiff's mind and contributes to his poor physical health. His injury is certainly immediate and irreparable.

c. Notice to the Defendants Should not be Required

Finally, counsel for the Plaintiff had been in negotiations with counsel for the Defendants in an attempt to reach a resolution of this matter short of litigation. During these discussions, counsel for the Plaintiff has learned that the Defendants are sophisticated individuals who harbor a great deal of resentment toward the Plaintiff's wife Wendy Wellin and desire to limit what the Plaintiff is able to leave her upon his death or give her during his life. Accordingly, upon information and belief, the Defendants wish to render the Plaintiff bankrupt to accomplish their goal. One easy method for the Defendants to accomplish this is to sell the BRKa shares or the limited partnership interest and saddle the Plaintiff, or his estate, with \$40,000,000 in tax liability.

In the event that the Defendants are not aware of the ramifications their sale of the BRKa shares or the limited partnership interest would have on the Plaintiff, counsel for the Plaintiff has decided not to give them notice of the same by way of notice of this Motion. Providing notice of this Motion to the Defendants could prompt the Defendants to sell the BRKa shares and/or the limited partnership interest and bankrupt their father in the last years of his life. Accordingly, notice of this Motion was not given to counsel for the Defendants.

II. THE COURT SHOULD SCHEDULE A HEARING ON A PRELIMINARY INJUNCTION AND GRANT THE SAME ENJOINING THE DEFENDANTS FROM SELLING THE BRKA SHARES HELD BY FRIENDSHIP PARTNERS, LP OR THE 98.90% LIMITED PARTNERSHIP INTEREST IN FRIENDSHIP PARTNERS, LP PENDING A TRIAL ON THE MERITS

A preliminary injunction order under Rule 65(a) is appropriate where, as here, a plaintiff establishes that: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in its favor, and (4) that an injunction is in the public interest. Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008); Pashby v. Delia, 709 F.3d 307, 320 (4th Cir. 2013); Rule 65, FRCP.

Here, the Plaintiff more than satisfies all four essential elements needed to grant a preliminary injunction enjoining the Defendants from selling, trading, negotiating, gifting, or otherwise disposing of the BRKa shares held by Friendship Partners, LP and/or the 98.90% limited partnership interest in Friendship Partners, LP, either of which would result in approximately \$40,000,000 in tax liability to the Plaintiff.

a. Plaintiff is Likely to Succeed on the Merits of His Claims

In order to carry its burden of establishing the likelihood of success on the merits, a party seeking an injunction need not exhibit a "certainty of success," but rather must make a "clear showing" that it is likely to succeed at trial. Pashby, 709 F.3d at 321. Here, Plaintiff's Verified Complaint asserts claims for Breach of Fiduciary Duty, Aiding and Abetting a Breach of Fiduciary Duty, Fraud, Negligent Misrepresentation, Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act, Violation of the South Carolina uniform Securities Act of 2005 S.C. Code Ann. §35-1-101 *et seq.*, Constructive Fraud, Rescission of Gifts based on Mistake of Fact, Unjust Enrichment, Constructive Trust, Appointment of Receiver, and Reformation of Promissory Note. Plaintiff's Verified Complaint seeks the rescission of the November 2009 Transaction, as well as other relief and damages including rescission of other transactions. However, since the Instant Motion seeks only to enjoin the sale or transfer of the BRKa shares and/or the limited partnership interest that the Defendants acquired pursuant to the November 2009 Transaction, this Motion need only analyze the likelihood of success on the merits of those causes of action seeking rescission of the November 2009 Transaction or otherwise seeking return of the BRKa shares transferred therein. This Motion will not address each cause of action that seeks return of those shares, as the Plaintiff need only show the likelihood of being meritorious on any one of them that will provide such relief.

Breach of Fiduciary Duty

"A fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." Moore v. Benson, 390 S.C. 153, 163, 700 S.E.2d 273, 279 (S.C. App. 2010) (quoting O'Shea v. Lesser, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (S.C. 1992)). "One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation." Benson, 309 S.C. at 163, 700 S.E.2d at 279 (quoting Moore v. Moore, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (S.C. App. 2004)).

At all times relevant to the November 2009 Transaction, Defendant Peter Wellin held five different durable powers of attorney to act as the Plaintiff's Attorney-in-Fact with regards to Plaintiff's financial and business transactions. One such power of attorney was held for South Carolina. The mere fact that Defendant Peter Wellin held these powers of attorney to act on the Plaintiff's behalf created a heightened fiduciary duty between Defendant Peter Wellin and the Plaintiff, even when Defendant Peter Wellin was not acting on the Plaintiff's behalf under any of the powers of attorney. In re Estate of Cumbee, 333 S.C. 664, 672, 511 S.E.2d 390, 394 (S.C. App. 1999) (finding a fiduciary relationship existed where a son had his mother's power of attorney and managed her finances despite the fact that the challenged transaction was not executed by son pursuant to the power of attorney). Additionally, Defendant Peter Wellin held a fiduciary duty to the Plaintiff by virtue of Defendant Peter Wellin serving as successor trustee of the Keith S. Wellin Florida Revocable Living Trust. Accordingly, Defendant Peter Wellin had a fiduciary duty to the Plaintiff to ensure that Plaintiff only enter into business transactions that were in the Plaintiff's best interest, especially at a time when Plaintiff's mental capacity to

understand and comprehend complicated financial transactions and their future ramifications was compromised. Defendant Peter Wellin breached that fiduciary duty by convincing the Plaintiff to execute the November 2009 Transaction, by allowing the Plaintiff to execute the November 2009 Transaction, and by executing the November 2009 Transaction himself, all the while knowing that the November 2009 Transaction was not in the best interest of the Plaintiff.

Similarly, Defendant Cynthia W. Plum owed the Plaintiff a fiduciary duty by virtue of her status as his successor Attorney-in-Fact and backup successor trustee of the Keith S. Wellin Florida Revocable Living Trust. Defendants Cynthia W. Plum had the identical duty of her brother to ensure that Plaintiff only enter into business transactions that were in the Plaintiff's best interest, especially at a time when Plaintiff's mental capacity to understand and comprehend complicated financial transactions and their future ramifications was compromised. Defendant Cynthia W. Plum breached that fiduciary duty by allowing the Plaintiff to execute the November 2009 Transaction and by executing the November 2009 Transaction herself, all the while knowing that the November 2009 Transaction was not in the best interest of the Plaintiff.

Accordingly, the Plaintiff has made a clear showing of his likelihood of success on the merits of his Breach of Fiduciary Duty claim regarding the November 2009 Transaction, such that the requested preliminary injunction is warranted. Pashby, 709 F.3d at 321.

Violation of South Carolina Uniform Securities Act of 2005, S.C. Code Ann. § 35-1-101, et seq

As stated above, the November 2009 Transaction involved a contract of sale, contract to sell, or disposition of a security or interest in a security for value. Pursuant to the South Carolina Uniform Securities Act of 2005, S.C. Code §35-1-501, it is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- a. to employ a device, scheme, or artifice to defraud;
- b. to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

Here, Defendant Peter Wellin, individually and as co-trustee of the Wellin Family 2009 Irrevocable Trust, employed a device, scheme, or artifice to defraud Plaintiff in connection with the November 2009 Transaction. Further, Defendant Peter Wellin, individually and as co-trustee of the Wellin Family 2009 Irrevocable Trust, made an untrue statement of a material fact when he told Plaintiff that the November 2009 Transaction was a "tax advantaged transaction" that was in Plaintiff's best interest. Next, Defendant Peter Wellin, individually and as co-trustee of the Wellin Family 2009 Irrevocable Trust, omitted certain material facts necessary to make his statement that the November 2009 Transaction was a "tax advantaged transaction" not misleading, including but not limited to:

- a. the overall impact the November 2009 Transaction would have on Plaintiff's finances;
- b. that Plaintiff will lose all access to and control over his assets, but still would be left with tax liability; and
- c. that the November 2009 Transaction was not advantageous from a tax perspective for Plaintiff during his lifetime.

Essentially, when Defendant Peter Wellin, in his individual capacity and in his capacity as trustee of the Wellin Family 2009 Irrevocable Trust, convinced the Plaintiff to execute the November 2009 Transaction, allowed the Plaintiff to execute the November 2009 Transaction, and himself took active steps to execute the November 2009 Transaction, he did so in violation of the South Carolina Uniform Securities Act of 2005. As a result of such a violation, Plaintiff is entitled to recover the securities and any income received on the securities, costs, and reasonable attorney's fees to be determined by the court.

Plaintiff has made a clear showing of the likelihood of success on the merits of this claim to support the requested injunctive relief.

b. Plaintiff is Suffering and Will Continue to Suffer Irreparable Injury and has no Adequate Remedy at Law

Plaintiff has lost control and use of his stock assets, which were valued at \$90,000,000 at the time of the November 2009 Transaction, but today are valued close to \$160,000,000. This is causing Plaintiff immediate financial harm as he is not able to use these assets to which he did not knowingly relinquish ownership or control. He will continue to suffer such financial injury until such time as the assets are rightfully returned to him.

Further, Plaintiff's injury is irreparable because he believes that his children will in fact sell the assets and/or the 98.90% limited partnership interest in Friendship Partners, LP for the sole purpose to trigger the massive \$40,000,000 income tax liability, for which the Plaintiff will be responsible. This will bankrupt the Plaintiff and leave nothing in the Plaintiff's estate for him to leave to his wife, Wendy Wellin, upon Plaintiff's death. Upon information and belief, this is a situation that the individual Defendants desire. Defendants' unilateral sale of the 896 BRKa shares or the limited partnership interest and the resulting tax liability would be irreparable and devastating to the Plaintiff. There is no adequate remedy at law for such injury because the

dollar amount would be so large that none of the Defendants would be able to compensate the Plaintiff or his estate for the damages caused.

Finally, the Plaintiff is currently in very poor physical health but is mentally competent in all regards. This situation, particularly the threat that the Defendants could unilaterally sell the 896 BRKa shares or the limited partnership interest and subject the Plaintiff to \$40,000,000 in tax liability, weighs on the Plaintiff's mind and contributes to his deteriorating physical health. This deterioration of health is a form of injury that is immediate, ongoing, and irreparable. Accordingly, the Court should grant this Motion for a Temporary Restraining Order and Order to Show Cause for a Preliminary Injunction to maintain the *status quo* by stripping the Defendants of their ability to sell, trade, negotiate, gift, or otherwise dispose of the 896 BRKa shares or the limited partnership interest in Friendship Partners, LP, which are currently in the custody and sole control of the Defendants.

c. A Balancing of the Equities and the Public Interest Both Weigh in Favor of Granting the Requested Injunctive Relief

Granting this Motion will result in zero harm to the Defendants. Instead, as is required, a grant of this Motion will simply maintain the *status quo*. To be sure, the Plaintiff is not asking that the injunctive relief enjoin the Defendants from selling the BRKa shares or the limited partnership interest under any circumstance. Surely, if the market dictates, a sale of all or some of the shares or the limited partnership interest could be a reasonable and preferred business decision. Plaintiff has as much interest in making the most beneficial business decisions regarding the assets as do the Defendants. For that reason, the Plaintiff is asking the Temporary Restraining and eventual Preliminary Injunction to only enjoin the Defendants from unilaterally selling, trading, negotiating, gifting, or otherwise disposing of the assets without express, written, and notarized consent of the Plaintiff, or his attorney-in-fact. Accordingly, the requested

Temporary Restraining Order and Preliminary Injunction would result in zero harm to the Defendants.⁵

To be sure, certain of the Defendants have had sole control over the 896 BRKa shares since 2003 and have not sold a single one, despite times of financial instability where the market might have dictated selling some or all of the shares. See Affidavit of Michael Simon ¶ 10-11. Further, certain of the Defendants have held sole control over the limited partnership interest in Friendship Partners, LP since November 2009 and have not sold the interest during the three and a half years that have lapsed. For the Defendants to now claim that they would suffer harm by being forced to not sell or dispose of the shares or the limited partnership interest pending a trial on the merits of this case would be disingenuous. Id. ¶ 13. Conversely, and as discussed above, the Plaintiff is suffering, and will continue to suffer, crippling and irreparable injury should the Court fail to grant the narrowly tailored injunctive relief.

Further, the equities tip in favor of the Plaintiff in this action. The Plaintiff is an 86 year old man who has been very generous to his children and grandchildren during his lifetime. The Plaintiff comes into this action with clean hands. On the other hand, the individual Defendants, seeking additional gifts from the Plaintiff and seeking to prohibit the Plaintiff from making desired gifts to his wife Wendy, approached the Plaintiff at a time when his mental and physical capacity were compromised and convinced the Plaintiff to execute the November 2009 Transaction to not only divest him of all claim to 896 BRKa shares that he had bought and had been holding since the 1960s, but also to saddle him with the massive income tax liability that will result if and when the Defendants liquidate those shares and enjoy the cash proceeds. It is

⁵ In fact, because the Defendants face no harm as a result of an injunction and could suffer no damages, no bond should be required from the Plaintiff. See Habitat Educ. Ctr. v. U.S. Forest Svc., 607 F.3d 453, 458 (7th Cir. 2010) (There is no reason to require a bond when the court is satisfied that there's no danger that the opposing party will incur damages from the injunction).

clear that the Defendants come to this action with unclean hands. Accordingly, a balance of the equities favors the Plaintiff and supports the Court granting the Plaintiff the requested injunctive relief.

Further, the requested injunctive relief will pose absolutely no harm to the public interest. The resolution of this matter will only affect those that are parties to this case and others that may stand to benefit from the estate of the Plaintiff. There is no situation where a grant of injunctive relief, or the desired relief pled in the Verified Complaint, could cause harm to the public at large. Accordingly, the requested injunctive relief is appropriate in this case. Pashby, 709 F.3d at 330 (finding that a finding of likelihood of success on the merits will satisfy the public interest prong if other considerations do "not meaningfully weigh on that factor.").

CONCLUSION

This unfortunate matter brings to the Court's attention a very successful and generous man who has given millions of dollars to his children over his lifetime. Those children were not satisfied and wanted more. They took advantage of the trust and confidence their father placed in them and his weakened mental state to convince him to transfer 896 shares of his Berkshire Hathaway stock to them, while he held the income tax liability associated with liquidating the same. Plaintiff will suffer immediate and irreparable harm if the Defendants sell the BRKa shares or the limited partnership interest in Friendship Partners, LP and generate approximately \$40,000,000 in tax liability for the Plaintiff. Accordingly, the Court should grant the requested Temporary Restraining Order, which will simply maintain the *status quo* by enjoining the Defendants from selling, trading, gifting, negotiating, liquefying, transferring, or otherwise disposing of the BRKa shares or the limited partnership interest, without the written consent of the Plaintiff, until such a time that the Plaintiff's Motion for Preliminary Injunction can be heard.

Further, the Court should eventually grant the Plaintiff preliminary injunction enjoining the Defendants from selling, trading, gifting, negotiating, liquefying, transferring, or otherwise disposing of the BRKa shares or the limited partnership interest, without the written consent of the Plaintiff, because the Plaintiff has made a clear showing of the likelihood of success on the merits of at least one claim asserted in his Verified Complaint, has demonstrated that he is and will continue to suffer from immediate and irreparable injury absent the injunction, has shown that the equities tip in his favor, and has proven that the public interest will not be harmed by an issuance of the requested injunctive relief.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

s/ Robert H. Hood
Robert H. Hood (1939)
Molly H. Craig (6671)
James B. Hood (9130)
Jeffrey M. Bogdan (10453)

Attorneys for the Plaintiff
Keith Wellin, individually and as Trustee of the
Keith S. Wellin Florida Revocable Living Trust
u/a/d December 11, 2001

July 3, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE PROBATE COURT
) CASE NO.
)

Lester S. Schwartz, as Trust Protector
of the Wellin Family 2009 Irrevocable
Trust, Plaintiff

vs.

SUMMONS

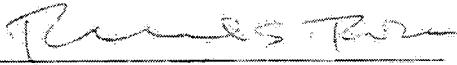
Peter J. Wellin, Cynthia W. Plum and
Marjorie W. King, Individually and as Co-
Trustees and Beneficiaries of the Wellin
Family 2009 Irrevocable Trust, Friendship
Management, LLC, Cynthia W. Plum as
Manager of Friendship Management, LLC,
Friendship Partners, LP and Keith S.
Wellin, Individually and as Trustee of the
Keith S. Wellin Florida Revocable Living
Trust u/a/d December 11, 2011, as Trustee
of the KSW 2011 Qualified Grantor
Retained Annuity Trust, and Trustee of the
KSW 2012 Qualified Grantor Retained
Annuity Trust u/a/d November 28, 2012
Defendant(s).

TO THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action,
a copy of which is herewith served upon you, and to serve a copy of your Answer to said
Complaint upon the undersigned, Rosen, Rosen & Hagood, at their offices at 151 Meeting Street,
Suite 400, Charleston, South Carolina 29401, within thirty (30) days of the service hereof,
exclusive of the day of such service, and if you fail to answer the Complaint as required by this
Summons, Plaintiff will apply to the Court for the relief demanded in the Complaint.

Respectfully submitted,

ROSEN, ROSEN & HAGOOD, LLC

By: 

Richard S. Rosen, Esquire
H. Brewton Hagood, Esquire
Daniel F. Blanchard, Esquire
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726
Email: rsrosen@rrhlawfirm.com

ATTORNEY FOR PLAINTIFF

Charleston, South Carolina
December 20, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) IN THE PROBATE COURT
) CASE NO.

Lester S. Schwartz, as Trust Protector
of the Wellin Family 2009 Irrevocable
Trust, Plaintiff

COMPLAINT

vs.

Peter J. Wellin, Cynthia W. Plum and
Marjorie W. King, Individually and as Co-
Trustees and Beneficiaries of the Wellin
Family 2009 Irrevocable Trust, Friendship
Management, LLC, Cynthia W. Plum as
Manager of Friendship Management, LLC,
Friendship Partners, LP and Keith S.
Wellin, Individually and as Trustee of the
Keith S. Wellin Florida Revocable Living
Trust u/a/d December 11, 2011, as Trustee
of the KSW 2011 Qualified Grantor
Retained Annuity Trust, and Trustee of the
KSW 2012 Qualified Grantor Retained
Annuity Trust u/a/d November 28, 2012
Defendant(s).

Petitioner, Lester S. Schwartz, as Trust Protector of the Wellin Family 2009 Irrevocable Trust, alleges and states as follows:

1. Plaintiff is a resident of South Carolina and is the duly appointed Trust Protector of the Wellin Family 2009 Irrevocable Trust having been appointed pursuant to the Trust Agreement by the Grantor Keith S. Wellin by document dated November 20, 2013.
2. The Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King are the children of Keith S. Wellin.
3. Keith S. Wellin is the Grantor of the Wellin Family 2009 Irrevocable Trust residing in Charleston, South Carolina.

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4. Pursuant to the Wellin Family 2009 Irrevocable Trust the Trust Protector has the authority to remove the Trustee and to appoint a different Trustee or additional Co-Trustees. The Trust Protector also has the authority to appoint Successor Trustees.

5. The Trust Protector does not have the authority to remove a child of the Grantor, Keith S. Wellin.

6. Pursuant to the Wellin Family 2009 Irrevocable Trust the Trust Protector has the power during the lifetime of the Grantor, Keith S. Wellin, to amend the provisions of the Trust with regard to how the beneficiaries will benefit from the Trust and to amend the Trust administrative provisions.

7. The Trust Protector has the authority to use Trust assets to hire legal counsel to advise him to defend the Trust Protector in connection with any matter concerning the Trust.

8. The Defendants herein, Peter J. Wellin, Marjorie W. King and Cynthia W. Plum serve and have served as Co-Trustees of the Wellin Family 2009 Irrevocable Trust.

9. On November 20, 2013, the Trust Protector removed South Dakota Trust Company, N.A., as the corporate Trustee of the Wellin Family 2009 Irrevocable Trust and appointed Brown Brothers Harriman Trust Company of Delaware, N.A. ("Brown Brothers") as the corporate Trustee, and Brown Brothers accepted the appointment in writing on November 20, 2013.

10. The Trust Protector amended the provisions of the Wellin Family 2009 Irrevocable Trust requiring that actions of the Trustees required the unanimous vote of the Trustees, excepting the vote of any Trustee who is also a beneficiary who is ineligible to participate in the exercise of the power or discretion because, as a beneficiary, such party may be affected by the exercise of such power or discretion.

11. On December 5, 2013, Brown Brothers submitted its notice of resignation as Trustee to the Trust Protector, and such resignation has not yet been accepted and Brown Brothers has not been discharged from its duties as Trustee.

12. Peter J. Wellin, Cynthia W. Plum and Marjorie W. King are Members of Friendship Management, LLC, a Delaware Limited Liability Company (the "Company" owning in the aggregate Sixty Percent (60%) of the Membership Interest in said Company), and Cynthia W. Plum is the Company's sole Manager.

13. Friendship Company, LLC is the general partner of Friendship Partners, LP, a Delaware Limited Partnership (the "Friendship Partners"), and the Wellin Family 2009 Irrevocable Trust is a Limited Partner owning a Limited Partnership interest of more than Ninety Percent (90%).

14. On or about December 1, 2013, Cynthia W. Plum, as Manager of Friendship Management, LLC, the general partner of Friendship Partners, LP, directed the liquidation of Friendship Partners, LP.

15. On or about December 6, 2013, Cynthia W. Plum, as the Manager of Friendship Management, LLC, while serving as Trustee of the Wellin Family 2009 Irrevocable Trust, acting solely in her own interest and in complete and utter disregard for her duties as a fiduciary with respect to Friendship Partners LP and the Wellin Family 2009 Irrevocable Trust, sold substantially all of the assets of the Partnership consisting of Berkshire Hathaway stock held in Friendship Partners LP a Delaware Limited Partnership. The sale of these assets was a violation of Defendants' fiduciary duties with respect to the Partnership and as Trustees as Defendants acted solely in their own financial interest in complete and utter disregard for the interest of the

Partnership, its Partners, and the Trust, for the intentions of the Grantor and the other beneficiaries of the Wellin Family 2009 Irrevocable Trust.

16. One or about December 1, 2013, the Defendants, Cynthia W. Plum, Peter J. Wellin, by Cynthia J. Plum, his attorney in fact, and Marjorie W. King, as the members of the Distribution Committee of the Wellin Family 2009 Irrevocable Trust, and as individual Trustees of the Wellin Family 2009 Irrevocable Trust, adopted by written consent without a meeting, a plan to distribute to themselves individually from the Wellin Family 2009 Irrevocable Trust, all of the proceeds from the liquidation of Friendship Partners, LP, exceeding the sum of \$52,000,000.00 (referred to in their written consent as the "Trust Retained Amount"), in equal shares to each of the three (3) individual Trustees/Defendants, directly from Friendship Partners, LP, as a deemed distribution first to the Wellin Family 2009 Irrevocable Trust, and then to themselves, individually, without actually making any distribution to the Wellin Family 2009 Irrevocable Trust.

17. That the Trust Retained Amount, reflects an amount that the Defendants allege is the sum due the Grantor, Keith S. Wellin, to satisfy a certain Promissory Note by and between the Grantor, Keith S. Wellin and the Defendants, Peter J. Wellin, Cynthia J. Plum and Marjorie W. King, as Trustees of the Wellin Family 2009 Irrevocable Trust, and presently in litigation.

18. That the actions of the Defendants, Peter J. Wellin, Cynthia J. Plum and Marjorie W. King, as Trustees of the Wellin Family 2009 Irrevocable Trust, have frustrated the intent and purposes of the Trust by distributing to themselves all of the Trust Estate except for that sum they have determined necessary to satisfy the debt owed to the Grantor, Keith S. Wellin, pursuant to his promissory note, leaving no Trust Estate available to make distributions to the qualified beneficiaries as intended.

19. These actions by Defendants, Peter J. Wellin, Cynthia J. Plum and Marjorie W. King were done without participation or consent of a Corporate Trustee.

20. There is currently pending in this Court a Petition filed by the Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King against Defendant Keith Wellin alleging the need for appointment of a Conservator for Keith Wellin, and alleging, among other things that the "central tenet" of Keith Wellin's estate planning was to protect his estate "for his lineal descendants"

21. There is currently pending other litigation involving the Wellin Family 2009 Irrevocable Trust including a Complaint for Injunctive and Declaratory Relief filed by Keith S. Wellin individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2001, Trustee of the KSW 2011 Qualified Grantor Retained Annuity Trust u/a/d November 20, 2011 and Trustee of the KSW 2012 Qualified Grantor Retained Annuity Trust u/a/d November 28, 2012 v. Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, individually, and as Co-Trustees and beneficiaries of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009, South Dakota Trust Company, LLC as Co-Trustee of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009, Friendship Management, LLC, Cynthia W. Plum, as Manager of Friendship Management, LLC and Friendship Partners, LP.

22. There is also pending in the United States District Court for the District of South Carolina a civil action entitled Keith Wellin, individually and as Trustee of the Keith S. Wellin Florida Revocable Living Trust u/a/d December 11, 2001 v. Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, individually, and as Co-Trustees and beneficiaries of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009, South Dakota Trust Company, LLC as Co-

Trustee of the Wellin Family 2009 Irrevocable Trust u/a/d November 2, 2009, Friendship Management, LLC, Friendship Partners, LP.

23. The Wellin Family 2009 Irrevocable Trust is the subject matter of both lawsuits. Among other relief requested in the United States District Court for the District of South Carolina by Keith Wellin is imposition of a Constructive Trust; appointment of a Receiver to take control of the Wellin Family 2009 Irrevocable Trust, Friendship Partners, LP and Friendship Management, LLC and rescission of the entire transaction creating the Wellin Family 2009 Irrevocable Trust.

24. By Order dated the 3d day of July, 2013 the Honorable David Norton, United States District Judge ordered that the individual Defendants, except Keith Wellin, be temporarily restrained and enjoined from selling, trading, gifting, transferring, negotiating or other disposing of any and all of the 896 BRKA shares owned by Friendship Partners, LP or the 98.9% interest in Friendship Partners, LP owned by the Wellin Family 2009 Irrevocable Trust, without the express, written, and notarized consent of Keith Wellin or his current attorney-in-fact. .

25. The Temporary Restraining Order issued by the United States District Court was dissolved on the 22nd day of November, 2013 and Keith Wellin's motion for preliminary injunction was denied.

26. Subsequently Defendants in violation of their fiduciary duties to the partners of the Partnership and as Trustees, in violation of their fiduciary and confidential relationship with their father, Keith S. Wellin, as well as their children and further descendants, embarked on a course of self-dealing and utter disregard of their fiduciary duties by selling all of the Berkshire Hathaway stock being held by Friendship Partners, LP.

27. The result of the sale of the Berkshire Hathaway stock is that more than \$155,000,000.00 were realized on the sale of the stock resulting in a tax consequence to the owners of the Partnership interests of more than \$40,000,000.00.

28. The Wellin Family 2009 Irrevocable Trust in Article IV, provides that the Trustee shall first pay to the beneficiary, or his or her living descendants, such amounts from the Trust income that the Trustee in its sole and absolute discretion shall deem needed for their health, support, maintenance or education (including a college education and professional or post-graduate study) or any other reasonable purpose. Such payments of income, if any, shall be made according to their respective needs and without regard to equality of distribution. Likewise, in addition to payments of income, the Wellin Family 2009 Irrevocable Trust provided that the Trustees may pay to beneficiary or to his or her living descendants, so much of the Trust principal as the Trustee in its sole discretion shall deem necessary or advisable for their health, support, maintenance, or education (including a college education and professional or post-graduate study), or any other reasonable purpose. Such principal payments are to be made on the basis of need and without regard to equality of distribution.

29. In utter disregard for the Trust provisions and in violation of their fiduciary duties, and duties of good faith, the Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King conspired to sell the assets held by Friendship Partners, LP, which partnership was an asset of the Wellin Family 2009 Irrevocable Trust. On or before December 5, 2013 sold all of the stock for cash, after which Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King acting solely in their own selfish interests, and in utter disregard for their duties as Trustees, partners and fiduciaries and in disregard of the rights of other beneficiaries, as well as the intentions of the Grantor, divided the net proceeds of their illegal transaction among themselves.

30. The sale of the Berkshire Hathaway stock the distributions from the Trust were unlawful and without legal affect.

31. Defendants left cash in the Partnership of approximately Fifty Two Million Two Hundred Twenty Eight Thousand (\$50,228,000) dollars in the Partnership which they improperly allege is due on a promissory note from the Trust to Keith S. Wellin, which note was satisfied on November 20, 2013 by a substitution of assets into the Trust by Mr. Wellin.

32. The sale of stock of Friendship Partners, LP and distributions from the Trust was done by Peter J. Wellin, Cynthia W. Plum and Marjorie W. King without requisite authorization or authority.

**FIRST CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY**

33. Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King by accepting their appointment as Trustees under the Wellin Family 2009 Irrevocable Trust thereby assumed fiduciary duties and duties of the utmost trust and confidence to the Grantor, Keith Wellin as well to all the beneficiaries of the Trust including the children of Defendants and unborn children of Defendants. It was the intention of the Grantor Keith Wellin to benefit his grandchildren.

34. Furthermore, Defendant Cynthia Plum as Manager of the General Partner, Friendship Manager, LLC owed fiduciary duties to the Friendship Partners, LP of which the Wellin Trust was a partner. Defendant Plum breached these duties as set forth herein.

35. Defendants owed to the Trust and the beneficiaries and potential beneficiaries the utmost duty of care, loyalty and good faith.

36. Defendants breached their fiduciary duties by, among other things, failing to act in the best interests of the beneficiaries and intended beneficiaries of the Wellin Family 2009 Irrevocable Trust; by breaching their duty of loyalty to the Grantor and to the other intended

beneficiaries; by violating the terms of the Wellin Family 2009 Irrevocable Trust and by misappropriating funds which were not rightfully belonging to them.

37. As a result, and pursuant to S.C. Code § 62-7-1001, Plaintiff is entitled to an order of this Court requiring Defendants to immediately restore the proceeds of the sale of the Berkshire Hathaway stock to the Trust; or in the alternative for damages as well as punitive damages in amounts to be determined by the trier of fact.

**FOR A SECOND CAUSE OF ACTION
FOR CONVERSION**

38. Plaintiffs hereby allege and re-allege as if fully set forth herein the proceeding allegations of this Complaint.

39. Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King were heretofore appointed duly acting individual Trustees of the Wellin Family 2009 Irrevocable Trust. Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King have converted the Trust assets of the Wellin Family 2009 Irrevocable Trust to their own use and benefit and sold the Berkshire Hathaway stock which they controlled via the Partnership and as Trustees and fiduciaries.

40. Plaintiff is the duly appointed Trust Protector of the Wellin Family 2009 Irrevocable Trust and the assets converted by Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King are rightfully assets of the Wellin Family 2009 Irrevocable Trust which Defendants wrongfully have detained, diverted and converted for their own use and benefit.

41. Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King have wrongfully and illegally transferred cash received from the sale of the Berkshire Hathaway stock and the dissolution of Friendship Partners, LP for their own use and benefit.

42. Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King have acted jointly and severally in converting the Trust assets and are each duly liable for all damages suffered by the Trust.

43. As a result Plaintiff is entitled to a judgment against each of these Defendants in an amount to be determined by the trier of fact, as well as an award of attorneys' fees and punitive damages.

FOR A THIRD CAUSE OF ACTION
REMOVAL OF TRUSTEES

44. Plaintiffs hereby re-allege as if fully set forth herein the proceeding allegations of this Complaint.

45. Based on the gross misconduct of the Defendants, their self-dealing, misappropriation of Trust assets and serious breaches of duty, and pursuant to S.C. Code §62-7-706, and 62-7-1001, Trust Protector requests that this Court issue an Order removing Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King as Trustees of the Wellin Family 2009 Irrevocable Trust.

FOR A FOURTH CAUSE OF ACTION
RESTITUTION

46. Plaintiffs hereby re-allege as if fully set forth herein the proceeding allegations of this Complaint.

47. Because Defendants have illegally and in violation of their fiduciary duties misappropriated funds belonging to the Trust, Plaintiff requests an Order of this Court requiring Defendants to immediately restore those funds improperly taken to the Trust.

FOR A FIFTH CAUSE OF ACTION
RECOVERY OF ATTORNEYS FEES

48. Plaintiffs hereby allege and re-allege as if fully set forth herein the proceeding allegations of this Complaint.

49. The Wellin Family 2009 Irrevocable Trust provides in paragraph 7 of Article VI that the Trust Protector is authorized to hire legal counsel to advise and defend the Trust Protector in any matter concerning the Trust.

50. Pursuant to the provisions of Article IV, paragraph B.1(a) distributions are to be made for beneficiaries health, support, maintenance or education (including college and post graduate study), or any other reasonable purpose. Such payments of income shall be made according to the respective needs of the beneficiaries. Distributions of principal may only be made based on similar ascertainable standards, again "on the basis of need".

51. The distribution of \$31,876,714.15 to each of the three children, to the exclusion of all other beneficiaries, leaving the Trust with less than 2% of its original asset value far exceeds the above standards which must only be made on the basis of need.

52. In addition, the alleged distribution direction by the children as Distribution Advisors and as Trustees violated their fiduciary distribution authority by the reciprocal nature of their attempted distributions and attempted to circumvent the Trust, and its other serving fiduciaries via directed distributions from the Partnership.

53. Plaintiff pursuant to S.C. Code §62-7-1004 hereby requests an award of attorneys fees, costs and expenses from Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King individually.

FOR A SIXTH CAUSE OF ACTION
TEMPORARY RESTRAINING ORDER, TEMPORARY AND PERMANENT INJUNCTION

54. Plaintiffs hereby re-allege as if fully set forth herein the proceeding allegations of this Complaint.

55. That unless the Defendants are restrained by this Court, there is, based on their past conduct, including the attempted conversion of over \$95,000,000 in assets, a substantial likelihood that the assets of the Trust will be dissipated or lost.

56. The loss of assets of the Trust would result in irreparable harm to the Trust and the intended beneficiaries.

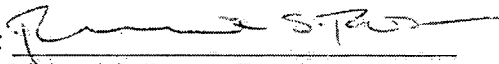
57. Plaintiff, as Trust Protector and pursuant to S.C. Code §62-7-706 hereby seeks an Order of this Court restraining and enjoining the Defendants from spending, reducing, pledging, distributing, sharing, or otherwise exercising any control or dominion over the cash assets of the Trust which defendants have misappropriated.

WHEREFORE, Plaintiffs pray for the following relief:

- (a) an Order removing Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King as Trustees of the Wellin Family 2009 Irrevocable Trust;
- (b) an Order pursuant to S.C. Code §62-7-706(c) requiring Defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King to immediately restore to Plaintiff as Trust Protector of the Wellin Family 2009 Irrevocable Trust, or to such Trustee as Plaintiff shall in his discretion appoint for the Trust, all distribution proceeds from the liquidation of Friendship Partners LP, other than the proceeds applicable to the 11,037 units owned by the general partner to which the general partner is entitled;

- (c) an award of actual damages, punitive damages and an award of attorneys' fees and costs incurred in this matter from individual defendants Peter J. Wellin, Cynthia W. Plum and Marjorie W. King; and
- (d) an Order approving the authority of the Trust Protector to pay himself appropriate compensation for his services from the Trust and to pay appropriate fees and cost to counsel for the Trust Protector as permitted in paragraph 7 of Article VI of the Trust document;
- (e) such other and further relief as this Court deems appropriate

ROSEN, ROSEN & HAGOOD, LLC

By: 

Richard S. Rosen, Esquire
H. Brewton Hagood, Esquire
Daniel F. Blanchard, Esquire
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726
Email: rsrosen@rrhlawfirm.com

ATTORNEY FOR PLAINTIFF

Charleston, South Carolina
December ____, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE PROBATE COURT
) CASE NO.
)

Lester S. Schwartz, as Trust Protector
of the Wellin Family 2009 Irrevocable
Trust, Plaintiff

vs.

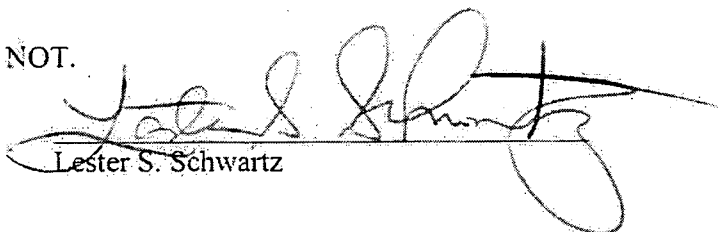
Peter J. Wellin, Cynthia W. Plum and
Marjorie W. King, Individually and as Co-
Trustees and Beneficiaries of the Wellin
Family 2009 Irrevocable Trust, Friendship
Management, LLC, Cynthia W. Plum as
Manager of Friendship Management, LLC,
Friendship Partners, LP and Keith S.
Wellin, Individually and as Trustee of the
Keith S. Wellin Florida Revocable Living
Trust u/a/d December 11, 2011, as Trustee
of the KSW 2011 Qualified Grantor
Retained Annuity Trust, and Trustee of the
KSW 2012 Qualified Grantor Retained
Annuity Trust u/a/d November 28, 2012
Defendant(s).

VERIFICATION

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Personally appeared before me, Lester S. Schwartz, who being duly sworn does state as follows; I have read the Complaint and can verify under oath that the facts stated therein are true, except for those stated upon information and belief, and as to those allegations, the Affiant believes them to be true.

FURTHER AFFIANT SAYETH NOT.


Lester S. Schwartz

SWORN to before me
This 20th day of December, 2013.


Notary Public for South Carolina

My Commission Expires: March 8, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE MATTER OF:
KEITH S. WELLIN

EDWARD G. R. BENNETT, as Special Conservator, and
KEITH S. WELLIN

Petitioners.

vs.

PETER WELLIN, CYNTHIA WELLIN PLUM,
and MARJORIE WELLIN KING.

Respondents.

IN THE PROBATE COURT
FILED PROBATE CT CHASH CO
CASE 2013-GC-10-129

SUMMONS

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED to answer the Petition to Return Assets in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Petition on the Plaintiff or his attorney, Tiffany N. Provence, 300 North Cedar Street, Suite A, Summerville, South Carolina 29483, within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Complaint.

By:

Tiffany N. Provence, Esq.
300 North Cedar St., Ste A
Summerville, SC 29483
(843) 871-9500
ATTORNEY FOR PETITIONER
EDWARD G.R. BENNETT
AS SPECIAL CONSERVATOR

Summerville, SC
February 25, 2014

FILED PROBATE CT CHASN CO

PETITION TO RETURN ASSETS

278

7. That after the date of the substitution by Keith S. Wellin, the Respondents liquidated Friendship Partners, LP.
8. That as a result of this liquidation, Keith S. Wellin was entitled to 58% of the net proceeds of the liquidation, which the Petitioners believe to be in excess of \$91,000,000.²
9. That the Respondents distributed the proceeds of the Friendship Partners, LP liquidation in disregard of Keith S. Wellin's substitution and the 58% interest he acquired via the substitution.
10. That Friendship Partners, LP disbursed the partnership funds to which Keith S. Wellin was entitled to the 2009 Trust, and the Respondents subsequently purported to distribute those same funds from the 2009 Trust to themselves as beneficiaries of the 2009 Trust.
11. That the Respondents have asserted (both before this Court in the hearing on February 6, 2014 and in correspondence to Keith S. Wellin's attorneys) that the substitution was invalid, apparently in an effort to retain these additional funds for themselves.³
12. That the Respondents in this action have refused to surrender any amount to Keith S. Wellin or his Special Conservator, Edward G. R. Bennett, which was due to Keith S. Wellin on account of the substitution of the Promissory Note for the 58% partnership interest and the subsequent liquidation of Friendship Partners, LP.
13. That the Special Conservator has a duty to ensure Keith S. Wellin does not transfer any asset without fair and adequate consideration.
14. That the Special Conservator sought clarification from this Court as to his duty and obligation towards Keith S. Wellin, with regards to this November 20, 2013 transaction upon which Bennett alleged that Wellin has transferred an asset (a Promissory Note) and has received no compensation (the partnership interest and his share of the liquidation proceeds thereof).
15. That as a result of that application, the Court held a hearing on February 6, 2014.
16. That as a result of that application, the Court amended the Order Appointing Special Conservator dated August 15, 2013 to include the power to pursue any third party,

² The Partnership Agreement of Friendship Partners, LP grants all partners the right to inspect the books and records of the partnership. Despite the fact that it is undisputed that Keith S. Wellin, in his capacity as Trustee of two grantor retained annuity trusts, is a partner of the partnership, the Respondents have been unwilling to comply with the partnership agreement and grant Keith S. Wellin or his attorney access to the partnership records to determine the exact amount available for distribution to the partners upon the liquidation. The amount set forth in this Petition is based on the estimates of Petitioners taking into account the information which they received.

³ An action is currently pending in South Carolina Federal District Court for return of these funds to the 2009 Trust and removal of the Respondents as Trustees.

including Respondents, holding assets belonging to the alleged incapacitated person.

17. That the Special Conservator is requesting that this Court review the above stated substitution and determine the amount due to Keith S. Wellin as a result of the liquidation of Friendship Partners, LP.
18. That the Special Conservator is also requesting that this Court require Respondents to return to Keith S. Wellin's estate the sum due to him as a result of the liquidation of Friendship Partners, LP.
19. That, upon information and belief, Friendship Partners, LP owned 906 shares of Berkshire Hathaway Class A common stock and cash on hand of less than \$25,000 as of November 22, 2013⁴, and that Keith S. Wellin is entitled to 58% of such amount as his share of the partnership liquidation .
20. That \$50,228,000 of this amount has already been Ordered by this Court to be held by Special Conservator II pursuant to an Order issued February 2, 2014.
21. That the Special Conservator now seeks the review and ratification of Keith S. Wellin's substitution and a Court Order requiring Respondents to surrender funds belonging to their father as a result of the liquidation of Friendship Partners, LP.

WHEREFORE, Petitioners pray for the following relief and pray that the Court take the following action:

- A. Review the substitution made by Keith S. Wellin whereby he substituted a Promissory Note valued at approximately \$49,802,115 plus accrued but unpaid interest as of November 20, 2013 for a 58% interest in Friendship Partners and determine the amounts due to Keith S. Wellin as a result of the liquidation of Friendship Partners, LP, plus interest thereon from the date of the liquidation.
- B. Order the Respondents to surrender to Keith S. Wellin or his Special Conservator the amounts due to him as a result of the liquidation of Friendship Partners, LP, plus interest thereon from the date of liquidation.
- C. Any other appropriate relief.

SIGNATURE ON FOLLOWING PAGE

⁴ The Petitioners use November 22, 2013 as the date of reference as that is the date on which Judge David C. Norton of the South Carolina Federal District Court dissolved the temporary restraining order preventing the Respondents from selling or otherwise disposing of the Berkshire Hathaway stock.

Summerville, SC
February 25, 2014



Tiffany Provence, Esquire
300 N. Cedar Street, Suite A
Summerville, SC 29483
(843) 871-9500
Fax (843) 261-7035
Email: TNProvence@gmail.com

Attorney for Edward G. R. Bennett,
as Special Conservator

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
IN THE MATTER OF:)
KEITH S. WELLIN)
)
Edward G. R. Bennett, as Special)
Conservator for Keith S. Wellin)
Petitioner.)
Vs.)
)
Keith S. Wellin,)
Respondent.)
_____)

IN THE PROBATE COURT

CASE NUMBER 2014-GC-10-

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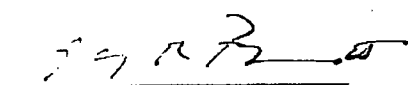
PROBATE COURT
CHARLESTON COUNTY

SUMMONS

TO ALL INTERESTED PARTIES OF THE ABOVE-NAMED ACTION:

YOU ARE HEREBY SUMMONED to answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Petition on the Petitioner or his attorney, Tiffany Provance, 300 N. Cedar Street, Suite A, Summerville, South Carolina 29483, within thirty (30) days after the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER that if you fail to appear and defend and fail to answer the Petition as required by this Summons within thirty (30) days after the date of service hereof, exclusive of the day of such service, judgment by default will be entered against you for the relief demanded in the Petition.


Edward G. R. Bennett, Esq.
EVANS CARTER KUNES & BENNETT, P.A.
P.O. Box 369
Charleston, SC 29402
(843) 577-2300
(843) 577-2055 (fax)

PETITIONER

Charleston, South Carolina
1st day of August, 2014

STATE OF SOUTH CAROLINA

COUNTY OF: CHARLESTON

IN THE MATTER OF: KEITH S. WELLIN

IN THE PROBATE COURT

FILED
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CASE NUMBER:

EDWARD G. R. BENNETT AS
CONSERVATOR

PROBATE COURT
CHARLESTON COUNTY
SPECIAL

Petitioner

PETITION FOR:

☐ MINOR
☒ ADULT

vs.

☒ PROTECTIVE ORDER
☒ APPOINTMENT OF CONSERVATOR

KEITH S. WELLIN

Respondent(s)

Petitioner: EDWARD G. R. BENNETT

1. Give your relationship to the alleged incapacitated person, if any, and your interest in this proceeding.

EDWARD G. R. BENNETT (SPECIAL CONSERVATOR)

2. Information – Minor/Allegedly Incapacitated Person

Name: KEITH S. WELLIN Age: 87
Date of Birth: [REDACTED]
Last Four Digits of
Social Security Number: [REDACTED]
Address: 126 TRADD STREET
City/State/Zip: CHARLESTON, SC 29401
Telephone (Home): (843) 853-8050 (Office/other):

To my knowledge, the above-named ☒ DOES ☐ DOES NOT have a Will

To my knowledge, the above-named ☒ DOES ☐ DOES NOT have a Power of Attorney

3. Jurisdiction and Venue

South Carolina has jurisdiction over the allegedly incapacitated adult because:

- A. ☒ South Carolina is the "Home State" because the allegedly incapacitated person has been physically present in South Carolina for the six month period immediately preceding the filing of this petition or for at least six consecutive months ending within the six month period immediately preceding the filing of this petition; or

- ☐ If the allegedly incapacitated person has not been physically present in South Carolina for that period, set forth on an additional sheet sufficient information on which the court may make a determination that it has initial jurisdiction pursuant to Section 62-5-707.

- ☐ Special jurisdiction is appropriate, if South Carolina does not have jurisdiction pursuant to Sections 62-5-707(1) through (3), to:

- (1) appoint a guardian in an emergency pursuant to this article for a term not exceeding ninety days for a respondent who is physically present in this State;
- (2) issue a protective order with respect to real or tangible personal property located in this State; or
- (3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued pursuant to procedures similar to Section 62-5-714.

B. Venue for this proceeding is proper in this county because the above minor/alleged incapacitated person:

- ☒ resides in this county
☐ does not reside in this county but has property in this county

4. The name and address of the above person's guardian, if any, is:

5. Information -- Family (list nearest relative first) of minor/alleged incapacitated person, including dates of birth of minors:

Name	Date of Birth	Address	Relationship
WENDY C. H. WELLIN	ADULT	[REDACTED]	WIFE
PETER J. WELLIN	ADULT	2 SHIP CHANNEL RD., SOUTH PORTLAND, ME 04106	SON
CYNTHIA WELLIN PLUM	ADULT	10 WATERMAN AVE., PHILADELPHIA, PA 19118	DAUGHTER
MARJORIE WELLIN KING	ADULT	1884 BEANS BIGHT RD., BAINBRIDGE ISLAND, WA 98110	DAUGHTER

(use additional sheet if necessary)

6. The following is a general statement of the property, assets, and income of the above person, together with an estimate of the value thereof: (A full inventory, Form #550PC, shall be completed and filed with the Court within thirty days of appointment.)

Description	Value
SEE EXHIBIT A	

7. The appointment of a conservator for the above person is necessary because (state reasons justifying appointment):

SEE EXHIBIT B.

8. I request the appointment of:

Name: WADE H. LOGAN, III ESQ
Address: 652 COLEMAN BLVD., SUITE 200
MT. PLEASANT, SC 29464
Telephone (O): (843) 856-4488
Telephone (H):
Email: WADE.LOGAN@BUISTBYARS.COM

whose priority for appointment as conservator for the above person is as follows:

- ☐ fiduciary appointed or recognized by the appropriate court of any other jurisdiction in which the minor/alleged incapacitated person resides
- ☒ individual or corporation nominated by the minor/alleged incapacitated person (if fourteen or more years of age and deemed mentally capable of making such a choice)
- ☐ attorney-in-fact appointed by protected person (Pursuant to S.C. Code Ann. Section 62-5-501)
- ☐ spouse of protected person
- ☐ adult child of protected person
- ☐ parent of protected person or person nominated by will of deceased parent
- ☐ other relative of protected person (specify): _____
- ☐ person nominated by the person who is caring for protected person or paying benefits to him/her
- ☐ nominated by one with priority to serve in his/her stead (specify): _____
- ☐ other (specify) _____

9. The following persons are required by statute to be given notice of the time and place of hearing on this Petition:

Name	Address	Relationship
KEITH S. WELLIN	126 TRADD ST., CHARLESTON, SC 29401	RESPONDENT
WIFE & 3 CHILDREN AS LISTED ABOVE (SECTION 5)		

10. I request that the Court set a time and place of hearing on this Petition; that the Court determine that the above person is a person for whom appointment of a conservator is proper; that the Court appoint Wade H. Logan, III as the conservator for the above minor/incapacitated person; and, that Letters of Conservatorship be issued to the conservator.

Executed this 1st day of August, 2014

Signature: [Signature]

VERIFICATION

The undersigned, being sworn, states: That the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief.

SWORN to before me this 1st day of August, 2014

[Signature]
Notary Public for South Carolina
My Commission Expires: 3-3-19

Signature: [Signature]

Name: EDWARD G. R. BENNETT

Address: 115 CHURCH ST.,
CHARLESTON, SC 29401

E-mail: _____

Telephone (O): (843) 577-2300

(H): _____

Signature: _____

Name: _____

Address: _____

E-mail: _____

Telephone (O): _____

(H): _____

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Conservator of the conservatorship of Keith S. Welton

Executed this 17th day of July, 20 14

SWORN to before me this 17th day of July, 20 14

[Signature]

Notary Public for South Carolina

My Commission Expires: 10/7/19

Signature: [Signature]

Name: WADE H. LOGAN, III ESQ

Address: 652 COLEMAN BLVD., SUITE 200
MT. PLEASANT, SC 29464

E-mail: WADE.LOGAN@BUISTBYARS.COM

Telephone (O): (843) 856-4488

(H): _____

Signature: _____

Name: _____

Address: _____

E-mail: _____

Telephone (O): _____

(H): _____

Petition for Conservator
EXHIBIT A

6. The following is a general statement of the property, assets, and income of the above person, together with an estimate of the value thereof:

Keith S. Wellin (including the Keith S. Wellin Florida Revocable Living Trust of which Keith S. Wellin is the current Trustee) currently owns assets valued at greater than \$50 million dollars. The exact amount of his assets is unknown due to ongoing litigation between Keith S. Wellin and his children.

Petition for Conservator

EXHIBIT B

7. The appointment of a conservator for the above person is necessary because (state reasons justifying the appointment):

The children of Keith S. Wellin petitioned this Court on July 13, 2013 seeking a Conservator for their father and asserting that his assets were in need of protection. As a result of that Petition, I (Edward G. R. Bennett) was appointed by consent of all interested parties, to serve as Keith S. Wellin's Special Conservator and as Special Trustee of the Keith S. Wellin Florida Revocable Living Trust until a full hearing on the merits of his alleged mental incapacity could be held. Unfortunately, that hearing has been significantly delayed by constant and ongoing litigation between the children in both this Court and the U.S. District Court with regards to various financial transactions between Keith S. Wellin and his children. The Wellin children are currently contesting this Court's continued jurisdiction over Keith S. Wellin by attempting to dismiss their own action and then appealing this Court's refusal to do so.

Pursuant to S.C. Code §62-5-404, I have an interest in the affairs and welfare of Keith S. Wellin as Keith S. Wellin's Special Conservator. At this time, I feel that I must bring a separate Petition to request this Court appoint a permanent Conservator for Keith S. Wellin due to his physical disability pursuant to S.C. Code §62-5-401(2)(i).

At 87 years old, Keith S. Wellin has suffered multiple medical issues including two strokes (a right frontal lobe and bilateral stroke), cancer of the tongue and adrenal insufficiency. These illnesses have caused Keith S. Wellin to suffer permanent dependence on a feeding tube, limited mobility and a significant speech deficit. Additionally, Keith S. Wellin has ongoing health concerns for which he has recently been hospitalized. Based not only on the extensive amount of time I have spent with him, but also on the opinion of many professionals, I remain convinced that Mr. Wellin currently has the mental capacity to manage his affairs. It has, however, become evident to me that Mr. Wellin is need of this Court's protection to ensure that a Conservator can protect his assets, participate in the current litigation on his behalf, and manage his affairs during periods of hospitalization.

Pursuant to S.C. Code §62-5-410(a)(2), Keith S. Wellin has chosen attorney Wade H. Logan, III to serve in this capacity, as he understands Mr. Wellin's financial and family situation as well as of the nature of the legal proceedings in which Keith S. Wellin is involved.

To support my request, I am attaching the following:

- a) An affidavit in support of Keith S. Wellin's need of protection due to physical disability as prepared by Glenn P. Churchill, Esq. who was appointed *Guardian ad Litem* for Keith S. Wellin by this Court (the original is being mailed directly to the Court by Mr. Churchill).
- b) An affidavit from me in support of Keith S. Wellin's need of protection due to physical disability.
- c) Reports will be submitted to the Court by two doctors who have confirmed this evaluation within the coming week. Such reports will confirm that although Keith S. Wellin is mentally competent, his physical disabilities prohibit him from actively managing his financial affairs, specifically his ability to participate in the pending litigation to protect his assets.

To encourage maximum self-reliance and independence, I request the Court limit the Conservator's powers (without Court approval) under S. C. Code §62-5-424 to include only the following:

- 1) Invest and reinvest funds of the estate, as would a trustee;
- 2) Receive additions to the estate;
- 3) Deposit estate funds in a bank including a bank operated by the conservator;
- 4) Pay a sum distributable to a protected person or his dependent without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to his guardian or if none, to a relative or other person with custody of his person;
- 5) Employ persons, including attorneys, auditors, investment advisors, or agents even though they are associated with the conservator to advise or assist him in the performance of his administrative duties; to act upon their recommendation without independent investigation; and instead of acting personally, to employ one or more agents to perform an act of administration, whether or not discretionary;
- 6) Prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties; and
- 7) Execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the conservator.

In addition to these powers, I would request the Court specifically grant the Conservator the power to:

- 1) Actively participate in and stand in the place of Keith S. Wellin in the current and future litigation regarding his assets;
- 2) The power to ensure that transfers of assets are not made without fair and adequate consideration;
- 3) The power to approve quarterly household expenditures consistent with past lifestyle to include an allowance for all medical, legal and other general expenses

- as currently approved by the Special Conservator;
- 4) Any other powers granted under §62-5-408(3)(a) after a hearing by this Court.

Upon appointment of the same, I would respectfully request that I be discharged from my duties as Special Conservator and as Special Trustee of the Keith S. Wellin Florida Revocable Living Trust.

FILED

STATE OF SOUTH CAROLINA 14 AUG -1 PM 4:30 IN THE PROBATE COURT
COUNTY OF CHARLESTON PROBATE CASE NUMBER 2014-GC-10-_____
CHARLESTON COUNTY
IN THE MATTER OF:)
KEITH S. WELLIN)
))
EDWARD G. R. BENNETT, as)
SPECIAL CONSERVATOR and)
KEITH S. WELLIN)
Petitioners.)
_____)

AFFIDAVIT OF
GLENN P. CHURCHILL

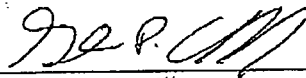
PERSONALLY appeared before me, Glenn P. Churchill, who being duly sworn,
deposes and says:

1. That effective May 1, 2014, I was appointed by this Court to serve as Guardian ad Litem for Keith S. Wellin in Charleston County Probate Court Case Number 2013-GC-10-129.
2. That due to ongoing litigation regarding this Court's jurisdiction, the status of my appointment was uncertain until this Court's further Order dated July 3, 2014.
3. That immediately upon receiving this Order, I began my investigation of this matter.
4. That per my appointment, I have met with the alleged incapacitated, Keith S. Wellin, at his home in Sullivan's Island on July 10, 2014.
5. That per my appointment, I have also personally met with the following:
 - a. His spouse, Wendy Wellin;
 - b. His Special Conservator, Edward G. R. Bennett, Esq.;
 - c. A CNA who has helped care for Keith S. Wellin for the past four (4) years, Tina Green; and
 - d. His primary speech therapist, Nan Ramsey.
6. That per my appointment, I have reviewed information and depositions from multiple medical doctors related to this matter including the report of Dr. Linda Austin as filed with this Court and the transcript of Dr. Edgar Weiss (Psychiatrist,

MUSC) who has been involved in Keith S. Wellin's care since November 2013.

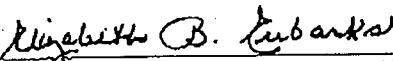
7. That based on my initial investigation, I did not find Keith S. Wellin to be lacking in mental capacity.
8. That based on my initial investigation, it is clear that Keith S. Wellin has multiple physical disabilities that make it difficult for him to actively participate in the litigation surrounding his assets.
9. That due to his children's current appeal over this Court's jurisdiction over Keith S. Wellin and his assets, I support the decision of Edward G. R. Bennett to move forward on a separate Petition seeking a Conservator to protect Keith S. Wellin.

FURTHER AFFIANT SAYETH NOT!


Glenn P. Churchill

SWORN TO BEFORE ME THIS

1st Day of August, 2014


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires; 8-10-2015

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF CHARLESTON	)	CASE NUMBER 2014-GC-10-
	)	
IN THE MATTER OF:	)	
KEITH S. WELLIN	)	
	)	
EDWARD G. R. BENNETT, as	)	AFFIDAVIT OF
SPECIAL CONSERVATOR for	)	EDWARD G. R. BENNETT
KEITH S. WELLIN	)	
Petitioner	)	
	)	

PERSONALLY appeared before me, Edward G. R. Bennett, who being duly sworn,
deposes and says:

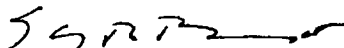
1. That by order dated August 15, 2013, I was appointed by this Court to serve as Special Conservator for Keith S. Wellin and as Special Trustee of the Keith S. Wellin Florida Revocable Living Trust in Charleston County Probate Court Case Number 2013-GC-10-129.
2. That I have served in this capacity since the time of my appointment and, due to the Notice of Intent to Appeal filed by the children of Keith S. Wellin on July 10th, 2013 of this Court's dismissal of their action to withdraw their Petition for the Appointment of a Conservator of July 19, 2013 to have a conservator named for him (which dismissal this Court filed on July 3rd, 2014), it is unclear to me as to what my status is pending that appeal.
3. That during the course of my service as Special Conservator and Special Trustee, I have met with the alleged incapacitated, Keith S. Wellin, at his home on Tradd Street in Charleston as well as at his home on Sullivan's Island. Over the course of my appointment I would estimate that I have met with him more than 30 times.
4. That during the course of my service as Special Conservator, I have also personally met many of Mr. Wellin's caregivers, including but not limited to, the following:
 - a. His spouse, Wendy C. H. Wellin (many times);
 - b. Glenn Churchill, who has been appointed by this Court as Guardian ad Litem;
 - c. His primary speech therapist, Nan Ramsey, as well as several other persons who assist him in both speech therapy and other forms of health care (on many occasions);
 - d. Tina Green, a CNA who has helped care for Keith S. Wellin for the past four (4)

years;

- e. The following physicians who have all seen him on bases ranging from intermittent to almost daily: George Durst; Layton McCurdy; Nancy Tsai; Edward Weiss.
5. That, as Special Conservator, I have reviewed the report of Dr. Linda Austin as filed with this Court and reviewed the transcript of her deposition (as of this date, the deposition has not been concluded).
 6. That, as Special Conservator, I have reviewed the transcripts of depositions taken in this litigation, including but not limited to transcripts of the depositions of Drs. Edgar Weiss, Nancy Tsai, and Sarah Stapleton, all of whom has been involved in Keith S. Wellin's care and all of whom indicate that Mr. Wellin has the mental capacity to conduct his affairs.
 7. That I have personally heard the sworn testimony of the following doctors, all of whom have testified in the U.S. District Court for South Carolina, that Mr. Wellin has the capacity to conduct his own affairs: Terry Day (MD); Nancy Tsai (MD); Sara Stapleton (MD); Edgar Weiss (MD), Scott Barton (Phd); Layton McCurdy (MD) and Betsy Davis (DSS).
 8. That, in my capacity as Special Conservator, based on my personal observations, my interaction with, and my knowledge of Mr. Wellin, as well as my discussions with his health care providers as outlined above, it is my belief and opinion that Keith S. Wellin has the capacity required to manage his own affairs, to conduct lawsuits (including all current actions), to enter into contracts, to execute a Will and to perform such other acts as are granted to a citizen of this State.
 9. That, notwithstanding my firm belief that Mr. Wellin has the capacity to manage and conduct his own affairs, it is clear that Keith S. Wellin has multiple physical disabilities that cause him to fatigue easily, make it difficult for him to communicate, and which make it difficult for him to actively participate in the litigation surrounding his assets.
 10. That Mr. Wellin has previously sought to attend several hearings relating to the existing litigation with his children and it is my personal observation and belief that he does not have the physical strength and stamina to attend all hearings, depositions and actively participate in all details of this litigation.
 11. That, in my role as Special Conservator, I have spoken with Mr. Wellin about the physical drain which this litigation has imposed, and continues to impose, on him and he has indicated to me that he would be comfortable with the appointment of a conservator to protect his interests, most particularly to handle the litigation for him due to his physical disabilities.

12. That Mr. Wellin has met with Wade H. Logan, III on several occasions and has discussed not only his family and financial situation with Mr. Logan but also the pending litigation.
13. That Mr. Logan is a past President of the South Carolina Bar, the Southern Conference of Bar Presidents and the South Carolina Defense Trial Attorneys Association, past Chairman of the Judicial Council of the State of South Carolina, has extensive legal experience as well as an excellent reputation for competence and integrity in the community.
14. That Mr. Wellin has indicated to me his preference for the appointment of Wade H. Logan, III as Conservator to serve on his behalf.
15. That due to Mr. Wellin's children's current appeal with respect to this Court's jurisdiction over Keith S. Wellin and his assets, I have determined to move forward on a separate Petition seeking a Conservator to protect Keith S. Wellin and to serve as Special Trustee of the Keith S. Wellin Florida Revocable Living Trust in my place and stead.

FURTHER AFFIANT SAYETH NOT


Edward G. R. Bennett

SWORN TO BEFORE ME THIS

15th day of August, 2014



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 3-3-19

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

In Matter of: Keith S. Wellin

Edward G. R. Bennett as Special
Conservator,

Petitioner

Versus

Keith S. Wellin,

Respondent

) IN THE PROBATE COURT
)
)
)
) C/A No.
)
)

**RESPONSE TO PETITIONER'S
PETITION FOR PROTECTIVE
ORDER AND APPOINTMENT OF
CONSERVATOR**

Respondent Keith S. Wellin (hereinafter "Respondent"), by and through his undersigned attorneys, hereby responds and joins in Petitioner's Petition for Protective Order and Appointment of a Conservator.

1. In response to the allegations set forth in Paragraph 1 of the Petition, Respondent admits that Edward G. R. Bennett serves as his Special Conservator.

2. Respondent admits that all information set forth in Paragraph 2 of the Petition is true and correct.

3. In response to the allegations set forth in Paragraph 3 subpart A, Respondent admits that South Carolina has jurisdiction over him, as South Carolina is the "Home State" because Respondent has been physically present in South Carolina for the six month period immediately preceding the filing of the Petition or for at least six consecutive months ending with the six month period immediately preceding the filing of the Petition.

4. In response to the allegations set forth in Paragraph 3 subpart B, Respondent admits that venue is proper in Charleston County.

5. In response to Paragraph 4 of the Petition, Respondent admits that no Guardian has been appointed for him.

6. Respondent admits that all information set forth in Paragraph 5 of the Petition is true and correct.

7. In response to Paragraph 6 of the Petition, Respondent admits that the general statement of his property, assets, and income, together with an estimate of the value thereof, attached as Exhibit A to the Petition, is true and correct.

8. In response to Paragraph 7 of the Petition, Respondent joins in the reasoning justifying the appointment of a Conservator attached as Exhibit B to the Petition.

Further responding, Respondent joins the Petition seeking a conservator for the protection of his assets due to his physical disability pursuant to South Carolina Code §62-5-401(2)(i). Respondent feels that he currently has the mental capacity to manage his own affairs. However, Respondent seeks this Court's protection to ensure that a Conservator can protect his assets, participate in the current litigation on his behalf, and manage his affairs during periods of hospitalization or physical illness which prevent him from doing so on his own subject to his retention of appropriate decision making powers .

Pursuant to South Carolina Code §62-5-10(a)(2), Respondent nominates attorney Wade H. Logan, III to serve in this capacity. Mr. Logan understands Respondent's financial and family situation as well as the nature of the legal proceedings within which he is involved.

With regard to the powers granted, I request that the Court limit the powers granted to those necessary to protect my financial well being due to physical illness.

I would request the Court specifically grant the Conservator the power to:

- 1) Actively participate in and stand in the place of Respondent in the current and future litigation regarding his assets;
- 2) The power to ensure that transfers of assets are not made without fair and adequate consideration;
- 3) The power to approve quarterly household expenditures consistent with past lifestyle to include an allowance for all medical, legal and other general expenses as currently approved by the Special Conservator;
- 4) Any other powers granted under §62-5-408(3)(a) after a hearing by this Court.

9. Respondent admits the allegations set forth in Paragraph 9 of the Petition.

10. In response to Paragraph 10 of the Petition, Respondent joins Petitioner's request for the Court to set a time and place for an emergency hearing for Protective Order and then for a full hearing on this Petition; determine that Respondent is a person for whom appointment of a Conservator is proper; appoint Wade H. Logan, III as the Conservator for Respondent; and issue limited Letters of Conservatorship to the Conservator, those being the remaining allegations of the Petition.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com

Robert H. Hood

Robert H. Hood (SC #2599)
Molly H. Craig (SC #6960)
Barbara Wynne Showers (SC #65489)
James B. Hood (SC #70212)

Attorneys for the Respondent
Keith S. Wellin

August 7, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 7 day of August, 2014.

Melanie D. Hall

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT

FILED
14 AUG 26 PM 3:56

IN THE MATTER OF:
KEITH S. WELLIN

Edward G. R. Bennett, as Special
Conservator for Keith S. Wellin,

Petitioner,

v.

Keith S. Wellin,

Respondent.

Case No. 2013-GC-10-129
CHARLESTON COUNTY

**RESPONSE OF PETER J. WELLIN,
CYNTHIA W. PLUM, AND
MARJORIE W. KING TO
PETITIONER'S PETITION FOR
PROTECTIVE ORDER AND
APPOINTMENT OF CONSERVATOR**

Peter J. Wellin, Cynthia Wellin Plum, and Marjorie Wellin King, the three adult children of Mr. Wellin and "interested persons" in this proceeding pursuant to Section 62-1-201 of the Probate Code (the "Wellin Children")¹, hereby submit this response to Petitioner's petition for protective order and appointment of a conservator and state as follows.

- I. The Wellin Children Dismissed Their Conservatorship Action Because it Appeared to the Wellin Children that Mr. Wellin No Longer Had Significant Assets in Need of Protection and Because the Wellin Children Decided to Seek Protection of Mr. Wellin by Requesting that the Federal Court Appoint a Guardian *ad Litem* for Mr. Wellin.**

In July of 2013, the Wellin Children filed a petition to appoint a conservator for Mr. Wellin with this Court. (Civil Action No. 2013-GC-10-129). The Wellin Children filed this petition out of concern over Mr. Wellin's uncharacteristic and sudden, erratic behavior, upon the belief that he was incapable of managing his financial affairs, and upon the fear he was being manipulated by Mrs. Wellin and others into taking actions that were inconsistent with Mr.

¹ Pursuant to Section 62-5-406 of the Probate Code, the Wellin Children, as interested persons, request that the Court notify them through their undersigned counsel before any order is issued in this proceeding.

Wellin's best interests and that ran counter to the estate planning in which he engaged while competent. At the time the Wellin Children filed the conservatorship action, the Wellin Children believed that Mr. Wellin still had substantial assets that needed protection by a conservator. The reasons that the Wellin Children filed this conservatorship action are set forth more fully in their petition and its attachments.

After filing the petition, this Court held an emergency hearing and met with counsel for the Wellin Children and Mr. Wellin in chambers. During that meeting, counsel for the Wellin Children, Robert Brunson, asked counsel for Mr. Wellin, Robert H. Hood, about the location of a large sum of money that was previously held in Mr. Wellin's bank account. Mr. Hood refused to answer the question.² Further, Mr. Wellin and his counsel refused to provide complete information about Mr. Wellin's assets at any time prior to the Wellin Children's dismissal of the conservatorship action.

In and around November and December of 2013, the Wellin Children, in certain capacities, caused the sale of certain Berkshire Hathaway stock held by a family limited partnership. The sale of this stock caused Mr. Wellin to incur a tax liability of approximately \$40 million that came due on April 15, 2014. Almost simultaneously with the sale of this stock (and several months before Mr. Wellin's taxes came due), counsel for the Wellin Children delivered to Mr. Bennett a check for approximately \$50,000,000 made out to Mr. Wellin's revocable trust. This check was provided on behalf of the Wellin Family 2009 Irrevocable Trust³ in prepayment of a promissory note made by the Trust that came due in 2021. Mr. Bennett rejected the check on Mr. Wellin's behalf and sent the check back to counsel for the

² In fact, Mr. Hood responded to the question by stating that, if Mr. Brunson asked that question to Mr. Wellin and Mr. Wellin had a gun, Mr. Wellin would likely "blow your head off."

³ The Trust is not taking any position in, or making an appearance in, this action. Counsel for the Wellin Children is merely referencing past events that occurred involving the Trust.

Wellin Children the same day it was delivered. On February 4, 2014, the parties took the deposition of Mr. Wellin in the federal litigation, and Mr. Wellin testified that he gave approximately \$40 million to Mrs. Wellin during 2013, a fact the Wellin Children did not know before that deposition because, as noted, Mr. Wellin's counsel refused to disclose this information.

Because of the large amount of taxes that Mr. Wellin owed on April 15, 2014⁴, and because Mr. Wellin had given approximately \$40 million to Mrs. Wellin during 2013, and because Mr. Bennett rejected a check for over \$50,000,000 made out to Mr. Wellin's revocable trust, the Wellin Children believed that Mr. Wellin no longer had significant assets to conserve after April 15, 2014. Indeed, by giving away \$40 million to his wife and thereby rendering himself effectively insolvent, Mr. Wellin placed himself at the mercy of his wife to pay his forthcoming tax liabilities and other living expenses. Whether competent to do so or not, and presumably with the input of his counsel, Mr. Wellin effectively made his wife his conservator by giving his assets to her in the summer of 2013.

Further, after receiving Dr. Linda Austin's report, the Wellin Children decided that it was necessary to file a motion to appoint a guardian *ad litem* under Federal Rule of Civil Procedure 17 in the pending federal litigation.⁵ The motion to appoint a guardian *ad litem* in federal court would require extensive discovery which would be similar to the extensive discovery required in the conservatorship action before this Court if the Wellin Children continued to pursue that

⁴ Upon information and belief, Mr. Wellin's tax liability on April 15, 2014, was substantially greater than the approximately \$40 million owed in connection with the Berkshire Hathaway stock sold in or around November and December of 2013.

⁵ See *Leake v. McAlister*, No. 07-2947, 2009 WL 1953446, (S.D.N.Y. July 1, 2009) (holding that children of incapacitated father should have petitioned the District Court for appointment of a guardian *ad litem* upon discovering that the father may be incapacitated and expressing frustration that no one alerted the court sooner).

conservatorship action.⁶ It would have been wasteful of judicial and other resources to litigate this same issue in both courts, if it was not necessary to do so.

In light of these considerations, the Wellin Children decided that appointment by the federal court of a guardian *ad litem* would be more appropriate to protect Mr. Wellin's interests than appointment of a conservator by this Court, and the Wellin Children did not want to pursue parallel proceedings in the two courts. Thus, the Wellin Children decided to dismiss their conservatorship proceeding by filing a notice of voluntary dismissal.⁷

II. Mr. Bennett Files a New Action Seeking Appointment of a Conservator for Mr. Wellin and Stating that Mr. Wellin Owns Substantial Assets, and Mr. Wellin's Counsel Consents to Such Appointment and Admits the Accuracy of the Statement of Assets.

On August 1, 2014, Mr. Bennett filed a new summons and petition with this Court requesting that this Court appoint a permanent conservator for Mr. Wellin. In this petition and the attached documents, Mr. Bennett states that Mr. Wellin is now comfortable with the appointment of a conservator to protect his interests and "most particularly to handle the litigation for him due to his physical disabilities." Mr. Bennett states in an attachment to the petition that it has become evident to him that Mr. Wellin is in need of a conservator to, *inter alia*, participate in the current litigation on his behalf. Further, Mr. Bennett states in another attachment to the petition that Mr. Wellin currently owns assets "valued at greater than \$50 million dollars." Mr. Wellin's counsel, Robert H. Hood, subsequently filed a response to the

⁶ At a hearing in the conservatorship action held by this Court after Dr. Austin issued her report, Mr. Wellin's counsel stated that he would oppose appointment of a conservator for Mr. Wellin even if the other court-appointed doctor, Dr. Teichner, agreed with Dr. Austin's opinion that a conservator should be appointed for Mr. Wellin, and he stated that he demanded a full hearing on the Wellin Children's conservatorship petition and would call numerous physicians and caregivers to testify at that hearing.

⁷ This Court has held that the Wellin Children's notice of voluntary dismissal was not effective, and the Wellin Children have appealed this ruling to the Circuit Court.

petition stating that he consents to the appointment of a conservator, joins in the reasoning for appointment of a conservator set forth in Mr. Bennett's petition, and admits that the statement of Mr. Wellin's assets in the attachment to Mr. Bennett's petition is true and accurate.

III. The Wellin Children Support Appointment of a Permanent Conservator for Mr. Wellin.

In light of the substantial assets that Mr. Wellin apparently owns, Mr. Wellin's incapacity as described in Dr. Austin's report, and Mr. Bennett's assertion that Mr. Wellin has now indicated that he would like a conservator, the Wellin Children support Petitioner's request that this Court appoint a permanent conservator for Mr. Wellin.⁸ Further, the Wellin Children do not object to the Court's appointment of Wade Logan III, Esq., as the permanent conservator for Mr. Wellin. Also, in light of Mr. Wellin's incapacity and declining medical condition, the Court should grant the appointed conservator all rights and obligations described in Mr. Bennett's petition and the attachments thereto, along with all other rights and obligations that the Court deems appropriate after a hearing on this matter. The rights and obligations granted to the conservator should include the right and obligation to participate in the litigation currently pending in federal court between Mr. Wellin and the Wellin Children and the right and obligation to make decisions on Mr. Wellin's behalf in that litigation. The appointed conservator should be charged with acting in the best interests of Mr. Wellin and, to the extent possible, consulting with Mr. Wellin before making decisions on his behalf.

⁸ In the attachments to his petition, Mr. Bennett asserts that he believes Mr. Wellin has the mental capacity to manage his affairs. While the Wellin Children dispute this assertion, the Wellin Children support the appointment of a conservator for Mr. Wellin.

IV. The Wellin Children are Working with Counsel for Mr. Bennett and Mr. Wellin to Provide the Court with a Consent Order Appointing a Conservator.

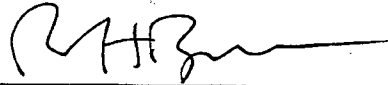
Counsel for Mr. Bennett has communicated with counsel for the Wellin Children and counsel for Mr. Wellin regarding drafting a consent order resolving Mr. Bennett's petition. Counsel for Mr. Bennett has agreed to circulate a draft order to the other counsel, and counsel for the Wellin Children is awaiting such a draft order.

V. Mr. Bennett's Summons and Petitions Is a New Civil Action, and a Partial Lifting of the Stay of the Prior Conservatorship Action is Not Necessary.

As indicated in an email from Mr. Bennett's counsel on August 25, 2014 (attached hereto as Exhibit A), the parties are in agreement that the summons and petition filed by Mr. Bennett earlier this month constitutes a new civil action and that this Court correctly assigned a new civil action number to this action when Mr. Bennett filed it. Thus, the Court does not need to lift the stay on the prior action filed by the Wellin Children (assuming that the Court would have the authority to partially lift the stay on that action to hear this petition) before hearing Mr. Bennett's new petition.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____


Robert H. Brunson
SC Bar No. 11987
E-Mail: robert.brunson@nelsonmullins.com
Bryson M. Geer
SC Bar No. 13606
E-Mail: bryson.geer@nelsonmullins.com
Merritt G. Abney
SC Bar No. 71893
E-mail: merritt.abney@nelsonmullins.com
Patrick C. Wooten
SC Bar No. 77985
E-Mail: patrick.wooten@nelsonmullins.com
151 Meeting Street / Sixth Floor

Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

*Attorneys for Peter Wellin, Cynthia Wellin Plum, and
Marjorie Wellin King*

Charleston, South Carolina
August 26, 2014

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **RESPONSE OF PETER J. WELLIN, CYNTHIA W. PLUM, AND
MARJORIE W. KING TO PETITIONER'S PETITION FOR
PROTECTIVE ORDER AND APPOINTMENT OF CONSERVATOR**

Counsel Served:

Gedney M. Howe, III, Esq.
Gedney M. Howe III, PA
PO Box 1034
Charleston, SC 29402

Robert H. Hood, Esq.
Molly H. Craig, Esq.
James B. Hood, Esq.
Hood Law Firm, LLC
PO Box 1508
Charleston, SC 29402

Edward G.R. Bennett, Esq.
Evans, Carter, Kunes & Bennett, P.A.
PO Box 369
Charleston, SC 29402-0369

Tiffany N. Provence, Esq.
Provence Messervy
300 North Cedar Street, Suite A
Summerville, SC 29483


Donna Horn
Administrative Assistant

August 26, 2014

Lauren Lynch

From: Tiffany Provence <tnprovence@gmail.com>
Sent: Monday, August 25, 2014 12:40 PM
To: Elizabeth Sykes; Michelle J. Weil
Cc: Bryson Geer; Patrick Wooten; Bennett@eckb.com; ghowe@gedneyhowe.com; Bobby Hood (bobby.hood@hoodlaw.com); james.hood@hoodlaw.com; rsrosen@rrhlawfirm.com; Robert Brunson; bhagood@rrhlawfirm.com; Kevin A. Cale
Subject: Re: Keith Wellin - Petition to Lift Stay

Michelle -

You may be surprised to learn that Mr. Brunson and I completely agree on this issue. I believe Hood Law Firm is in agreement as well.

I noted in the Petition to Lift the Stay that I am not sure it was required due to the new Petition filed previously by my client; however, we filed the same in an effort to address any possible issue with moving forward. We will proceed however the Court prefers under the circumstances but do want to renew our request for a hearing as soon as possible on an emergency appointment.

Thank you,

Tiffany Provence

Tiffany N. Provence
Provence Messervy LLC
300 North Cedar Street, Suite A
Summerville, SC 29483

JOIN US ON FACEBOOK!

www.ProvenceMesservy.com
TNProvence@gmail.com
(843) 871-9500 (office)
(843) 261-7035 (fax)

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On Aug 21, 2014, at 2:38 PM, Robert Brunson <robert.brunson@nelsonmullins.com> wrote:

Thank you, Tiffany.

Exhibit A

Michelle-

Thank you for your email. As counsel for Peter Wellin, Cynthia Plum, and Marjorie King, we do not agree with lifting the automatic stay in the action filed on behalf of our clients because it is not necessary under these circumstances and there could be some unanticipated impact on the matters on appeal. Lifting the stay is not necessary because the new Petition is a separate action arising from a new Summons and Petition with a different petitioner and without any claims involving our clients. In the new Petition, Edward Bennett is Petitioner and only Keith Wellin is a Respondent. It is entirely separate from the case that our clients brought as Petitioners and to which Mr. Bennett was not a party. Although for reasons that are not clear to us, the new action does bear the same civil action number as the case brought by our clients that is now on appeal, that should not affect the ability of the Court to move forward on the new petition filed as a separate action. Thus, we believe that Mr. Bennett's case can only proceed independently and without any need to lift the stay. We also question whether the probate court has the jurisdiction and legal authority to lift the automatic stay, but under the circumstances the court does not need to consider that question.

On a more practical note, we understand that initially the new case had a different civil action number. Perhaps it would make sense to go back to that so that there is no confusion between the two cases and so it is absolutely clear that the automatic stay need not be lifted.

Please let us know if the Court needs any additional information from us.

Robert Brunson
Nelson Mullins
843-534-4226
robert.brunson@nelsonmullins.com

From: Tiffany Provence [<mailto:tnprovence@gmail.com>]
Sent: Thursday, August 21, 2014 11:09 AM
To: Bryson Geer
Cc: Michelle J. Weil; Robert Brunson; Patrick Wooten; Bennett@eckb.com; ghowe@gedneyhowe.com; Bobby Hood (bobby.hood@hoodlaw.com); james.hood@hoodlaw.com; rsrosen@rrhlawfirm.com; bhagood@rrhlawfirm.com; Elizabeth Sykes; Kevin A. Cale
Subject: Re: Keith Wellin - Petition to Lift Stay

Sorry, I shouldn't rely on talk to text while driving. That should have read "We are only seeking to lift the stay on the Appointment of Conservator."

Tiffany

On Aug 21, 2014, at 11:00 AM, Tiffany Provence <tnprovence@gmail.com> wrote:

Bryson,

We are only seeking a stay on the Appointment of Conservator.

Thank you.

Tiffany Provence

Sent from my iPhone
843-871-9500 (office)

On Aug 20, 2014, at 3:48 PM, Bryson Geer <bryson.geer@nelsonmullins.com> wrote:

Michelle- We are reviewing the Petition and will get back to you as soon as we can as to whether Respondents can agree to allow the merits hearing to go forward on Mr. Bennett's new petition to appoint a conservator. It would be very helpful to us if Ms. Provence could confirm that the Petition is only seeking to lift the stay for that limited purpose. While I think that is the case, the Petition was not entirely clear to us. Thanks very much.

Bryson

Bryson M. Geer
Nelson Mullins Riley & Scarborough, LLP
151 Meeting Street, Suite 600
Charleston, SC 29401
(843) 720-4306

From: Michelle J. Weil [<mailto:MWeil@charlestoncounty.org>]
Sent: Wednesday, August 20, 2014 12:57 PM
To: Bryson Geer; Robert Brunson; Patrick Wooten
Cc: Tiffany Provence (tnprovence@gmail.com); Bennett@eckb.com; ghowe@gedneyhowe.com; Bobby Hood (bobby.hood@hoodlaw.com); james.hood@hoodlaw.com; rsrosen@rrhlawfirm.com; bhagood@rrhlawfirm.com; Elizabeth Sykes; Kevin A. Cale
Subject: Keith Wellin - Petition to Lift Stay

Counsel,

Good afternoon. The Court has reviewed the attached Petition for Order Lifting Automatic Stay, filed on August 19, 2014, by Ms. Provence. Rather than issue an ex parte order, the Court would like to schedule this matter for a hearing as soon as possible, unless the Respondents agree to allow the merits hearing to go forward, not subject to the appeal. Please reply to this email as soon as possible, so that the Court may move forward with this issue.

Thank you,
Michelle

Michelle J. Weil, Esq.
Law Clerk
Charleston County Probate Court
84 Broad Street
Charleston, SC 29401
Phone: 843.958.5012
Fax: 843.958.5044

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