

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM JASPER COUNTY  
Court of Common Pleas

Darrell Thomas Johnson, Jr., Special Referee

APPELLATE CASE NO: 2016-000042

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FEB 13 2017

SC Court of Appeals

C. E. LOWTHER, JR., CLAYTON CLARK  
LOWTHER, MITCHELL S. LOWTHER  
AND EFFIE SANDRA TURPIN,.....Respondents.

v.

E. LEGRAND LOWTHER.....Appellant.

**MOTION TO DISMISS APPEAL**

The Respondents hereby move to have the above Appeal dismissed. The grounds for said motion is as follows:

The late C. E. Lowther, Sr., died in 2004. By his Will, he left his Estate to seven of his children. He left nothing to his son, Legrand Lowther (which he noted was at Legrand's request as Legrand had been his business partner for many years). Legrand was named co-executor of the Estate. The Estate held mostly land -- 40 acres adjacent to the Lowther homestead outside Ridgeland, a 1/2 interest in 5 waterfront lots located on the Chechessee River in Beaufort County, and a 1/4 interest in 240 +/- acres located in Jasper County. Legrand thereafter, without notification to his siblings, negotiated a sale of the 40 acres. This was for \$810,000.00. He further negotiated with the same potential buyers the sale of the 240 +/- acre tract for \$5,450,000.00. He thereafter approached his siblings about buying their interest in the

properties. A contract was signed between the Appellant and his siblings to convey the home tract for \$511,000.00, the 240 acres for \$2,464,000.00, and the Estate's ½ interest in the waterfront lots were thrown in. (He sold the 5<sup>th</sup> lot for \$750,000.00 while these matters were pending.) He steadfastly denied to his siblings that he had negotiated any sale for any properties, while he in fact had done so during his time as the Executor of the Estate. The 40 acre tract closed with him realizing a profit of \$299,000.00. At the end of the time per the contract, he had not sold the 240 acre tract, but did not return the deed to the siblings nor account for monies he had made while he controlled the property. Thereafter, suit was filed in Probate Court, Case No., 2007-ES-07-00655, which accused him of abusing his authority as Executor and profiting at the expense of the devisees. The matter resulted in the Probate Court finding he in fact had abused his authority and awarded a judgment of \$69,051.15. Thereafter, both sides appealed to the Master in Equity for Beaufort County who upheld the abuse of authority, but increased the damage award to \$289,923.65. This matter was thereafter heard by the South Carolina Court of Appeals and the Supreme Court. The Court of Appeals upheld the verdict and the Supreme Court refused to deny certiorari. The remittitur was filed June 6, 2013 with the lower court. The companion case is Appellate Case Number 2012-212-168.

The other matters were referred to Darrell Thomas Johnson, Jr., as Special Referee with finality, to make a determination of sums owed while Mr. Lowther had control of the properties. After a long involved hearing and numerous accountings, it was determined that, amongst other things, Mr. Lowther had sold a number of lots from the property, sold the timber thereon, and as a result owed his siblings a return of the deed to the premises (what was left of it), the Estate regained its interest in the four waterfront lots, and a money judgment in the amount of \$193,231.32 was entered. Thereafter a Motion to Reconsider was filed which lay dormant for a number of years. An initial Appeal was filed January 7, 2016.

Some four years after the entry of the Order by Special Referee Johnson, Legrand Lowther filed a Motion to Reconsider that judgment as well as a challenge to the Special Referee's accounting of the dollar amount owed (the original order awarded various sums for various inactions and sometime after the Special Referee did the math and assigned a dollar amount to the total amount of the judgment.) The Order on the Motion to Reconsider was filed December 28, 2015, with the Office of the Clerk of Court for Jasper County, by Special Referee Johnson.

Thereafter, the Appellant Legrand Lowther filed a Motion to the effect that the original file could not be located in the Clerk of Court's office and that it needed to be sent back to the Special Referee to reconstruct the file. Such was done by Order of the Court on July 21, 2016. Such was done. The Order of Reconstruction was filed and served on October 28, 2016 (the effect of the Order was that both files had always been in the Office of the Clerk of Court for Jasper County, but as an Order had been issued on two different files, they were consolidated under 2008-CP-27-151. Ninety days elapsed since the Record was reconstructed with no brief, motion for more time or anything else filed by the Appellate E. Legrand Lowther.

There is further nothing in the Record that shows that the Appellant ever requested the Special Referee to rule on any outstanding motions, nor do anything but rest on his laurels as time marched on.

**JUSTICE DELAYED IS JUSTICE DENIED.** The Respondents, C. E. Lowther, Jr., et al, respectfully move that pursuant to Rule 28(a)(4) of the SCRAP that this Appeal should be dismissed.

LAW OFFICE OF R. THAYER RIVERS, JR.

A handwritten signature in cursive script, appearing to read "R. Thayer Rivers, Jr.", written over a horizontal line.

R. THAYER RIVERS, JR.

Post Office Box 668

Ridgeland, SC 29936

843-726-8136

Attorney for the Appellants

Ridgeland, SC,  
February 8, 2017

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**PROOF OF SERVICE**

I certify that I have served the Appellant's Motion to Dismiss on E. Legrand Lowther by depositing a copy of same in the United States Mail, postage prepaid, on February 8, 2017, addressed to his attorney of record, H. Fred Kuhn, Jr., Post Office Drawer 507, Beaufort, SC, 29901.

LAW OFFICE OF R. THAYER RIVERS, JR.

  
R. THAYER RIVERS, JR.  
Post Office Box 668  
Ridgeland, SC 29936  
843-726-8136

Attorney for the Appellants

Ridgeland, SC,  
February 8, 2017

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ALSO ADMITTED IN GEORGIA

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(843) 726-8136  
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February 8, 2017

Ms. V. Claire Allen  
Deputy Clerk  
Post Office Box 11629  
Columbia, SC 29211

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**RE: C. E. LOWTHER, JR. v. E. LEGRAND LOWTHER**  
**APPELLATE CASE NUMBER: 2016-000042**

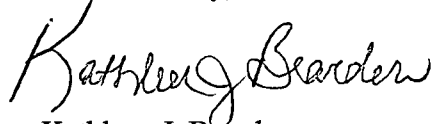
Dear Ms. Allen:

Enclosed please find the original and 7 copies of the Respondent's Motion to Dismiss Appeal in the above matter. Please file the original and return a clocked copy in the envelope provided. Also enclosed is our firm's check in the amount of \$25.00 representing the filing fee for same.

By copy of this letter, I am serving H. Fred Kuhn, Jr., attorney for the Appellant, a copy of the aforementioned Motion to Dismiss.

Thank you and kindest regards..

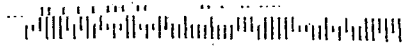
Most sincerely,



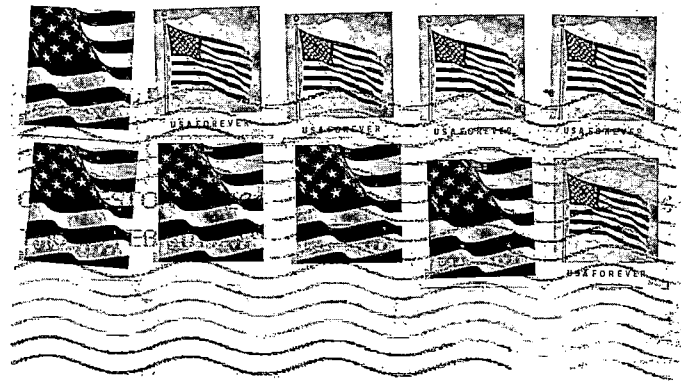
Kathleen J. Bearden  
Paralegal to R. Thayer Rivers, Jr.

:kjb  
Enclosures

cc: H. Fred Kuhn, Jr., Esquire (w/encl.)



LAW OFFICE  
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